



Missouri Public Service Commission

FILED

SEP 19 2017

Judge or Division: Regulatory Law Judge Michael Bushmann	Appellate Number:	Missouri Public Service Commission 11:08am MA  (Date File Stamp)
Appellant: Grain Belt Express Clean Line, LLC	Missouri Public Service Commission File Number: EA-2016-0358	
Respondent: Missouri Public Service Commission		

Notice of Appeal

Notice is given that Grain Belt Express Clean Line, LLC appeals to the Missouri Court of Appeals  Western  Eastern  Southern District.

September 19, 2017  
Date Notice of Appeal Filed  
(to be filled in by Secretary of Commission)

Signature of Attorney of Appellant

The notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, and any other information specified by the rules of the court. The appellant(s) must file the original and (2) two copies and pay the docket fee required by court rule to the Secretary of the Commission within the time specified by law. **Please make checks or money orders payable to the Missouri Court of Appeals.** At the same time, Appellant must serve a copy of the Notice of Appeal on attorneys of record of all parties other than appellant(s), and on all parties not represented by an attorney. The commission shall forward the notice of appeal to the appropriate appellate court.

CASE INFORMATION

Appellant Name / Bar Number: Jeremiah W. "Jay" Nixon, MO Bar # 29603 John J. Rehmann, II MO Bar # 61245	Respondent's Attorney / Bar Number: Kevin Thompson, MO Bar # 36288		
Address: Dowd Bennett LLP 7733 Forsyth Blvd, Suite 1900 St. Louis, MO 63105	Address: Missouri Public Service Commission P.O. Box 360 Jefferson City, MO 65102		
Telephone: (314) 889-7300	Fax: (314) 863-2111	Telephone: (573) 751-7393	Fax: (573) 751-9285
Date of Commission Decision: August 16, 2017	Date of Application for Rehearing Filed: August 25, 2017	Date Application for Rehearing Ruled On: September 19, 2017	

DIRECTIONS TO COMMISSION

A copy of the notice of appeal and the docket fee shall be forwarded to the clerk of the appellate court. Unless otherwise ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of appeal, certify its record in the case to the court of appeals.

Certificate of Service

I certify that on September 19, 2017 (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

See Civil Case Information Form, attached hereto, for list of counsel to be served via United States mail.

---



---



---



---

Appellant or Attorney for Appellant

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Application of Grain Belt Express )  
Clean Line LLC for a Certificate of Convenience and )  
Necessity Authorizing it to Construct, Own, Operate, )  
Control, Manage, and Maintain a High Voltage, Direct ) Case No. EA-2016-0358  
Current Transmission Line and an Associated Converter )  
Station Providing an Interconnection on the Maywood- )  
Montgomery 345 kV Transmission Line )

**APPLICATION FOR REHEARING  
OF GRAIN BELT EXPRESS CLEAN LINE LLC**

Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”) submits this Application for Rehearing, pursuant to Section 386.500<sup>1</sup> and 4 CSR 240-2.160, seeking rehearing on the Missouri Public Service Commission’s (“Commission” or “PSC”) Report and Order (“Report and Order”) issued on August 16, 2017.

In support of this Application, the Company states as follows:

**I. Legal Principles that Govern Applications for Rehearing**

1. All decisions of the Commission must be lawful, with statutory authority to support its actions, as well as reasonable. State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732, 734-35 (Mo. banc 2003). An order’s reasonableness depends on whether it is supported by substantial and competent evidence on the record as a whole. State ex rel. Alma Tel. Co. v. PSC, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). An order must not be arbitrary, capricious, or unreasonable, and the Commission must not abuse its discretion. Id.

2. In a contested case, the Commission is required to make findings of fact and conclusions of law pursuant to Section 536.090. Deaconess Manor v. PSC, 994 S.W.2d 602, 612 (Mo. App. W.D. 1999). For judicial review to have any meaning, it is a minimum requirement

---

<sup>1</sup> All references are to the Missouri Revised Statutes (2016), as amended.

that the evidence, along with the explanation thereof by the Commission, make sense to the reviewing court. State ex rel. Capital Cities Water Co. v. PSC, 850 S.W.2d 903, 914 (Mo. App. W.D. 1993). In order for a Commission decision to be lawful, the Commission must include appropriate findings of fact and conclusions of law that are sufficient to permit a reviewing court to determine if it is based upon competent and substantial evidence. State ex rel. Monsanto Co. v. PSC, 716 S.W.2d 791, 795 (Mo. banc 1986); State ex rel. Noranda Aluminum, Inc. v. PSC, 24 S.W.3d 243, 246 (Mo. App. W.D. 2000); State ex rel. A.P. Green Refractories v. PSC, 752 S.W.2d 835, 838 (Mo. App. W.D. 1988); State ex rel. Fischer v. PSC, 645 S.W.2d 39, 42-43 (Mo. App. W.D. 1982), cert. denied, 464 U.S. 819 (1983).

