

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Mark Sievers, Chairman
 Thomas E. Wright
 Shari Feist Albrecht

In the Matter of the Application of Grain)
Belt Express Clean Line LLC for a Siting)
Permit for the Construction of a High)
Voltage Direct Current Transmission Line in) Docket No. 13-GBEE-803-MIS
Ford, Hodgeman, Edwards, Pawnee, Barton,)
Russell, Osborne, Mitchell, Cloud, Washington,)
Marshall, Nemaha, Brown, and Doniphan)
Counties Pursuant to K.S.A. 66-1,177, et seq.)

ORDER GRANTING SITING PERMIT

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, the Commission finds and concludes as follows:

1. On July 15, 2013, Grain Belt Express Clean Line LLC (Grain Belt Express) filed an Application with the Commission pursuant to the Kansas Electric Transmission Siting Act (Siting Act), K.S.A. 66-1,177 *et seq.* The Application is for a siting permit conferring on Grain Belt Express the right to construct the Kansas portion of a multi-terminal ±600 kilovolt (kV) high voltage direct current (HVDC) transmission line, and an HVDC converter station and associated transmission facilities, running from near the Spearville 345 kV substation in Ford County, Kansas, to a delivery point near the Sullivan 765 kV substation in Sullivan County, Indiana.¹ The line proposed by Grain Belt Express will go through Ford, Hodgeman, Edwards, Pawnee, Barton, Russell, Osborne, Mitchell, Cloud, Washington, Marshall, Nemaha, Brown, and Doniphan Counties in Kansas.

¹ See Application, p. 1 (July 15, 2013).

2. The Commission has jurisdiction over the Application under the Siting Act. The Commission has full power, authority, and jurisdiction to supervise and control electric public utilities doing business in Kansas and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.²

3. The following parties were granted intervention in this docket: Thomas and Deborah Stallbaumer, *pro se*; Matthew Stallbaumer, *pro se*; Cynthia Dettke Thoreson, *pro se*; Nancy Vogelsberg-Busch, *pro se*; Donald Miller and Jana Reed, *pro se*; the Irene Miller Family Trust; Mai Oil Operations, Inc.; ITC Great Plains, LLC; Mid-Kansas Electric Company, LLC; Sunflower Electric Power Corporation; Westar Energy, Inc. and Kansas Gas and Electric Company (Westar); Nemaha-Marshall County Electric Cooperative; the Board of Marshall County Commissioners; and the Coalition for Landowners, the Environment, and Natural Resources (CLEANR).

4. In issuing or withholding a siting permit, the Commission must decide the necessity and reasonableness of the location of the proposed electric transmission line, taking into consideration the benefit to consumers in and outside Kansas as well as economic development benefits in Kansas. The Commission may condition the permit as it deems just and reasonable and to best protect the rights of all interested parties and the general public.³

5. Grain Belt Express estimates it will cost approximately \$900,000,000 to construct the Kansas DC Facilities. The Grain Belt Express Project is a merchant transmission line, and its cost will not be recovered through the SPP cost allocation process. The cost of the Project will be

² K.S.A. 66-101; K.S.A. 66-101a; K.S.A. 66-104.

³ K.S.A. 66-1,180.

borne by the investors in Clean Line and Grain Belt Express's transmission customers, and not by the electricity consumers of Kansas.⁴

6. Grain Belt Express engaged the services of Louis Berger to assist in selecting the Proposed Route. Louis Berger is a privately held consulting firm providing engineering, architecture, program and construction management, environmental planning and science, and economic development services on an international scale.⁵

7. In collaboration with Louis Berger, Grain Belt Express conducted a series of community roundtable meetings to obtain proactive input on routing opportunities and constraints, as well as a series of public open house meetings designed to elicit input from residents and landowners along several potential routes. Grain Belt Express also obtained feedback from state and federal agencies, as well as public interest groups. Grain Belt Express conducted the open houses and obtained stakeholder participation in hopes of minimizing and mitigating potential adverse impacts of the Project. Grain Belt Express carefully considered all inputs received when selecting the Proposed Route.⁶

8. Grain Belt Express plans to use both lattice structures and tubular steel monopole structures for the Project, based on specific conditions at particular locations or in particular segments of the line. Most structures are expected to be between 100 to 175 feet tall, with taller structures potentially required at river crossings and in certain other situations such as where longer span lengths are required. The foundation piers of the typical structure will be 3 feet to 6 feet in diameter for lattice structures and 7 feet to 11 feet in diameter for monopoles. The transmission line will be bipolar with two bundles of three conductors. Typical span lengths will

⁴ Application at ¶ 8.

⁵ *Id.* at ¶ 9.

⁶ *Id.* at ¶ 10.

be 1,500 feet between structures where lattice structures are used and 1,200 feet between structures where monopoles are used, with shorter or longer span lengths where warranted by conditions in specific locations. The ± 600 kV converter stations will be rated at approximately 3,756 MW in Kansas.⁷

9. The nominal width of the DC Line right-of-way will be 150 to 200 feet. Landowners will be able to use the DC Line right-of-way for any agricultural purpose, provided said purpose does not interfere with the use of the Project by Grain Belt Express, and is not hazardous to the landowner, the Project, or to the public generally. No structures will be allowed in any portion of the right-of-way. Trees and brush in the right-of-way will be trimmed or removed as necessary. Except in the case of certificated organic farms, or upon request by the landowner or by neighboring landowners, herbicides may be used to control vegetation in the right-of-way.⁸

10. Easements will be procured from landowners prior to construction. Landowners will be compensated for damages related to crop losses that are directly attributable to construction of the Project. In its transmission line easements, Grain Belt Express will provide landowners with indemnification protections and with certain releases of liability.⁹

11. Construction of the proposed route is scheduled to start as early as 2016 with completion as early as 2018.¹⁰

12. The Commission entered into the record the following testimony:

- a. Grain Belt Express: Direct testimony of Michael Skelly, Mark Lawlor, David Berry, Wayne Galli, and Timothy Gaul; Rebuttal testimony of

⁷ *Id.* at ¶ 13.

⁸ *Id.* at ¶¶ 18, 19.

