

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 Transmission Line and an Associated Converter            )  
Station Providing an interconnection on the Maywood-            )  
Montgomery 345 kV Transmission Line                                )

Case No. EA-2014-0207

CHAIRMAN ROBERT S. KENNEY'S DISSENTING OPINION

I dissent from the Report and Order denying Grain Belt Express Clean Line LLC ("Grain Belt Express" or the "Company") a certificate of convenience and necessity ("CCN") because Missouri does, in fact, need the project Grain Belt Express was proposing; because the project is economically feasible; and because the project is most assuredly in the public interest.

The evidence in the case demonstrates that the project would fulfill many needs in Missouri. The evidence also establishes that the project is economically feasible. Finally, the project is in the public interest.

Grain Belt Express proposes to build a high voltage direct current ("HVDC") transmission line that would begin in Kansas, crossing Missouri and Illinois, and ending in Indiana. Grain Belt Express also proposed constructing an associated converter station in Ralls County, Missouri and alternating current ("AC") interconnection facilities, delivering 500 megawatts of power to Missouri.<sup>1</sup> A purpose of the Project is to facilitate the delivery of low-cost western wind energy to Missouri, Illinois, Indiana, and other states.<sup>2</sup>

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<sup>1</sup> Collectively the HVDC line and converter station will be referred to as the "Project".

<sup>2</sup> See, generally, Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity

The Report and Order recites the five factors the Commission has traditionally applied when determining whether to grant or deny a certificate of convenience and necessity.<sup>3</sup> Applying the five *Tartan* factors, the applicant has the burden of demonstrating that: 1. there is a need for the Project; 2. the applicant is qualified to undertake the Project; 3. the applicant has the financial ability to undertake the Project; 4. the Project is financially feasible; and 5. the Project is in the public interest. The Report and Order correctly notes that two of the five factors can be easily resolved in Clean Line's favor.<sup>4</sup> Grain Belt Express met its burden of proving that it is qualified and has the financial ability to construct, manage, own, operate, and maintain the Project. All that remains is to determine whether Grain Belt Express met its burden of proving that it satisfies the other three factors.

#### **I. The Project is Needed**

Whether the project is needed is not a matter of determining whether it is "essential" or "absolutely indispensable." Rather, the proper test is whether the Project will enhance or improve the delivery of public utility services such that its cost is justified. Importantly, the cost of the Project would not be borne by Missouri consumers.

The Project would facilitate and enhance investor owned utilities' abilities to comply with Missouri's Renewable Energy Standard. Additionally, the Project would facilitate and enhance compliance with the Clean Power Plan and other environmental regulations. The Project would also enhance and improve the reliability of the regional transmission grid. Without needed

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<sup>3</sup> *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 Transmission Line and Associated Converter Station Providing an Interconnection on the Maywood – Montgomery 345 kV Transmission Line*, File No. EA-2014-0207, Report and Order Dated July 1, 2015, page 20, citing *In re Tartan Energy Co., L.C.*, 3 Mo.P.S.C.3d 173, Case No. GA-94-127, 1994 WL 762882 (Sept. 16, 1994).

<sup>4</sup> *Id.* at page 21.

transmission infrastructure, wind energy cannot be moved to markets. The project is, therefore, needed.

The Report and Order notes that it is "more appropriate to consider aspects of the Project related to the effect on Missouri utilities and consumers rather than how it might affect Kansas wind developers or utilities and consumers from other states."<sup>5</sup> Regrettably, this analysis is narrow and parochial. Moreover, it does not apply the first *Tartan* criteria correctly. Because Missouri's regulated utilities participate in regional wholesale markets, it is appropriate to look at the effects on the wholesale, regional markets and market participants; examining the effect of the Project on generators operating in other states would be appropriate in determining whether the Project is needed. Examining the wholesale markets, rather than narrowly focusing on Missouri, is perfectly appropriate where Missouri utilities participate in two regional transmission organizations, buying and selling power in these wholesale markets.