3. However, the Commission's findings of fact and conclusions of law must not run afoul of the negative or "dormant" federalism principles embodied in the Commerce Clause, U.S. Const. Art. 1, § 8, cl. 3. The dormant Commerce Clause restricts individual state interference with the flow of interstate commerce, be it through actions that overtly discriminate against interstate commerce through differential treatment of in-state and out-of-state economic interests, or through actions that in their effect impose a burden upon interstate commerce that is excessive. Oregon Waste Sys., Inc. v. Department of Env'tl. Quality, 511 U.S. 93, 99 (1994); Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970); U & I Sanitation v. City of Columbus, 205 F.3d 1063, 1067 (8th Cir. 2000).

4. A review of the Commission's conclusions of law and of the evidentiary record in this case demonstrates that the Report and Order failed to comply with these principles in certain respects and that rehearing should be granted as to the issues discussed below.

## II. Issues on Which Rehearing is Sought

### A. **This Commission May Lawfully Issue the Company a Line CCN**

5. As the Commission stated in its Report and Order, “[t]he threshold issue for determination is whether the Commission may lawfully issue to [the Company] the certificate of convenience and necessity it seeks.” See Report and Order at 11. But the Commission needlessly and improperly looked to the recent decision of the Court of Appeals in Neighbors United Against Ameren’s Power Line v. PSC, No. WD79883, 2017 WL 1149139 (Mo. App. W.D., Mar. 28, 2017), transfer denied, No. SC96427 (June 27, 2017) (“Neighbors United”)<sup>2</sup> for “guidance from the courts on this issue.” See Report and Order at 11.

6. Contrary to the Commission’s assertion that it was reading the Court’s “plain language,” Neighbors United does *not* limit the Commission’s ability issue a Certificate Convenience and Necessity (“CCN”) in this case. See Report and Order at 13-14. Nor does it impact the Commission’s ability to grant the waiver or variance of its filing requirements that the Company sought in its June 29, 2017 motion. See Report and Order at 14-15.

7. The Court in Neighbors United considered whether the Commission properly issued a CCN to Ameren Transmission Company of Illinois (“ATXI”) conditioned upon that company obtaining the assent of county commissions under Section 229.100 for the ATXI project to cross county roads. Finding that “[r]esolution of the issue of whether the PSC had the statutory authority to grant a conditional CCN to ATXI in this instance involves statutory interpretation,” the Court of Appeals declared: “Neither statute [explicitly referring to Section 393.170.2] nor rule [explicitly referring to 4 CSR 240-3.105(1)(D)1] authorizes the PSC to issue a CCN *before* the applicant has obtained the required consent or franchise.” Neighbors United,

---

<sup>2</sup> Neighbors United is the same decision referred to in the Report and Order as “Ameren Transmission Co.”

2017 WL 1149139 at \*3, 4 (emphasis original). It vacated the Commission's Report and Order "[b]ecause the PSC has no statutory authority to grant a preliminary or conditional CCN contingent on the required county commission consents." Id. at \*1.

8. Interpreting that decision, this Commission in the instant case determined that "[t]here are no material factual distinctions" between that case and the Grain Belt Express case presently before the Commission. See Report and Order at 13. Accordingly, this Commission felt that its hands were tied and that it "cannot lawfully issue a CCN to [Grain Belt Express] until the company submits evidence that it has obtained the necessary county assents under Section 229.100." See Report and Order at 14.<sup>3</sup>

9. This determination is in error for two reasons: (1) The Neighbors United decision interprets a statutory provision that was never invoked in and is not relevant to this case, and that Court found that such statutory provision prohibits the Commission from issuing a preliminary or conditional CCN, which it did not do in this case; and (2) Contrary to the Commission's statement, there are particular legal and factual distinctions between this case and that underlying Neighbors United, and granting the waiver or variance of filing requirements that the Company sought would have addressed these factual distinctions while also yielding to the Neighbors United decision.

10. Accordingly, the Commission's findings of fact and conclusions of law are not supported by substantial and competent evidence on the record as a whole and are grounded in

---

<sup>3</sup> This finding plainly amounts to a usurpation of the statutory and general supervision powers delegated to the Commission by the Missouri General Assembly and codified in the Public Service Commission Law at Chapters 386 and 393. Contrary to its findings in the Report and Order, nothing in Neighbors United prevents the Commission from exercising its delegated statutory authority to grant a CCN here. Finding otherwise is in derogation of this Commission's duty to exercise the powers necessary to enable it to carry out fully and effectually all purposes of the Public Service Commission Law, and is contrary to the long-standing statutory scheme and intent of the Missouri General Assembly.

legal error, and the Report and Order is unlawful, arbitrary, capricious, and unreasonable. Rehearing of the case is warranted.

**B. Neighbors United Does Not Bind This Commission**

11. In Neighbors United the Court found that the Commission exceeded its authority under the second subsection of Section 393.170 by granting ATXI a conditional CCN under the third subsection of Section 393.170 prior to ATXI obtaining all necessary county road-crossing assents under Section 229.100. Therefore, the holding of Neighbors United is based on a statutory provision of no relevance to the Grain Belt Express Application, which specifically requested a CCN under the first subsection of Section 393.170. See Application, Preamble & ¶ 1 (Aug. 30, 2016).