⁹ *Id.* at ¶ 20.

¹⁰ *Id.* at ¶ 21.

Mark Lawlor and Wayne Galli; Testimony in Response to Written and Public Hearing Comments of Wayne Galli, Timothy Gaul, Mark Lawlor and John McBeath; and Rebuttal Testimony in Response to Staff's Response to Public Comments of Mark Lawlor.

- b. Commission Staff: Direct testimony of Michael Wegner and Thomas DeBaun; Testimony in Response to Public Comments of Michael Wegner and Thomas DeBaun; and Supplemental testimony of Michael Wegner.
- c. Westar: Direct testimony of David Benak.
- d. Matthew Stallbaumer: Direct testimony.

13. With their Application, Grain Belt Express submitted a list of landowners of record whose land or interest therein was: (1) proposed to be acquired to construct the proposed line, or (2) located within 1,000 feet of the center line of the easement where the line is proposed to be located, exceeding the 660-foot statutory requirement.¹¹

14. The Commission conducted four public hearings in this docket pursuant to K.S.A. 66-1,178: on August 12, 2013, in Seneca, Kansas, on August 14, 2013, in Beloit, Kansas, on August 20, 2013, in Russell, Kansas, and on August 22, 2013, in Kinsley, Kansas. At each of the public hearings, any member of the public who indicated a desire to speak before the Commission was granted an opportunity to ask questions of Grain Belt Express and Commission Staff prior to entering sworn testimony into the record in this case. No one was barred from entering sworn testimony at any of the four public hearings. Staff estimates more than 700 people attended the public hearings and the Commission received 56 sworn statements from the

¹¹ *Id.* at ¶ 23 and Exhibit D (landowner list).

public. In response to comments made at the public hearings, Staff filed testimony addressing concerns raised as well as route modifications proposed by several affected landowners.

15. In an affidavit filed August 9, 2013, Grain Belt Express explained they delivered by certified mail, return receipt requested, to owners of record of property located within 1,000 feet of the center line of its proposed HVDC transmission line: notice of the Application for a siting permit, a copy of a map of the proposed route, written notice of the dates, times, and locations of the four public hearings to be held before the Commission, and detailed information on how to submit a public comment directly with the Commission's Public Affairs and Consumer Protection Division within the established comment period.¹² The Commission received and entered into the record over 2,600 public comments in this docket, including petitions, telephoned comments, emailed comments, and letters.

16. The Commission finds Grain Belt Express complied with the requirement to send notice to all landowners of record whose land or interest therein is proposed to be acquired in connection with the construction of the line.¹³ The Applicant exceeded the requirements of K.S.A. 66-1,178(a)(2) by including landowners within 1,000 feet of the center line of the easement of the proposed line. The Commission finds Grain Belt Express complied with the publication notice requirement and agrees with Staff's assessment that the Applicant provided adequate notice to landowners.

17. Mai Oil argues it was not properly notified of the proposed line as an oil and gas mineral rights owner, citing K.S.A. 66-1,178(a)(2). "Ordinary words are to be given their ordinary meanings without adding something that is not readily found in the statute or

¹² See Affidavit of Publication and Notice to Landowners, pp. 1-2 and 35-75 (Aug. 9, 2013).

¹³ K.S.A. 66-1,179.

eliminating that which is readily found therein.”¹⁴ In construing a statute, the intent of legislature governs, when it can be ascertained from the statute.¹⁵ Ordinary words are interpreted without adding something not found in the statute or eliminating language found in the statute.¹⁶ The ordinary words contained in K.S.A. 66-1,178(a)(2) indicate only “the names and addresses of *the landowners of record* whose land or interest therein is proposed to be acquired in connection with the construction of or is located within 660 feet of the center line of the easement where the line is proposed to be located” are required to be listed in a utility’s line siting application and given notice of the proposed line. (Emphasis added). Any contention by Mai Oil that the notice requirement of K.S.A. 66-1,178(a)(2) includes owners of oil and gas interests thus fails. Moreover, Mai Oil’s attorney testified at the public hearing held in Russell, Kansas.¹⁷ Mai Oil therefore had constructive notice of the proposed line and the public hearings in this case.

18. The Commission held an evidentiary hearing on October 8, 2013. Grain Belt Express, Staff, ITC Great Plains, Nemaha-Marshall County Electric Cooperative, and CLEANR appeared by counsel. The Irene Miller Family Trust, Mai Oil, and the Board of Marshall County Commissioners did not appear by counsel, and Westar, Mid-Kansas, and Sunflower all waived their appearances at the hearing. Eight witnesses appeared at the hearing, five on behalf of the Applicant, two on behalf of Staff, and Matthew Stallbaumer. Testimony of Westar’s witness was admitted into the record without objection. The Commission limited several intervenors’ participation in the proceedings to making opening statements and filing post-hearing briefs.

¹⁴ *Bluestem Tel. Co. v. Kansas Corp. Comm’n*, 33 Kan. App. 2d 817, 109 P.3d 194, 196 (2005).

¹⁵ *Bluestem*, 33 Kan. App. 2d at 824.

¹⁶ *Id.* at 824-25.

¹⁷ Transcript of Proceedings, Russell, Kansas Public Hearing, August 20, 2013, Testimony of Dennis Davidson, pp. 30-33.

Necessity of the Proposed Line

19. In issuing a siting permit, the Commission must determine the necessity of the proposed transmission line. In deciding necessity, the Commission considers “the benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas.”¹⁸ The Commission is required to “issue or withhold the permit applied for and may condition such permit as the commission may deem just and reasonable and as may, in its judgment, best protect the rights of all interested parties and those of the general public.”¹⁹

20. While the Kansas Legislature did not define the criteria to determine necessity of a proposed electric transmission line, the Commission considers whether the line promotes the public interest.²⁰

21. Addressing the purpose of the proposed line, Grain Belt Express explained:

- a. “The proposed Project is designed to facilitate the development and export of wind resources from western Kansas to load and population centers in Missouri, Illinois, Indiana, and states farther east. By connecting Kansas’ abundant supply of wind with large and growing markets for wind power, the Grain Belt Express Project will facilitate construction of thousands of megawatts (‘MW’) of new wind power generation facilities in Kansas.”²¹

22. Grain Belt Express also asserts the proposed line will expand renewable generation resources and transmission infrastructure in Kansas, while using HVDC technology which allows for better control when injecting variable wind generation into the grid. Compared with AC lines, HVDC technology allows the transfer of significantly more power with less power loss over long distances, and utilizes narrower rights of way, shorter structures, and fewer

¹⁸ K.S.A. 66-1,180.

