

**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 Current ) **Case No. EA-2016-0358**  
Transmission Line and an Associated Converter )  
Station Providing an Interconnection on the )  
Maywood-Montgomery 345kV Transmission Line )

**STAFF’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**COMES NOW** the Staff of the Public Service Commission of the State of Missouri and alternatively proposes the following Findings of Fact and Conclusions of Law:

**Proposed Findings of Fact**

1. Grain Belt Express Clean Line LLC (Grain Belt) is seeking a certificate of convenience and necessity from this Commission for the approximately 206 mile Missouri length of an about 780 mile proposed new interstate high-voltage, direct current (HVDC) transmission line that would traverse from southwest Kansas to western Indiana, and a 500 megawatt (MW) converter station with an associated alternating current (AC) switching station and other AC facilities to interconnect the HVDC line with the AC grid in Missouri. As part of this transmission line project, Grain Belt will build converter stations in Kansas and Illinois sized with the purpose of enabling the delivery from southwest Kansas into eastern Missouri and west central Indiana, respectively, 500 MW and 3.5 gigawatts (GW) of AC electricity.

2. Grain Belt is requesting that the Commission excuse it from complying from the reporting and filing requirements of rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175 and 4 CSR 240-3.190(1), (2) and (3)(A)-(D).

3. The evidentiary record in this case is closed.

4. Grain Belt has authority in Kansas to operate as a public utility for that part of its project that will be located in Kansas (an AC collector system and about 370 miles of HVDC transmission line), as well as specific siting authority for that part of its HVDC transmission line in Kansas.

5. Grain Belt has authority in Indiana to operate as a public utility for that part of its project that will be located in Indiana—less than two miles of AC transmission line.

6. Grain Belt has a Certificate of Public Convenience and Necessity, with a designated route, issued by the Illinois Commerce Commission in Case No. 15-0277, for that part of the project that will be located in Illinois; however, a challenge to that Commission's authority to grant that certificate is pending before the Illinois 5<sup>th</sup> District Appellate Court in consolidated Case No. 5-15-0551. The same issue is before the Illinois Supreme Court regarding the Rock Island HVDC line in consolidated Case No. 121302, which presently is scheduled for oral argument at 9:00 a.m., May 17, 2017, after the Illinois 3<sup>rd</sup> District Appellate Court (2016 IL App (3d) 150099) reversed the Illinois Commerce Commission's order granting a certificate of public convenience and necessity for that line.

7. Grain Belt's HVDC transmission line would traverse Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri.

8. Grain Belt's AC transmission line and converter station in Missouri would be located in Ralls County, Missouri.

9. Portions of Grain Belt's HVDC transmission line route lie in public rights-of-way in Missouri, including in Caldwell County, Missouri.

10. Grain Belt obtained franchises from the county commissions of Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe, and Ralls Counties, Missouri, to use their public rights-of-way for the Grain Belt project; however, in Caldwell County Circuit Court Case No. 14CL-CV00222 the court voided the Caldwell County Commission consent, and, a lawsuit is pending before the Monroe County Circuit Court in Case No. 14MN-CV00164 seeking to void the Monroe County Commission's consent.

11. Physically, the project would allow electricity to flow bi-directionally at each converter station; however, Grain Belt has only pursued regional transmission organization (RTO) interconnection studies for transmitting electricity out of the Southwest Power Pool (SPP) footprint and into the Midcontinent Independent System Operator (MISO) and PJM footprints, respectively.

12. Electricity transmitted over the Grain Belt project into Missouri would be delivered into the MISO footprint and would affect the MISO wholesale markets.

13. Electricity originating in southwestern Kansas would be transmitted over the Grain Belt project.

## **Need**

14. Similar to how a merchant generator recovers its costs and makes its profits by bidding its output into the competitive RTO capacity and energy markets, the Federal Energy Regulatory Commission (FERC) has authorized Grain Belt to recover its

costs and any profits from transmission right rates it directly negotiates through a competitive process.

15. Grain Belt has a transmission services agreement with the Missouri Joint Municipal Electric Utility Commission (MJMEUC) that gives MJMEUC the rights to purchase transmission capacity on the project at known prices, up to 200 MW from Kansas to Missouri, up to 25 MW from Missouri to PJM and, an option to purchase up to an additional 25 MW from Missouri to PJM at an indeterminate price.

16. Grain Belt has a transmission services agreement with Realgy that gives Realgy the rights to purchase transmission capacity on the project, up to 25 MW from Kansas to Missouri and up to 25 MW from Kansas to PJM.