12. The Court of Appeals determined that “county commission assents required by section 229.100 and 4 CSR 240-3.105(1)(D)1 must be submitted to the PSC before the PSC grants a CCN.” It found error when the “PSC imposed a condition upon the CCN that ATXI acquire the county assents before the CCN would become effective.” Neighbors United, 2017 WL 1149139 at \*2. But it made this determination based on the mandatory language of the second subsection of Section 393.170. Id. at \*4. See Report and Order at 13. The Court did so in light of the permissive language of the third subsection of Section 393.170, which authorized the Commission to “impose such condition or conditions as it may deem reasonable and necessary.” Id.

13. The Court explicitly held that “the general provision of section 393.170.3 gives way to the more specific and mandatory language of section 393.170.2, which says that the applicant ‘shall’ file with the PSC a certified copy of the applicant’s corporate charter together with ‘a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper [local government] authorities.’” Neighbors United,

2017 WL 1149139 at \*4. It reasoned that its “harmonization of the statute preserves the integrity of both subdivisions [that is, the second and third subsections] of section 393.170” and “gives plain meaning to the legislature’s use of the mandatory term ‘shall’ when it describes what documents the applicant must submit to the PSC before a CCN will be issued.” Id. Based on this statutory interpretation, the Court of Appeals pronounced: “The PSC’s issuance of a CCN contingent on ATXI’s subsequent provision of required county commission assents was unlawful as it exceeded the PSC’s statutory authority.” Id.

14. Because the Commission and Missouri appellate courts have for decades recognized the distinction between the first (construction) and second (area franchise) subsections of Section 393.170,<sup>4</sup> Grain Belt Express submitted its Application under the first subsection of Section 393.170, which plainly does not contain the mandatory language relating to “the required consent of the proper municipal [or local governmental] authorities.” The Neighbors United decision did nothing to change the fact that Line and Area certificates are distinct, as are the statutory sections under which the Commission may grant those certificates. Because the Court of Appeals decision makes no mention of Section 393.170.1, its holding does not affect CCN applications submitted under that provision. Nor may the Court’s rationale be exported to Subsection 1 Line certificate cases such as the instant case, as there is no mandatory

---

<sup>4</sup> Section 393.170.1 concerns “line” certificates where a company seeks permission to construct an electric plant or a transmission line, which Grain Belt Express seeks to do here. State ex rel. Union Elec. Co. v. PSC, 770 S.W.2d 283, 285 (Mo. App. W.D. 1989) (“Two types of certificate authority are contemplated under Missouri statutes,” noting line certificates provide authority to construct electrical plants and transmission lines, and area certificates provide authority “to serve a territory”; rejecting the view “that the two types of authority should be considered interchangeable”); State ex rel. Harline v. PSC, 343 S.W.2d 177, 182-83 (Mo. App. K.C. 1960). By contrast, Section 393.170.2 relates to “area” certificates sought by a utility to serve retail customers in a particular territory, which is not relevant to this case. See also State ex rel. Cass County v. PSC, 259 S.W.3d 544, 548-49 (Mo. App. W.D. 2008) (“Permission to build transmission lines or production facilities is generally granted in the form of a ‘line’ certificate. ... A line certificate thus functions as PSC approval for the construction described in subsection 1 of section 393.170. Permission to exercise a franchise by serving customers is generally granted in the form of an ‘area’ certificate. ... Area certificates thus provide approval of the sort contemplated in subsection 2 of section 393.170.”). Accord StopAquila.org v. Aquila, Inc., 180 S.W.3d 24, 33 (Mo. App. W.D. 2005) (Section 393.170 is “divided into three distinct subsections”<sup>4</sup>).

language in that subsection that is analogous to the mandatory language in Subsection 2 upon which the Court based its decision. And the Court's determination is limited to the Commission's authority to issue preliminary or conditional CCNs where Subsection 2 requires county commission assents, which the Commission did not do here.

15. The maxim of stare decisis applies only to points actually decided in a case, and should not be applied to constructions that, at most, may be implied from what was actually decided. Franklin v. Pinnacle Ent., Inc., 1 F. Supp. 3d 979, 990 (E.D. Mo. 2014) (noting that a case deciding dismissal on a single issue different from the instant issue was not precedential); Bob DeGeorge Assocs., Inc. v. Hawthorn Bank, 377 S.W.3d 592, 600 (Mo. 2012) (distinguishing a separate decision as "limited to the facts of that case"); Broadwater v. Wabash R. Co., 212 Mo. 437, 110 S.W. 1084, 1086 (1908). Neighbors United plainly is not binding here.