¹⁹ *Id.*

²⁰ See Order Granting Siting Permit, Docket No. 09-ITCE-729-MIS, ¶ 39 (July 13, 2009).

²¹ Application at ¶ 4; Direct Testimony of Michael Peter Skelly, p. 6 (July 15, 2013) (Skelly Direct); Direct Testimony of David A. Berry, p. 5 (July 15, 2013) (Berry Direct).

conductors.²² Grain Belt Express argues the proposed project will make possible more wind generation that would displace other, less environmentally friendly sources of energy, and would provide economic benefits to Kansas in the form of landowner contracts with generators for royalties and construction of wind farms that would not otherwise be built due to insufficient transmission facilities.²³ In Kansas, the proposed project is estimated to result in approximately 2,340 jobs annually during the three-year construction period, and an estimated 135 jobs to operate and maintain the project on an ongoing basis.²⁴ Additionally, construction of the associated wind facilities in Kansas is estimated to generate between 15,542 and 19,656 Kansas jobs, while operating and maintaining the wind farms is expected to generate 528 Kansas jobs.²⁵ Estimates are that during construction, the project would add \$131.5 million to salaries and wages spent in Kansas, \$371 million to Kansas's aggregate economic product, and \$6.76 million a year to state income and sales tax revenues.²⁶

23. The construction of wind farms and manufacture of wind turbine components facilitated by this project are estimated to result in between \$779 million and \$1.026 billion of salaries and earnings for those employed in that industry in Kansas. The economic impact of those earnings in the Kansas economy is estimated to between \$2.284 billion and \$3.268 billion. The operations of these wind farms were estimated to generate 528 jobs, \$25 million in earnings

²² Initial Brief of Grain Belt Express Clean Line LLC, p. 6 (October 17, 2013) (Grain Belt Express Initial Brief); Direct Testimony of Mark Owen Lawlor, Exhibit MOL-5 (July 15, 2013) (Lawlor Direct).

²³ Grain Belt Express Initial Brief, pp. 6, 16; Skelly Direct, p. 6; Berry Direct, pp. 12, 19-20, 23-24; Transcript of Proceedings, Testimony of Thomas DeBaun, pp. 212-213 (October 8, 2013) (Transcript).

²⁴ Berry Direct, p. 11.

²⁵ *Id.* at pp. 10-11.

²⁶ David Loomis and J. Lon Carlson, Economic Impact Study of the Proposed Grain Belt Express Clean Line Project (June 10, 2013), Exhibit DAB-2 Berry Direct (hereinafter cited as "*Economic Development Study*").

and add \$73 million to the aggregate economy in Kansas.²⁷ The project and new wind farms will also provide additional tax revenue for local and State government authorities.²⁸

24. Grain Belt Express further posits the proposed project will not duplicate the transmission services being provided by other public utilities in Kansas.²⁹ It explains the Southwest Power Pool (SPP) projects are developed to meet the intraregional needs of the SPP member utilities, whereas the Grain Belt Express project will provide interregional transmission, making Kansas wind exports to other Regional Transmission Organization (RTO) markets possible³⁰ without adding costs to Kansas ratepayers.³¹ Furthermore, the potential wind generation in Kansas is substantially greater than the transmission capacity available on the SPP system.³² Grain Belt Express also argues its project will benefit wholesale competition in the electricity market,³³ and will not have any negative impact on Kansas electric customers or public utility shareholders.³⁴ Finally, Grain Belt Express argues the economic benefits of the proposed project established in its uncontroverted testimony amount to hundreds of millions of dollars for Kansas citizens and businesses.

25. Grain Belt committed to landowner compensation that would pay the market value of the land for an easement to cross land, plus compensation for structures that could be taken as a one-time payment or as an annual payment for as long as the transmission structures

²⁷ Berry Direct, p. 11.

²⁸ *Id.* at p. 8.

²⁹ *Id.* at pp. 4-5.

³⁰ Transcript, DeBaun, p. 215.

³¹ Skelly Direct, p. 5.

³² Transcript, DeBaun, p. 213.

³³ Skelly Direct, p.6; Berry Direct, pp. 12-13, Exhibit DAB-3.

³⁴ Skelly Direct, p.6; Berry Direct, p. 22.

are in place.³⁵ Thus, landowners would receive the market value of their land over which the lines pass while continuing to use the land so long as the use did not interfere with the lines.

26. In addition, because Kansas statutes exempt transmission lines from paying property taxes for the first 10 years of their operation,³⁶ Grain Belt committed to pay local governments a one-time Construction Mitigation Payment fee of \$7,500 per mile prior to the commencement of construction.³⁷ Since the Kansas portion of the project is about 370 miles long, this commitment amounts to \$2.8 million in payments to local governments in Kansas.

27. Grain Belt provided evidence it is capable of undertaking this project. One of Grain Belt's investors is National Grid, a major utility with headquarters in the UK.³⁸ Also, the project in Kansas is not the only transmission project being undertaken by Grain Belt. Grain Belt's affiliates are also developing three other high voltage long distance DC transmission projects and an AC transmission line.³⁹

28. Staff recommends the Commission find Grain Belt Express's proposed project is necessary on the grounds the project has the potential to benefit Kansas directly and to produce economic development benefits for both Kansas and the SPP region.⁴⁰ Staff witnesses testified the project is necessary to further wind development in Kansas,⁴¹ would promote current and past Kansas Governors' initiatives which support wind development in Kansas,⁴² furthers the Kansas Electric Transmission Authority's (KETA) mission to build electric transmission

³⁵ Testimony of Mark Lawlor in Response of Written and Public Hearing Comments, p. 20 (Sept. 10, 2013) (Lawlor Response).

³⁶ See K.S.A. 79-259.