## **II. The Project is Economically Feasible**

The Report and Order incorrectly analyzes "feasibility" and then proceeds to apply this flawed analysis to the facts of this case. The analysis in the Report and Order incorrectly focuses on the lack of interconnection studies with SPP, MISO, and PJM. The Report and Order also incorrectly focuses on production cost modeling studies to reach the conclusion that the Project's impact on retail rates is unknown. But this analysis is inconsistent with what is required by *Tartan*.

Grain Belt Express's analysis demonstrates that the project is feasible when examined through the lenses of the correct definition of the word. As Grain Belt Express correctly notes,

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<sup>5</sup> *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 Transmission Line and Associated Converter Station Providing an Interconnection on the Maywood – Montgomery 345 kV Transmission Line*, File No. EA-2014-0207, Report and Order Dated July 1, 2015, page 21.

the *Tartan* analysis looks at economic feasibility as a test of whether the Project is economically achievable and who bears the burden if the Project fails. In the *Tartan* case, the Commission found that the project was economically feasible where Tartan bore "most of the risk if it has underestimated the economic feasibility of its project . . . ." <sup>6</sup> As in the *Tartan* case, Grain Belt Express is financially able to undertake and complete the project. And, because costs will be recovered through bilateral contracts with those using the transmission capacity on the line, Missouri consumers bear no risk. The Project, therefore, is economically feasible.

### **III. The Project is in the Public Interest**

Whether the Project is in the public interest is largely a public policy determination left to the Commission's sound judgment. There is "no specific definition." <sup>7</sup> And where the first four factors of the *Tartan* analysis have been resolved in the applicant's favor, the public interest determination should also be resolved in the applicant's favor. <sup>8</sup>

Here, the Commission should have found this factor in Grain Belt Express's favor because it should have found the first four factors in Grain Belt Express's favor. But even analyzed as a stand-alone factor, the public interest determination should have been resolved in Grain Belt Express's favor.

The Project represents a first of its kind deployment of a cutting edge technology. The economic development impact is undeniable. The record is replete with evidence of the jobs that would be created and the tax revenue that would be generated. And there was testimony at the local public hearings and at the evidentiary hearings about the need for these jobs and this tax revenue in virtually all of the affected counties.

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<sup>6</sup> *In re Tartan Energy Co., L.C.*, 3 Mo.P.S.C.3d 173, Case No. GA-94-127, 1994 WL 762882 (Sept. 16, 1994).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

The Project's ability to facilitate the deployment of low cost renewable energy will have quantifiable public health and environmental benefits of great significance. The interregional nature of the Project will enhance reliability in three Regional Transmission Organizations. The Project would serve to lower wholesale market prices, reducing congestion costs and locational marginal prices. There is no question but that the Project would serve the public interest in a multitude of ways.

There were concerns about private property rights and the potential use of eminent domain to take easements and rights of way. These concerns are legitimate and not to be discounted. But these concerns were also amenable to mitigation. This Commission could certainly have imposed reasonable conditions on the routing of the line or it could have established a methodology by which the Company would have been limited in its use of eminent domain authority. The concerns of many landowners were heard over eight very respectful local public hearings. And it is important to give those concerns their due hearing. But these concerns should not be the basis for closing a market to a viable market participant. This is particularly so when this Commission could have creatively managed these concerns.

Grain Belt Express met its burden of establishing that the Project would serve the public interest.

#### **IV. Conclusion**

The Commission should have granted Grain Belt Express a certificate of convenience necessity. The Project is needed, is economically feasible, and is in the public interest. Denying the CCN sends the wrong message about the great state of Missouri.

In denying the CCN we are, like the Luddites of the nineteenth century, telling the world that we do not embrace new technologies. We are telling the world that we prefer central

planning to free markets. We are telling the world that new businesses models will be looked at with more than healthy skepticism; indeed new business models will be frowned upon and will be unwelcome. These are wrong messages to send. The Commission should have granted the CCN. And for the aforementioned reasons, I respectfully dissent.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Robert S. Kenney". The signature is written in black ink and is positioned above a horizontal line.

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Robert S. Kenney  
Chairman

Dated at Jefferson City, Missouri  
On this 7<sup>th</sup> Day of August, 2015