16. When the Neighbors United Court stated that "[b]y statute and by rule, the PSC is authorized to issue a CCN only after the applicant has submitted evidence satisfactory to the PSC that the consent or franchise has been secured by the public utility," it was explicitly referring to Section 393.170.2 and 4 CSR 240-3.105(1)(D)1. Its rationale was entirely premised on the mandatory language of Subsection 2. And its holding was that the PSC may not issue CCNs contingent upon the subsequent provision of county commission assents where Subsection 2 requires such assents. Accordingly, the Neighbors United decision is not binding upon the Commission in this case, and is not relevant to Subsection 1 which contains no language regarding governmental consents. The Commission erred here when it found that it was bound by the non-precedential Neighbors United decision, and when it denied the Company's CCN Application on that ground.



**C. There Exist Legal and Factual Distinctions with the ATXI Case That Would Allow the PSC to Issue Grain Belt Express a CCN**

17. Unlike Grain Belt Express, ATXI did not request a Line certificate under Section 393.170.1. See Application at 1, In re Ameren Trans. Co. of Illinois, No. EA-2015-0146 (May 29, 2015). As a result, the Commission granted a non-specific CCN under Section 393.170, without indicating whether a Line or an Area certificate was being granted. See Report and Order at 5, In re Ameren Trans. Co. of Illinois, No. EA-2015-0146 (Apr. 27, 2016). Given the absence of specific findings of fact and conclusions of law on the differences between Line and Area certificates, and Subsections 1 and 2 of Section 393.170, the Court of Appeals failed to address this distinction and issued an opinion which, by its plain language, applies only to CCNs sought under the Subsection 2 of Section 393.170.

18. Furthermore, the Grain Belt Express Project is a four-state interstate, wholesale transmission line. See Report and Order at 7. ATXI's project is entirely in Missouri – it starts near Palmyra, Missouri and extends to the Iowa border. See Neighbors United, 2017 WL 1149139 at \*1; see also Application at 1, In re Ameren Trans. Co. of Illinois, No. EA-2015-0146 (May 29, 2015).

19. Accordingly, the Commission erred when it stated that “[t]here are no material factual distinctions between *Ameren Transmission Co.* and this [Grain Belt Express] case that would permit the Commission to reach a different result on the question of statutory authority to grant a CCN in this case.” See Report and Order at 13.<sup>5</sup>

---

<sup>5</sup> The Commission further erred when it determined that the Company did not submit evidence of county assents in this case. See Report and Order at 14. The record clearly contained such evidence, as the Commission found in its own findings of fact. See Report and Order, ¶ 12 at p. 8, citing Ex. 300 at 33 (Lowenstein Rebuttal) & Sched. LDL-3. In any event, while the Commission correctly noted that certain county commissions have attempted to rescind their previously-granted assents, it is not within the purview of this Commission to determine the validity of assents or rescissions. See Report and Order at 8. See also Ex. 300, Lowenstein Rebuttal, at 33, Sched. LDL-4. The Commission plainly does not have the authority to determine whether governmental approvals are valid, a question

20. Moreover, unlike ATXI, Grain Belt Express never once argued that it need not obtain Section 229.100 county assents. See Report and Order, Finding of Fact ¶ 16 at p. 9. To the contrary, Grain Belt Express has consistently acknowledged that such county assents are required under an independent statute, and must be obtained prior to the start of construction. See Supplemental Brief of Grain Belt Express at 7-8, 14 (July 18, 2017); Response of Grain Belt Express to Agenda Discussion of Notice Regarding Case Status at ¶ 11 (June 1, 2017); Reply Brief of Applicant Grain Belt Express Clean Line LLC at 8 (Apr. 24, 2017); Initial Post-Hearing Brief of Applicant Grain Belt Express Clean Line LLC at 20-22 (Apr. 10, 2017). Grain Belt Express also recognized that the Commission’s rules require the filing of the approval of “affected governmental bodies” when such approvals are required, and that such filing must occur “prior to the granting of the authority sought.” See 4 CSR 240-3.105(1)(D)1, 4 CSR 240-3.105(2). See also Request of Grain Belt Express and Motion for Waiver or Variance of Filing Requirements at ¶ 9 (June 29, 2017).

21. However, nothing in the plain language of Section 229.100 or Section 393.170.1 requires the filing of county assents with the Commission prior to its issuing a CCN. Section 229.100 isn’t even part of the electricity provisions of the Public Service Commission Law, which are codified in Chapters 386 and 393. And nothing in the Neighbors United decision requires the filing of county assents with the Commission prior to its issuing a Subsection 1 line CCN. To the contrary, Neighbors United held that the required filing of county assents prior to the Commission’s issuance of a CCN “by statute and by rule” is found in Section 393.170.2 and 4 CSR 240-3.105(1)(D)1, respectively. Neighbors United, 2017 WL 1149139 at \*3.

---

that is reserved to the courts. See State ex rel. Elec. Co. of Missouri v. Atkinson, 275 Mo. 325, 204 S.W. 897, 898 (Mo. en banc 1918).