³⁷ Lawlor Response, pp. 14-15.

³⁸ Skelly Direct, p. 17.

³⁹ Skelly Direct p. 11.

⁴⁰ Direct Testimony of Thomas B. DeBaun p. 11 (Aug. 9, 2013) (DeBaun Direct).

⁴¹ Transcript, Cross-Examination of DeBaun, p. 212; DeBaun Direct, p. 6.

⁴² *Id.* at, p. 213; DeBaun Direct, pp. 6-7.

facilities in Kansas for the exportation of wind energy into other states,⁴³ and addresses an SPP goal to develop transmission systems to export wind energy.⁴⁴ An additional benefit Staff identifies is the “merchant” nature of the proposed project, based on the fact the “cost causer” or the end users of the demand, rather than Kansas ratepayers, will pay for the costs of the project.⁴⁵

29. In this case, the evidence presented indicated that the project was being undertaken to incent the construction of wind farms in southwestern Kansas and carry wind generated electric energy to eastern markets. Thus, the commercial premise of the project is that but for the transmission line, the wind farms in southwestern Kansas would not be built.

30. Testimony indicated markets to the west, north and south were not economically feasible.⁴⁶ Thus, the testimony suggested that the route from southwestern Kansas to the east presented the only route to access economically feasible markets.

31. Testimony also indicated the demand for renewable energy from the states in the Midcontinent Independent System Operator, Inc. (MISO) and the Pennsylvania-New Jersey-Maryland Interconnection, L.L.C. (PJM) grids would be 99.7 million MWh in 2015, 157.3 million MWh in 2020 and 194.8 million MWh in 2025.⁴⁷ This demand greatly exceeds the renewable generation capacity of the MISO and PJM states, which testimony estimated to be 83.1 million MWh in 2010.⁴⁸ Thus, the evidence shows Grain Belt Express has a ready market for Kansas wind generated power carried east over its proposed transmission facilities.

⁴³ *Id.*; DeBaun Direct, p. 7.

⁴⁴ *Id.* at p. 214; DeBaun Direct, p. 6.

⁴⁵ *Id.* at p. 224; DeBaun Direct, p. 9.

⁴⁶ Transcript, Lawlor, pp. 106-108.

⁴⁷ Berry Direct, p. 21, Exhibit DAB-4.

⁴⁸ *Id.* at p. 21.

32. The Commission finds it is physically necessary to build a transmission facility that runs between southwest Kansas to eastern Kansas if one wishes to sell wind energy from southwestern Kansas to markets east of Kansas.

33. Testimony indicated the project would enable about 15 million MWhs annually of electricity generated by Kansas wind farms to be delivered and sold into the MISO and PJM grids.⁴⁹ As described above and contained in the Economic Development Study, testimony indicated the construction and operation of the wind farms and manufacture of wind turbine components in Kansas would add between \$2.3 and \$3.3 billion to the Kansas economy.

34. Grain Belt Express's Executive Vice President of Strategy and Finance, David Berry, sponsored a study of the benefits of the project to consumers in and outside of Kansas.⁵⁰ The general approach taken was to develop a simulation model of electric demand in the MISO and PJM states, to make assumptions about future demand in those states in 2019 and to simulate how the sale of Kansas wind energy into these markets would affect aggregate electric generation costs and emissions levels of various pollutants.

35. Grain Belt Express's analysis of consumer benefits is that consumers – largely outside of Kansas in the PJM and MISO states – benefit by a reduction in the cost of electric power generation ranging between \$354 million annually to \$546 million annually depending on the assumptions made about 2019 demand levels. Grain Belt Express also asserts that consumers would benefit by reductions in emissions levels.

36. After reviewing the record, the Commission finds substantial evidence in the record as a whole to support a finding of necessity to build Grain Belt Express's proposed 600

⁴⁹ *Id.* at p. 13.

⁵⁰ Bob Cleveland and Gary Moland, Grain Belt Express Project Benefits Study (Oct. 30, 2012), Exhibit DAB-3, Berry Direct (hereinafter cited as "*Benefits Study*").

kV transmission line. The Commission finds that the evidence in the record establishes the need for this line to address wind energy development in Kansas. Without this project, hundreds of millions of economic development dollars would not be spent in Kansas, and the potential for large scale wind farm development would be lost. The Commission finds that this project will have significant short- and long-term economic development benefits for the state of Kansas.

37. The Commission finds and concludes that the proposed transmission line provides benefits to electric customers both inside and outside of Kansas and economic development benefits in Kansas. The Kansas economy will benefit from construction activities which will require food, fuel, lodging and other local supplies and services. In addition, the proposed line and associated economic activity will have the long-term lasting impact of added Kansas jobs and will achieve the transmission and wind development goals of SPP, KETA, and current and past Kansas Governors.

Reasonableness of the Proposed Line's Route

38. In determining whether to issue a siting permit, the Commission must also determine the reasonableness of the location of the proposed electric transmission line.⁵¹ The Commission may condition a siting permit as it "may deem just and reasonable, and as may, in its judgment, best protect the rights of all interested parties and those of the general public."⁵² Kansas courts have held that a condition is reasonable if it is based on substantial, competent evidence.⁵³

39. The proposed route is supported by an exhaustive routing effort documented in the Kansas Route Selection Study (Routing Study) prepared by Louis Berger and sponsored by

⁵¹ K.S.A. 66-1,180.

⁵² *Id.*

⁵³ *See Kansas Electric Power Coop., Inc. v. State Corporation Comm'n*, 235 Kan. 661, 665, 683 (1984).