17. The record does not show that MISO, or anyone else, has studied or has sought authority from MISO for transmission capacity from Missouri through the Grain Belt Missouri converter station.

18. The Grain Belt transmission services agreement with MJMEUC has a discounted "first mover" rate.

19. The Grain Belt transmission services agreement with MJMEUC could be satisfied through existing transmission markets through financial arbitrage, with or without the Grain Belt line, and with or without the Missouri converter station.

20. The Missouri Public Energy Pool ("MoPEP") of 35 Missouri cities has committed to MJMEUC to buy 60 MW of the 200 MW of transmission capacity to which MJMEUC has rights.

21. The City of Kirkwood has contracted with MJMEUC to buy 25 MW of the 200 MW of transmission capacity to which MJMEUC has rights.

22. The City of Hannibal has contracted with MJMEUC to buy 15 MW of the 200 MW of transmission capacity to which MJEUC has rights.

23. Grain Belt asserts its project is needed for meeting the renewable energy portfolio requirements of the Missouri Renewable Energy Standard. But, except for Union Electric d/b/a Ameren Missouri, all of the entities subject to the renewable energy portfolio requirements have existing capacity and new contracts sufficient to meet or exceed them, and the evidence in the record before the Commission does not show that Ameren Missouri will benefit from the Grain Belt project to meet those requirements.

24. Electric utility customers such as Walmart are requesting electricity generated from renewable sources including wind.

25. Grain Belt's loss of load expectation study does not demonstrate that the Grain Belt project will improve reliability in Missouri—study results showing a reduction from 0.004 day per year to 0.001 day per year do not demonstrate improved reliability when an accepted target in North America is 0.1 day per year.

### **Qualifications**

26. Grain Belt personnel, including Michael P. Skelly, with his over 20 years of experience in the renewable energy business and Anthony Wayne Galli, with his over 18 years of experience in the electric transmission industry, together with their consultants Quanta Services, Inc.; GDS Associates, Inc.; Quanta Technology, LLC; Louis Berger Group, Inc., have the requisite qualifications now for moving forward on Grain Belt's transmission project.

## **Financial Capability**

27. Grain Belt is undertaking this project as a merchant project for which Grain Belt is assuming all of the market risk and will have no captive customers from which it can recover the project costs.

28. Through intermediary entities Grain Belt is owned primarily by GridAmerica Holdings, Inc., a subsidiary of National Grid USA, and by Clean Line Investor Corp., a subsidiary of ZAM Ventures, LP (ZAM Ventures).

29. Through intermediary entities ZAM Ventures is owned by Ziff Brothers Investments, LLC, a multi-billion dollar family investment fund.

30. The estimated net worth of the three Ziff brothers is approximately \$14 billion.

## **Economic Feasibility**

31. Grain Belt has not provided a robust estimate for the costs of constructing the project, including reliable estimates of the cost of interconnecting the Missouri converter station, including any operating constraints that PJM, MISO, or SPP may impose that would impact Grain Belt's ability to operate the line and the Missouri converter station as it desires.

32. Grain Belt has not shown that the project will not require regional transmission upgrades as a result of wind energy transmitted into Missouri over the project because Grain Belt has not requested that MISO or SPP complete all of the system interconnection studies that would show whether those upgrades are needed.

## **Public Interest**

33. Other than where the wind source is sited, Grain Belt has not shown its project will offer any customer participating in the MISO or PJM footprints access to low-cost wind energy, which today customers cannot readily access in MISO or PJM through their centralized transmission planning and expansion functions which identify regional projects to increase access to wind energy.

34. Grain Belt has not shown its project provides the most cost-effective means to comply with the renewable energy standards in Missouri, as all but one of Missouri's investor owned utilities has already disclosed that it has existing capacity and new contracts that will meet or exceed the 15% renewable portfolio standard target by 2021.

35. Grain Belt has not shown its project will improve reliability in Missouri in that the operating characteristics assumed in the modeling Grain Belt witness Pfeiffer provided are inconsistent with the operating characteristics described in the testimony of Grain Belt's other witnesses.

36. Grain Belt has not shown that it will not incur costs for regional transmission organization-required upgrades for the project to interconnect with the grid that may will be socialized, which may cause Missouri electricity consumers to bear some of those socialized costs.

37. Grain Belt estimates the Grain Belt project will cost about \$2.35 billion, with the projected cost of the line in Missouri totaling about \$425 million and the cost of the Missouri converter station totaling about \$100 million.

38. Grain Belt anticipates it will not incur more than \$10 million in additional costs above its current estimates for regional transmission organization-required upgrades for the project to interconnect with the grid.