22. Consequently, and to the extent the Commission found Neighbors United relevant to this Subsection 1 line CCN case, the Company's request for a waiver or variance of the Commission's filings requirements would have allowed the Commission to lawfully issue the Company a CCN consistent with the precise holding in Neighbors United. See Request of Grain Belt Express and Motion for Waiver or Variance of Filing Requirements at ¶ 17 (June 29, 2017). While the Commission is free to acknowledge that other independent legal requirements, such as Section 229.100 county assents, must be met prior to the commencement of construction, those requirements are conditions precedent to the issuance of a line CCN under neither Missouri statute nor Neighbors United, and do not prevent the Commission from exercising its lawful jurisdiction under Section 393.170.1.

23. Therefore, the Company requests that this Commission rehear its determination that because it concluded Company's Application must be denied under Neighbors United, the Motion for Waiver or Variance of Filing Requirements is rendered moot and must also be denied. See Report and Order at 14-15. Section 229.100 is in a distinct section of Missouri statutes relating to the "Construction and Regulation of Public Roads." It is irrelevant to this Commission's authority to determine the public convenience or necessity of a proposed construction project, and it should not be used subjugate the Commission's authority to hear Line certificate cases. This Commission may waive its filing requirements in 4 CSR 240-3.105(1)(D)1 and 240-3.105(2), and issue a Line CCN with full confidence that the Company is still independently required to obtain all county assents required under Section 229.100.

24. The Commission's finding that "[t]here are no material factual distinctions between *Ameren Transmission Co.* and this [Grain Belt Express] case that would permit the Commission to reach a different result on the question of statutory authority to grant a CCN in

this case” is contrary to the substantial and competent evidence in this case, and its conclusion that the Company’s pending Motion for Waiver or Variance of Filing Requirements is moot is arbitrary, capricious, and unreasonable. Rehearing on these issues is warranted.

### **III. The Commission’s Decision Violates the Commerce Clause**

25. The Commission’s conclusions in this case violate the dormant federalism principles embodied in the Commerce Clause, which restrict state intrusion upon the flow of interstate commerce. Because the Commission’s decision in its Report and Order discriminates against interstate commerce, it is unconstitutional.

26. The dormant Commerce Clause analysis is two-tiered. First, the law will be stricken if the challenged action “overtly discriminates against interstate commerce.” U&I Sanitation v. City of Columbus, 205 F.3d 1063, 1067 (8th Cir. 2000). “Discrimination” in this context means “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.” Id., citing Oregon Waste Sys., Inc. v. Department of Env’tl. Quality, 511 U.S. 93, 99 (1994). Second, even if a law does not overtly discriminate against interstate commerce, the law will nonetheless be stricken if the burden it imposes upon interstate commerce is “clearly excessive in relation to the putative local benefits.” Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970). Here, the Commission improperly stretched a court decision premised explicitly on Subsection 2 of Section 393.170 to this Subsection 1 case. In doing so, and no matter how well-intended, the Commission’s determination discriminates against interstate commerce in its practical effect, and the burden it imposes on interstate commerce is excessive, in contravention of the dormant Commerce Clause. See City of Philadelphia v. New Jersey, 437 U.S. 617, 624, 627 (1978). The Report and Order therefore unlawfully violates the Commerce Clause of the U.S. Constitution.

27. Indeed, the dormant Commerce Clause bars state regulations that, although facially nondiscriminatory, unduly burden interstate commerce. Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970). See Kassel v. Consolidated Freightways Corp., 450 U.S. 662 (1981).<sup>6</sup> The Commission's denial of the Company's Line CCN Application runs afoul of this element of Commerce Clause analysis because it unduly burdens the delivery of electricity generated by wind farms in western Kansas not just to Missouri consumers, but to key markets in Illinois, Indiana, and the eastern United States.

28. The Court in Pike v. Bruce Church, Inc., 397 U.S. 137 (1970), stated the general rule for determining the validity of state statutes affecting interstate commerce:

Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. [397 U.S. at 142 (citations omitted)].

29. The Commission clearly misapplied the Neighbors United decision to this case. That case did not interpret or apply to Section 393.170.1, the lone section under which the Company sought a Line CCN. The Commission's finding that Neighbors United "and its plain language regarding the necessity of obtaining prior county assents apply to the [Grain Belt Express] application" is incorrect, counter to the plain language of 393.170.1, contrary to a century of case law developed by the Commission and Missouri appellate courts, and, importantly, will impede future investment and development that would benefit Missouri, the region, and the nation as a whole. See Report and Order at 13-14.

---

<sup>6</sup> In Kassel the Supreme Court held that Iowa's prohibition on the use of certain trucks within its borders, unlike all other neighboring states, unconstitutionally burdened interstate commerce due to, *inter alia*, the increased costs to trucking companies in routing their trucks around Iowa, and denied Iowa's defense of the prohibition as a reasonable safety measure. 450 U.S. at 663, 674.