Grain Belt Express witness Timothy Gaul. This effort included a three-stage public outreach campaign to gather information relevant to the routing process from state and local officials, community leaders, landowners, agencies, conservation focused non-governmental organizations, and other stakeholders.⁵⁴ Grain Belt Express recorded the information gathered through the public outreach effort and integrated it into the process of route development, refinement, and ultimately, the selection of the proposed route.⁵⁵

40. In developing the Routing Study, the Routing Team⁵⁶ identified a range of routing constraints and opportunities through the use of Digital Aerial Photography, GIS data sources, outreach efforts, and route reconnaissance. The Routing Team used this information in combination with General and Technical Guidelines to develop routes that attempted to minimize the overall effect of the line on natural and human environments while avoiding unreasonable and circuitous routes and unreasonable costs.⁵⁷ The General Guidelines in the Routing Study consist of a series of ten principles, including maximizing the length of the route, avoiding impacts to public resource lands and critical habitats, and minimizing substantial visual impacts, among others.⁵⁸ The Technical Guidelines in the Routing Study address the physical limitations, design, right-of-way requirements, and reliability concerns of the project infrastructure.⁵⁹ These guidelines consist of eight technical principles that addressed issues such as placement of structures, the crossing of existing transmission lines, and separation distances when paralleling existing transmission lines.⁶⁰

⁵⁴ Lawlor Direct, pp. 6-15.

⁵⁵ Direct Testimony of Timothy B. Gaul, Exhibit TBG-1, pp. 2-2 through 2-4 (July 15, 2013) (Gaul Direct); Lawlor Direct, pp. 6-15; Transcript, Wegner, p. 243.

⁵⁶ For members of the Routing Team, *see* Gaul Direct, Exhibit TBG-1, Appendix A; Transcript, Gaul, p. 158.

⁵⁷ Gaul Direct, Exhibit TBG-1, pp. 2-6 through 2-9.

⁵⁸ *Id.*, p. 2-4.

⁵⁹ *Id.*

⁶⁰ *Id.*, pp. 2-5 through 2-6.

41. Staff reviewed the Applicant's process to route the line and found both the process utilized and the preferred route to be reasonable.⁶¹ Staff based its determination of reasonableness on both the Route Selection Study and Staff's own reconnaissance of the proposed route.⁶²

42. The Commission finds and concludes the process to determine the route of Grain Belt Express's proposed transmission line and the route proposed by the Applicant are reasonable.

Modifications to the Route

43. Landowners presented several route modifications to Grain Belt Express and Staff during the pendency of this proceeding. Staff and Grain Belt Express agreed four alternative routes were reasonable. Those four alternative routes are as follows:

- a. Swenson/Johnson Alternative Route: This proposal moves the line approximately ½ mile to the north and provides for a greater distance away from the Swenson's home, saving their shelterbelt, routing through the Johnson's pasture land and spanning the edge of the Johnson's center pivot.
- b. Steele Alternative Route: This proposal moves the line ½ mile north instead of moving through the middle of the section and would begin in the northeast corner of the Blau property.
- c. Schmitt/Huffman Alternative Route: This proposal routes the line parallel to the existing electric line located around the Schmitt's feedlot. Staff recommended the Commission approve an alternative wherein Grain Belt Express makes its line crossing as requested and then continues in a parallel manner, thus avoiding the Schmitt's farm buildings.
- d. Dockendorf Alternative Route: This proposal suggests moving the line approximately ¼ to ½ mile east in Sections 23 and 13 of Township 24

⁶¹ Staff's Post Hearing Brief, pp. 18-20 (Oct. 24, 2013); Transcript, Wegner, pp. 221-235.

⁶² Direct Testimony of Michael J. Wegner, P.E., pp. 7, 9, 10-13, (Aug. 9, 2013) (Wegner Direct); Transcript, Wegner, pp. 243-244.

South, Range 20 West. Grain Belt Express has sent notice to other landowners that would be affected by this alternative.

44. In deciding whether an alternative route is reasonable, the Commission has traditionally considered the additional cost directly attributable to the alternative route. However, the mere fact that an alternative route is estimated to cost more than the filed route does not preclude a finding that an alternative route is reasonable and should be adopted. Other factors to consider include benefits gained by choosing the alternative route and the harm avoided by moving the filed route.⁶³

45. The Commission has evaluated each proposed route modification. The Commission has an obligation to balance the interests of landowners in minimizing the impact on their property with the costs associated with the project. As discussed above, Staff found Grain Belt Express's proposed route to be reasonable, as well as several proposed route modifications.

46. The Commission finds the route proposed in the Application is reasonable. After considering comments from landowners and the responses of Grain Belt Express and Staff, the Commission finds the modifications to the proposed route spelled out in paragraph 43 are also reasonable and are in the public interest.

47. During the pendency of this proceeding, several individuals or parties have argued Grain Belt Express should be required to bury the proposed transmission line in whole or in part. Grain Belt Express witness Galli testified numerous times that burying the line is not only technically impracticable but economically infeasible.⁶⁴ Staff witness DeBaun also concluded

⁶³ See Order Granting Siting Permit, Docket No. 10-ITCE-557-MIS, ¶ 58 (June 30, 2010).

⁶⁴ Testimony of Dr. Wayne Galli in Response to Written and Public Hearing Comments, pp. 7-8 (Sept. 10, 2013) (Galli Response); Direct Testimony of Dr. Anthony Wayne Galli, P.E., pp. 7-8 (July 15, 2013) (Galli Direct); Transcript, Galli, pp. 179-181.

underground construction of the Grain Belt Express project is not a viable alternative.⁶⁵ Grain Belt Express presented further testimony and exhibits demonstrating the technical and economic barriers to burying the line.⁶⁶ The Commission finds the record evidence demonstrates burying Grain Belt Express's proposed transmission line would be both technically impracticable and economically infeasible.

48. Several parties also raised concerns regarding the proposed line's impact on oil and gas facilities and potential future drilling sites. Grain Belt Express has stated it "recognize[s] the value of oil and gas production in the state and . . . [does] not want to negatively impact that. So we are of a position that we will make routing and engineering adjustments to provide the appropriate amount of setback and space in order . . . to work with those facilities."⁶⁷ Staff's position is these concerns are micro-siting issues which should be addressed during Grain Belt Express's final planning and engineering stages of the project. The Commission agrees. Grain Belt Express is directed to work with owners of oil and gas facilities along the proposed route and develop adjustments to the route as necessary to minimize impact to such facilities.