39. Section 229.100, RSMo., requires Grain Belt to obtain Missouri counties' assents for where the Grain Belt project to cross public roads and highways in those counties.

### **Conditions**

40. Section 393.170, RSMo., authorizes the Commission to impose conditions on certificates of convenience and necessity that it deems are reasonable and necessary.

41. The Grain Belt project will affect Missouri landowners and their use of their land before, during and after construction.

42. If built, the Grain Belt project will conduct electricity with its attendant safety risks.

### **Variances**

43. The filing and reporting requirements of rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175 and 4CSR 240-3.190(1), (2) and (3)(A)-(D) are intended for this Commission's ratemaking authority over electrical corporations.

44. Grain Belt will have no retail customers.

45. This Commission will have no authority over Grain Belt's rates.

### **Proposed Conclusions of Law**

A. The FERC, not this Commission, has jurisdiction over transmission right rates and primary jurisdiction over the safety of interstate transmission lines, and this



Commission's jurisdiction is limited to the impacts this project will have in and on Missouri that are not preempted by federal jurisdiction.

B. By offering electric transmission service to the public without discrimination Grain Belt is a public utility.

C. Grain Belt is an "electrical corporation" within the meaning of that term as defined by § 386.020(15), RSMo. 2016.

D. Section 393.170 provides:

393.170. 1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

§ 393.170 RSMo.

E. Grain Belt requires the permission and approval of this Commission shown by a certificate of convenience and necessity to lawfully build that portion of the Grain Belt project in Missouri.

F. Grain Belt has the burden of proving the convenience or necessity of its project by a preponderance of the evidence.

### **Need**

G. It is unclear that the Grain Belt project is needed.

### **Qualifications**

H. Grain Belt is qualified to obtain, and will need to get, additional expertise for constructing, owning, operating, controlling and managing the high-voltage transmission line and converter stations.

### **Financial Capability**

I. Grain Belt has the financial capability to undertake and execute the Grain Belt project.

### **Economic Feasibility**

J. It is unclear that the Grain Belt project is economically feasible.

### **Public Interest**

K. It is unclear that the Grain Belt project would promote the public interest.

L. It is within the Commission's discretion to determine when the evidence indicates that the public interest would be served by the award of the certificate.<sup>1</sup>

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<sup>1</sup> *State ex. rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo.App. 1975).

## **Ordered Paragraphs**

### **If the Commission grants Grain Belt a CCN:**

1. Grain Belt Express Clean Line LLC's application for a certificate of convenience and necessity filed on August 30, 2016, as modified by an addendum filed October 27, 2016, is granted, subject to the conditions listed below.

### **Conditions**

2. Exhibit 206 is hereby incorporated and Grain Belt is directed to comply with each of the conditions as worded in that exhibit.

3. Grain Belt must adhere to its Missouri Landowner and Missouri Agricultural Impact Protocols, with the exception that Grain Belt is ordered to begin making contributions its decommissioning fund protocol when the project begins commercial operations.

4. If the design and engineering of the Grain Belt project materially changes from how it is described Grain Belt's revised application in this case, Grain Belt must file an updated application for the project with the Commission for it to consider and act on.

5. Grain Belt file its outstanding studies regarding this project with the Commission; if they raise any new issue(s), the Commission must be satisfied with Grain Belt's resolution of those issue(s).

6. Grain Belt must obtain the assents of the county commissions of each of the counties of Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls, Missouri, to use their public rights-of-way for the Grain Belt project before Grain Belt begins construction in Missouri, and file each of those assents with this Commission immediately after it obtains the assent.

7. Good cause exists to relieve Grain Belt from the filing and reporting requirements of rules 4 CSR 240-3.145, 4 CSR 240-3.165 (except for the annual report filing requirement for which Grain Belt does not need relief since it “agrees to file with the Commission the annual report that it files with FERC), 4 CSR 240-3.175 and 4CSR 240-3.190(1), (2) and (3)(A)-(D) because these filing and reporting requirements are intended for ratemaking, but this Commission will have no jurisdiction over Grain Belt’s rates because it will have no retail customers, so the filing and reporting requirements would impose a burden on Grain Belt with little commensurate benefit.

If the Commission denies Grain Belt a CCN:

1. Grain Belt Express Clean Line LLC’s application for a certificate of convenience and necessity filed on August 30, 2016, as modified by an addendum filed October 27, 2016, is denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 25<sup>th</sup> day of April, 2017.

**/s/ Nathan Williams**