30. Moreover, the Commission's determination is inconsistent with other midwestern states, further evidencing a burden on interstate commerce. See Kassel, 450 U.S. at 671 (noting that "Iowa's law [prohibiting trucks of a certain size] is now out of step with the laws of all other Midwestern and Western States. Iowa thus substantially burdens the interstate flow of goods by truck."). Grain Belt Express has received the approval of the regulatory utility commissions of Kansas,<sup>7</sup> Illinois,<sup>8</sup> and Indiana.<sup>9</sup> Missouri is the only state to withhold its approval, the only state to withhold its approval based on a misinterpretation of the Court of Appeals decision, discussed above.

31. Courts have long-recognized that inconsistent state regulation of those aspects of commerce that by their unique nature demand cohesive national treatment offends the Commerce Clause. See Wabash, St. Louis & Pac. Ry. v. Illinois, 118 U.S. 557 (1886) (holding railroad rates exempt from state regulation). "The menace of inconsistent state regulation invites analysis under the Commerce Clause of the Constitution, because that clause represented the framers' reaction to overreaching by the individual states that might jeopardize the growth of the nation—and in particular, the national infrastructure of communications and trade—as a whole." American Libraries Ass'n v. Pataki, 969 F. Supp. 160, 169 (S.D.N.Y. 1997) (New York computer crime statute violated the Commerce Clause because, *inter alia*, "the Internet is one of those areas of commerce that must be marked off as a national preserve to protect users from inconsistent [state] legislation that, taken to its most extreme, could paralyze development of the

---

<sup>7</sup> Order Approving Stipulation & Agreement and Granting Certificate, In re Application of Grain Belt Express Clean Line LLC for a Limited Certificate of Public Convenience, Docket No. 11-GBEE-624-COC (Kan. Corp. Comm'n, Dec. 7, 2011); Order Granting Siting Permit, In re Application of Grain Belt Express Clean Line LLC for a Siting Permit for the Construction of a High Voltage Direct Current Transmission Line, Docket No. 13-GBEE-803-MIS (Kan. Corp. Comm'n, Nov. 7, 2013).

<sup>8</sup> Order, Grain Belt Express Clean Line, LLC, No. 15-0277 (Ill. Comm. Comm'n, Nov. 12, 2015) at 232-33.

<sup>9</sup> Order, Petition of Grain Belt Express Clean Line, LLC, Cause No. 44264 (Ind. Util. Reg. Comm'n, May 22, 2013).

Internet altogether”). The Commission’s decision here is equally likely to paralyze the development of interstate electric transmission to deliver low-cost renewable wind power from high capacity states to states that lack renewable energy resources. Accordingly, the Report and Order violates the Commerce Clause of the U.S. Constitution, and should be reheard.

WHEREFORE, Grain Belt Express Clean Line LLC requests that the Commission grant this Application for Rehearing of its August 16, 2017 Report and Order consistent with the Company’s CCN Application, Initial Post-Hearing Brief, Reply Post-Hearing Brief, Proposed Findings of Fact and Conclusions of Law, Motion for Waiver or Variance of Filing Requirements, and Supplemental Brief.

/s/ Karl Zobrist

Karl Zobrist	MBN 28325
Jacqueline M. Whipple	MBN 65270
Dentons US LLP	
4520 Main Street, Suite 1100	
Kansas City, Missouri 64111	
(816) 460-2400	
(816) 531-7545 (Fax)	
karl.zobrist@dentons.com	
jacqueline.whipple@dentons.com	

Cary J. Kottler  
General Counsel  
Erin Szalkowski  
Corporate Counsel  
Clean Line Energy Partners LLC  
1001 McKinney Street, Suite 700  
Houston, TX 77002  
(832) 319-6320  
ckottler@cleanlineenergy.com  
eszalkowski@cleanlineenergy.com

ATTORNEYS FOR GRAIN BELT EXPRESS  
CLEAN LINE LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all parties of record by email or U.S. mail, postage prepaid, this 25th day of August, 2017.

/s/ Karl Zobrist

Attorney for Grain Belt Express Clean Line LLC



IN THE MISSOURI COURT OF APPEALS

EASTERN DISTRICT

APPEAL NO. \_\_\_\_\_

CIVIL CASE INFORMATION FORM

Party

Grain Belt Express Clean Line, LLC  
(Appellant)

Missouri Public Service Commission  
(Party as a matter of right per statute)

Missouri Landowners Alliance  
(Intervenor in PSC proceedings)

Charles and Robyn Henke  
(Intervenor in PSC proceeding)

Attorney

Jeremiah W. "Jay" Nixon, MO Bar # 29603  
John J. Rehmann, II, MO Bar # 61245  
Adam J. Simon, MO Bar # 68396  
Dowd Bennett LLP  
7733 Forsyth Blvd, Suite 1900  
St. Louis, MO 63105  
(314) 889-7300

James R. Layton, Mo Bar # 45631  
Tueth Keeney  
34 N. Meramec Ave., Suite 600  
St. Louis, MO 63105  
(314) 880-3600

Cary J. Kottler  
Erin Szalkowski  
Clean Line Energy Partners LLC  
1001 McKinney Street, Suite 700, Houston, TX  
77002  
(832) 319-6311