49. Other concerns raised by individuals or parties in this proceeding include the following: concerns over the subsidization of wind generation, complaints about the 120-day statutory deadline for a Commission order in line siting cases, concerns about Grain Belt Express's lack of experience and ability to build the project, concerns about the potential for creating a utility corridor, concerns that the power generated and transmitted will not be used in Kansas, visual impacts, impact on land value, impact on aerial spraying of crops, impact on

⁶⁵ Testimony of Thomas B. DeBaun in Response to Public Comments, pp. 12-15 (Sept. 12, 2013) (DeBaun Response).

⁶⁶ Galli Response, pp. 4, 8; Galli Direct, p. 7; Transcript, Galli, pp. 196, 199-200; Transcript, Lawlor, p. 127; Transcript, Skelly, pp. 137, 140; Galli Direct, pp. 7-8; Grain Belt Express Exhibit 3.

⁶⁷ Transcript, Cross-Examination of Lawlor, p. 92.

farming global positioning systems, eminent domain issues, health impacts on humans and livestock due to electromagnetic fields and lightning, concerns regarding potential crossing of existing electric facilities, concern over the 10-year tax exemption for line siting projects granted in K.S.A. 79-259, and inverse condemnation concerns. The Commission understands from the public comments and materials presented by certain parties in this case that these are issues of great concern to them. However, the Commission finds most of these issues are either best addressed in separate proceedings before the district courts of Kansas or do not fall within the Commission's jurisdiction to grant or withhold line siting applications under the statutory standard expressed above. Specifically, these concerns do not address the necessity of the line, the reasonableness of the proposed route, economic development benefits, benefits to consumers, or conditions that should be imposed on the line.

Conditions

50. Staff recommended the Commission make any order approving the Application contingent on the following:

- a. Grain Belt Express must also obtain requisite approval from Missouri, Illinois, and Indiana to construct the project;
- b. A sunset provision allowing Grain Belt Express five years from the date of the Commission's Order to begin construction of the project in Kansas or otherwise be required to reapply;
- c. A requirement Grain Belt Express continue providing quarterly project updates to the Commission until the project has been completed or otherwise abandoned;
- d. The project remains a "merchant" transmission line only and not become subject to funding by Kansas ratepayers as provided in the Order Approving Stipulation and Agreement in Docket No. 11-GBEE-624-COC.

51. Grain Belt Express did not object to the conditions proposed by Staff, but offered alternative language for two of the conditions which Staff witnesses did not object to at the evidentiary hearing.⁶⁸ The proposed alternative language is as follows:

- a. The cost of the Project and any AC Collector System owned by Grain Belt Express will not be recovered through the SPP cost allocation process or from Kansas ratepayers.
- b. Prior to commencing construction of the DC component of the Grain Belt Project in Kansas, Grain Belt Express will obtain the state or federal siting approvals required by law to begin construction on the entirety of the direct current portion of the Grain Belt Project outside the state of Kansas. For the avoidance of doubt, transmission line siting approvals from the Missouri, Illinois, and Indiana state utility commissions shall be sufficient to satisfy this condition.

52. The Commission finds the conditions as recommended by Staff and modified by Grain Belt Express are reasonable and should be adopted.

53. Prior to commencing construction of the direct current component of the Grain Belt Project in Kansas, Grain Belt Express will obtain the state or federal siting approvals required by law to begin construction on the entirety of the direct current portion of the Grain Belt Project outside the state of Kansas. For the avoidance of doubt, transmission line siting approvals from the Missouri, Illinois, and Indiana state utility commissions shall be sufficient to satisfy this condition.

54. The cost of the Project and any AC Collector System owned by Grain Belt Express will not be recovered through the SPP cost allocation process or from Kansas ratepayers.

55. Grain Belt Express is allowed five years from the date of the Commission's Order to begin construction of the project in Kansas or otherwise be required to reapply.

⁶⁸ Transcript, DeBaun, pp. 220-221; Transcript, Wegner, pp. 239-240.

56. Finally, Grain Belt Express shall continue providing quarterly project updates to the Executive Director, General Counsel and Director of Utilities of the Commission as directed in Docket No. 11-GBEE-624-COC until the project has been completed or otherwise abandoned. The requirement to file such quarterly reports is hereby transferred from Docket No. 11-GBEE-624-COC to the present docket.

Conclusion

57. The Commission finds the Grain Belt Express line will make possible the utilization of heretofore undeveloped wind energy potential in Kansas and will have significant short- and long-term economic development benefits for Kansas and the SPP region. Therefore, based upon a review of the record as a whole, the Commission concludes the proposed electric transmission line is necessary and the proposed route is reasonable. The Commission approves certain route modifications as discussed above.

58. Approval of the siting permit is expressly conditioned on Grain Belt Express's continued flexibility in working with all affected landowners. The Commission approves minor adjustments to the location of the line as necessary to minimize landowner impact but requires material, major adjustments, and any such adjustment for which landowners would not have received notice, be approved by the Commission before implementation.

59. Finally, the Commission emphasizes the duty of Grain Belt Express to restore affected land to the condition which existed prior to the construction once construction of the line is complete, to the extent reasonably possible.⁶⁹

⁶⁹ See K.S.A. 66-1,183.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission finds the proposed electric transmission line is necessary and proposed route is reasonable. Certain modifications to the proposed route are also reasonable. The Commission grants Grain Belt Express's Application for a siting permit to construct an electric transmission line with certain proposed route modifications approved in this Order.

B. The Commission approves of minor adjustments to the location of the line as necessary to minimize landowner impact, but requires material, major adjustments, and any such adjustment for which landowners would not have received notice, be approved by the Commission before implementation.

C. Prior to commencing construction of the direct current component of the Grain Belt Project in Kansas, Grain Belt Express will obtain the state or federal siting approvals required by law to begin construction on the entirety of the direct current portion of the Grain Belt Project outside the state of Kansas. For the avoidance of doubt, transmission line siting approvals from the Missouri, Illinois, and Indiana state utility commissions shall be sufficient to satisfy this condition.

D. This Order is conditional upon the cost of the Project and any AC Collector System owned by Grain Belt Express not being recovered through the SPP cost allocation process or from Kansas ratepayers.

E. Grain Belt Express is allowed five years from the date of the Commission's Order to begin construction of the project in Kansas or otherwise be required to reapply.

C. The Commission requires the Applicant to submit quarterly reports detailing the progress and costs of the project and a final report once construction is complete.

D. This Order will be served by electronic mail. Parties have 15 days from the date of service of this Order in which to petition the Commission for reconsideration.⁷⁰

E. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chairman; Wright, Commissioner; Albrecht, Commissioner.

Dated: 11-7-2013



Kim Christiansen
Executive Director

ORDER MAILED NOV 07 2013
ELECTRONIC

JV

⁷⁰ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

I. BACKGROUND

At a high level, this application by Grain Belt Clean Line Express, LLC ("*Grain Belt*") represents a \$2.2 billion transmission line project (about \$900 million in Kansas) that is intended to enable \$7 billion of investment in the development and sale of wind energy produced in southwestern Kansas for sale at points east of Kansas. It will cross 14 counties in Kansas, then on through Missouri, Illinois and Indiana. It will be more than 750 miles long (370 miles in Kansas) and deliver Kansas wind-generated electric energy into eastern power grids operated by the Midcontinent Interconnection Operator ("*MISO*") and the PJM Interconnection that operates the grid in eastern United States (originally the Pennsylvania-New Jersey-Maryland (PJM) Interconnection).

The western end of the line will have an AC/DC converter station near Spearville, Kansas. The eastern end will have converter stations in Sullivan, Indiana connecting to Indiana Michigan Power Company and the PJM Interconnection. There will also be a midpoint converter in Missouri to connect to Ameren Missouri and MISO's grid.¹

Grain Belt's application and business model is a "merchant model" in the sense that its costs will be recovered from the wind farms that generate energy in southwestern Kansas and from the eastern consumers who buy the Kansas power.² Thus, unlike utility transmission projects the Commission has reviewed and approved in the past, this project will have no impact on Kansas' electric utility rates.

The high level estimated economic impacts of the project are that it would create 2,340 jobs in Kansas during the 3 year construction period; 135 jobs in Kansas during the operations of the line; and between 15,000 and 19,000 jobs in the wind industry depending on assumptions regarding the percentage of wind turbine components built. Estimates are that during construction the project would add \$131.5 million to salaries and wages spent in Kansas, \$371 million to Kansas' aggregate economic product, and \$6.76 million a year to state income and sales tax revenues.³

The construction of wind farms and manufacture of wind turbine components facilitated by this project are estimated to result in between \$779 million and \$1.026 billion of salaries and earnings for those employed in that industry in Kansas. The economic impact of those earnings in the Kansas economy is estimated to between \$2.284 billion and \$3.268 billion. The

¹ David Berry Direct Testimony, p. 7 (July 15, 2013).

² Michael Skelly Direct Testimony pp. 7-8 (July 15, 2013).

³ David Loomis and J. Lon Carlson, Economic Impact Study of the Proposed Grain Belt Express Clean Line Project, (June 10, 2013) (attached as Exhibit DAB-2 to the prefiled testimony of David Berry (hereinafter cited as "*Economic Development Study*")).

operations of these wind farms were estimated to generate 528 jobs, \$25 million in earnings and add \$73 million to the aggregate economy in Kansas.⁴

Unlike other transmission line cases heard by the Commission where the general level of landowner compensation was not presented, Grain Belt committed to landowner compensation that would pay the market value of the land for an easement to cross land, plus compensation for structures that could be taken as a one-time payment or as an annual payment for as long as the transmission structures are in place.⁵ Thus, landowners would receive the market value of their land over which the lines pass while continuing to use the land so long as the use did not interfere with the lines. Also, unlike other transmission projects that have come before the Commission, Grain Belt has also established a written code of conduct for its property managers charged with negotiating agreements with landowners.⁶

The value of this proposed compensation to Kansas is hard to estimate as it depends on local property values. The US Department of Agriculture's most recent survey of farmland property reports that the average farm real estate value per acre in Kansas is about \$1,900/acre; somewhat more for cropland, less for pastureland.⁷ Since the Kansas portion of the project is 370 miles long and assuming that landowner compensation will be made for a 200 foot strip along the line,⁸ that represents about 8,970 acres for which right-of-way compensation would be made. Thus, this commitment represents roughly \$17 million in easement payments to Kansas landowners. Payments for crop damages, field repair, and impacts to center pivot irrigators that will reduce the effective area of the irrigation equipment or require new equipment would be in addition to this amount, as well as payments for transmission line structures (towers).

In addition, because Kansas statutes exempt transmission lines from paying property taxes for the first 10 years of their operation,⁹ Grain Belt committed to pay local governments a one-time Construction Mitigation Payment fee of \$7,500 per mile prior to the commencement of construction.¹⁰ Since the Kansas portion of the project is about 370 miles long, this commitment amounts to \$2.8 million in payments to local governments in Kansas.

⁴ David Berry Direct Testimony, p. 11 (July 15, 2013).

⁵ Mark Lawlor, Responsive Testimony, p. 20 (Sept. 10, 2013). ("Grain Belt Express is offering a payment to the landowner for the transmission easement itself, a payment per structure, and additional payments as compensation for crop damages, field repair, and impacts to center pivot irrigators that will reduce the effective area of the irrigation equipment or require new equipment. The landowner will retain the ability to continue agricultural production on the entirety of the easement except for the relatively small footprint of the structures. During our public outreach process, landowners expressed a desire to have the option for a recurring annual payment. As a result, Grain Belt Express is offering the landowner, at his or her option, either a one-time payment or a recurring annual payment for the structures on their property. If elected by the landowner, the annual structure payment will be made as long as the above-ground transmission structures are present on the property and Grain Belt Express retains an easement. Total compensation to landowners with structures on their property will exceed 100% of the fair market value of the easement area.").

⁶ Mark Lawlor Direct Testimony, Exhibit MOL-8 (July 15, 2013).

⁷ US Department of Agriculture, Land Values 2013 Summary (August 2013).

⁸ Application, C. Right of Way, ¶18 (July 15, 2013).

⁹ K.S.A. 79-259.

¹⁰ Mark Lawlor, Responsive Testimony, pp. 14-15 (Sept. 10, 2013).