Kevin Thompson, MO Bar # 36288  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102-0360  
(573) 751-7393

Paul Agathen, MO Bar # 24756.  
485 Oak Field Ct.  
Washington, MO 63090  
(636) 980-6403

Paul Agathen, MO Bar # 24756.  
485 Oak Field Ct.  
Washington, MO 63090  
(636) 980-6403

R. Kenneth Hutchinson  
(Intervenor in PSC proceeding)

Paul Agathen, MO Bar # 24756.  
485 Oak Field Ct.  
Washington, MO 63090  
(636) 980-6403

Matthew and Christina Reichert  
(Intervenor in PSC proceeding)

Paul Agathen, MO Bar # 24756.  
485 Oak Field Ct.  
Washington, MO 63090  
(636) 980-6403

Randall and Roseanne Meyer  
(Intervenor in PSC proceeding)

Paul Agathen, MO Bar # 24756.  
485 Oak Field Ct.  
Washington, MO 63090  
(636) 980-6403

Eastern Missouri Landowners Alliance  
d/b/a Show Me Concerned Landowners  
(Intervenor in PSC proceeding)

David C. Linton, MO Bar # 32198  
314 Romaine Spring View  
Fenton, MO 63026  
(314) 341-5769

Missouri Joint Municipal Electric Utility  
Commission  
(Intervenor in PSC proceeding)

Peggy A. Whipple MO Bar # 54758  
Douglas L. Healy, MO Bar #51630  
Penny M. Speake, MO Bar #37469  
Healy Law Offices, LLC  
514 East High Street, Suite 22  
Jefferson City, MO 65101  
(573) 415-8379

Rockies Express Pipeline LLC  
(Intervenor in PSC proceeding)

Colly J. Durley, #33800  
Sarah E. Giboney, ##50299  
SMITH LEWIS, LLP  
Suite 200, City Centre Building  
111 South Ninth Street  
P.O. Box 918  
Columbia, MO 65205-0918  
(573) 443-3141

Sierra Club  
(Intervenor in PSC proceeding)

Henry B. Robertson, MO Bar # 29502  
Great Rivers Environmental Law Center  
319 N. Fourth Street, Suite 800  
St. Louis, Missouri 63102  
(314) 231-4181

Natural Resources Defense Council  
(Intervenor in PSC proceeding)

Henry B. Robertson, MO Bar # 29502  
Great Rivers Environmental Law Center  
319 N. Fourth Street, Suite 800  
St. Louis, Missouri 63102  
(314) 231-4181

The Wind Coalition  
(Intervenor in PSC proceeding)

Sean R. Brady (IL Bar No. 6271134)  
Wind on the Wires  
P.O. Box 4072  
Wheaton, IL 60189-4072  
(312) 867-0609

Deirdre Kay Hirner (MO Bar #66724)  
American Wind Energy Association  
2603 Huntleigh Place  
Jefferson City, MO 65109  
(202) 412-0130

Wind on the Wires  
(Intervenor in PSC proceeding)

Sean R. Brady (IL Bar No. 6271134)  
Wind on the Wires  
P.O. Box 4072  
Wheaton, IL 60189-4072  
(312) 867-0609

Deirdre Kay Hirner (MO Bar #66724)  
American Wind Energy Association  
2603 Huntleigh Place  
Jefferson City, MO 65109  
(202) 412-0130

Infinity Wind Power  
(Intervenor in PSC proceeding)

Terri Pemberton, MO Bar No. 60492  
CAFER PEMBERTON LLC  
3321 SW Sixth Ave.  
Topeka, KS 66606  
(785) 232-2123

Missouri Department of Economic  
Development  
(Intervenor in PSC proceeding)

Brian Bear, MO Bar # 61957  
Missouri Department of Economic Development  
P.O. Box 1157  
Jefferson City, MO 65102  
573-526-2423

Walmart Stores, Inc.  
(Intervenor in PSC proceeding)

David L. Woodsmall, MO Bar # 40747  
308 E. High Street, Suite 204  
Jefferson City, Missouri 65101  
(573) 797-0005

Earth Island Institute d/b/a Renew  
Missouri  
(Intervenor in PSC proceeding)

Andrew J. Linhares, MO Bar # 63973  
1200 Rogers St., Ste. B  
Columbia, MO 65201  
(314) 471-9973

International Brotherhood of Electrical  
Workers Locals 2 and 53 AFL-CIO  
(Intervenor in PSC proceeding)

Sherrie Hall, MBN 40949  
Emily R. Perez, MBN 62537  
Hammond and Shinnors, P.C.  
7730 Carondelet Avenue, Suite 200  
St. Louis, Missouri 63105  
(314) 727-1015

Missouri Farm Bureau Federation  
(Intervenor in PSC proceeding)

Brent E. Haden, Mo. Bar No. 54148  
827 E. Broadway, Suite B  
P.O. Box 7166  
Columbia, MO 65201  
(573) 442-3535

Missouri Industrial Energy Consumers  
(Intervenor in PSC proceeding)

Lewis Mills, #28866  
221 Bolivar Street, Suite 101  
Jefferson City, MO 65109  
(573) 556-6622

Diana M. Vuylsteke, # 42419  
211 N. Broadway, Suite 3600  
St. Louis, Missouri 63102  
(314) 259-2543

Missouri Retailers Association  
(Intervenor in PSC proceeding)

Lewis Mills, #28866  
221 Bolivar Street, Suite 101  
Jefferson City, MO 65109  
(573) 556-6622

Diana M. Vuylsteke, # 42419  
211 N. Broadway, Suite 3600  
St. Louis, Missouri 63102  
(314) 259-2543

Consumers Council of Missouri  
(Intervenor in PSC proceeding)

John B. Coffinan, MO Bar # 36591  
John B. Coffinan, LLC  
871 Tuxedo Blvd.  
St. Louis, MO 63119-2044  
(573) 424-6779

Missouri AFL-CIO  
(Intervenor in PSC proceeding)

James P. Faul, MO Bar # 58799  
4399 Laclede Avenue  
St. Louis, MO 63108  
(314) 531-105

The Record on Appeal will consist of:

       Legal File only or   X   Legal File and Transcript

## A BRIEF STATEMENT OR DESCRIPTION OF THE CASE

After conducting public hearings in counties spanning the State of Missouri, including Monroe and Ralls counties, and a four-day evidentiary hearing, Respondent Missouri Public Service Commission (“Commission”) issued the Report and Order that is the subject of this appeal in Case No. EA-2016-0358 on August 16, 2017. In that Report and Order, the Commission determined that Neighbors United Against Ameren's Power Line v. PSC, No. WD79883, 2017 WL 1149139 (Mo. App. W.D., Mar. 28, 2017), transfer denied, No. SC96427 (June 27, 2017) (“Neighbors United”), precluded it from issuing the Line Certificate of Convenience and Necessity (“CCN”) to construct an electric transmission line and substation requested by Appellant Grain Belt Express Clean Line LLC (“Grain Belt Express”) under Section 393.170.1, Mo. Rev. Stat. (2016). After four of the Commissioners found Grain Belt Express met the five factor test to grant a Line CCN, the Commission concluded that “[w]hile it disagree[s] with the legal analysis and conclusions in [Neighbors United],” it “cannot lawfully issue a CCN to GBE.” Grain Belt Express sought rehearing of the Report and Order and this appeal follows.

Four Commissioners filed a concurring opinion to the Report and Order. These four Commissioners stated in their concurrence, “had it not been for the [Neighbors United] opinion, we would have granted the GBE application, as the evidence showed that the GBE project is ‘necessary or convenient for the public service.’” Thus, the majority of Commissioners found Grain Belt Express had met the requirements to begin the process of legally acquiring land and easement rights and compensating land owners for this project.

The Report and Order are in error, and in light of the clear position of a majority of the Commissioners, should be reversed and remanded with instructions to the Commission to issue Grain Belt Express the Line CCN to which it is entitled.

## ISSUES EXPECTED TO BE RAISED ON APPEAL

(Anticipated to be presented by the Appeal; Appellant is not bound by this designation.)

1. Appellant is immediately entitled to a Line CCN under RSMo § 393.170.1 for the two-year statutory period in accordance with the concurring opinion of four Commissioners who, after hearing and process, found that “the evidence showed that the GBE project is ‘necessary or convenient for the public service.’”
2. In considering Appellant’s application for a Line CCN under RSMo § 393.170.1, the Commission erred in concluding it is bound by the decision of the Missouri Court of Appeals, Western District, in Neighbors United because Neighbors United applied RSMo § 393.170.2 related to Area CCNs.
3. The Missouri Court of Appeals, Western District in Neighbors United erred in ruling that the Commission lacks statutory authority to grant a Line CCN under RSMo § 393.170.1 until the applicant obtains and files all county assents required by RSMo § 393.170.2 related to Area CCNs because that decision is inconsistent with and would defeat the statutory and general supervisory powers delegated to the Commission by the Missouri General Assembly and codified in the Public Service Commission Law at Chapters 386 and 393 of the Missouri Revised Statutes and is contrary to decades of Missouri precedent distinguishing between the

standards applicable to Line CCNs under RSMo § 393.170.1 and Area CCNs under RSMo § 393.170.2.

4. In the alternative, even if Neighbors United does apply, the Commission's determination was error because there are material legal and factual distinctions between this case and Neighbors United, and granting a waiver or variance of certain filing requirements regarding the timely receipt of governmental consents by Grain Belt Express under 4 CSR 240-3.1 05(1)(D)1 and 240-3.1 05(2) would have addressed such distinctions.
5. For these reasons, the Commission's findings of fact and conclusions of law in the Report and Order are not supported by substantial and competent evidence on the record as a whole and are grounded in legal error, and the Report and Order is unlawful, arbitrary, capricious, and unreasonable.