Grain Belt provided sufficient evidence it is capable of taking on this project. Testimony in this case was that one of Grain Belt's investors is National Grid, a major utility with headquarters in the UK.¹¹ Also, the project in Kansas is not the only transmission project being undertaken by Grain Belt. Grain Belt's affiliates are also developing three other high voltage long distance DC transmission projects and one AC transmission line.¹²

A. Studies

The record in this matter is very large. Several significant studies were submitted in support of the project, including:

1. **Route Selection Study.** This study described the process and data used by the applicant to iterate from early conceptual routes, to potential routes, to alternative routes and, finally, to the proposed route presented to the Commission.¹³
2. **Economic Development Study.** This study quantified and estimated the economic development impacts of the project to Kansas.¹⁴
3. **Benefits Study.** This study quantified and estimated the benefits of the project to consumers in and outside of Kansas.¹⁵
4. **Burial Study.** This study quantified and estimated the costs of burying the line rather than stringing it on overhead facilities.¹⁶
5. **HVDC Environmental Issues Study.** This study analyzed the issues surrounding high voltage direct current transmission lines.¹⁷
6. **Transmission Line Design Study.** This study analyzed the general design of the transmission line.¹⁸

¹¹ Michael Skelly Direct Testimony, p. 17 (July 15, 2013).

¹² *Id.* at p. 11.

¹³ Louis Berger Group, Inc., Kansas Route Selection Study (July 8, 2013) (attached as Exhibit TBG-1 to the prefiled direct testimony of Timothy Gaul (hereinafter cited as "*Route Selection Study*").

¹⁴ Economic Development Study.

¹⁵ Bob Cleveland and Gary Moland, Grain Belt Express Project Benefits Study (Oct. 30, 2012) (Exhibit DAB-3 attached to the prefiled direct testimony of David Berry (hereinafter cited as "*Benefits Study*").

¹⁶ Grain Belt Exhibit 3, Power Engineers, 500kv DC White Paper Project, Underground DC Feasibility Report (Nov. 11, 2010) (hereinafter cited as "*Burial Study*").

¹⁷ Oak Ridge National Laboratories, HVDC Power Transmission Environmental Issues Review (April 1997) (Exhibit AWG-6 attached to the prefiled direct testimony of Dr. Anthony Galli (hereinafter cited as "*HVDC Environmental Issues Study*").

¹⁸ Power Engineers, Grain Belt Express HVDC Line Preliminary Design Criteria (Jan. 27, 2011) (Exhibit AWG-3 attached to the prefiled direct testimony of Dr. Anthony Galli (hereinafter cited as "*Line Design Study*").

B. Public Comments

While the volume of public comments received by the Commission was quite large and many opinions were expressed, the project is generally supported by many in southwestern Kansas and opposed by groups in northeastern Kansas.

As part of its filing in this matter, Grain Belt included letters of support from more than 260 individuals and officials representing 12 counties, 6 cities, 8 economic development agencies, 4 colleges or universities, 4 utilities (including the largest municipal utility, the Kansas City Board of Public Utilities), and also numerous businesses, farmers and associations that would be affected by the project.¹⁹

As described in its prefiled testimony supporting its application,²⁰ Grain Belt conducted three rounds of public outreach before the public hearings were scheduled. Those public outreach efforts that preceded the public hearings included:

1. **Stage 1 Meetings.** These were meetings with Kansas state agencies (*e.g.*, Kansas Chamber of Commerce, Department of Wildlife and Parks), local utilities, legislators, economic development agencies, county commissioners and other community leaders. The intent was to develop information about local communities, wildlife habitats, existing infrastructure, pipelines, transmission lines, etc. About 100 of those meetings were held.
2. **Roundtables.** These were larger group meetings to include anyone suggested by county commissioners as having a broad understanding of the local community and geography. A total of 19 roundtable meetings were held with attendance of slightly more than 300 individuals.²¹
3. **Open Houses.** Once the alternative routes were identified, Grain Belt mailed invitations to landowners of record with property within about 1½ miles from the center lines of each potential route segment to attend an open house to describe and discuss the project. Invitations were sent to more than 11,200 people and advertisements were placed in 24 local newspapers to publicize the open house in addition to the mailed invitations.²²

The table below summarizes the on-the-record public testimony/comments heard by the Commission at public hearings in Seneca, Beloit, Russell and Kinsley.

¹⁹ Mark Lawlor Direct Testimony Exhibit MOL-8 (July 15, 2013).

²⁰ Mark Lawlor Direct Testimony pp. 6-15 (July 15, 2013).

²¹ Mark Lawlor Direct Testimony, Exhibit MOL-1 (July 15, 2013).

²² Mark Lawlor Direct Testimony, Exhibit MOL-3 (July 15, 2013).

Testimony About the Proposed Route			
<i>Public Hearing Location</i>	<i>Approximate # of Attendees</i>	<i>Favorable</i>	<i>Opposition</i>
Seneca	400	6	11 1 conditional
Beloit	225	7	4 1 conditional
Russell	150	4	1 2 conditional
Kinsley	175	15	2 1 conditional
Total	950	32	18 5 conditional

More than 2,500 written comments concerning the proposed project were received by the Commission's Public Affairs and Consumer Protection ("PACP") group. A large majority of those comments came in the form of an on-line electronic petition in opposition to the project posted on change.org, a web site that facilitates posting and gathering petition signatures. Among the written comments received, about 470 (about 18%) did not live in Kansas.

II. RECOMMENDATIONS

I support approval of the Grain Belt proposal. This statement and the materials that follow outline the reasons for my vote, the record and reasoning I relied on in forming my opinion, and generally the reasons I did not agree with the arguments made by opponents to the proposal. Based on the evidence in the record, I believe the proposed route with the modifications presented in this proceeding meets the mandatory statutory standards that it is necessary and reasonable, benefits consumers in and outside of Kansas, and has significant economic development benefits.

My support also comes with the following recommended conditions to best protect the rights of all interested parties and those of the general public:

1. The routing proposals made by Staff should be approved.
2. The approval should allow for minor adjustments to facilitate to-date unforeseen conditions or mutually agreeable adjustments made by the affected landowner and Grain Belt.
3. The approval should be conditioned on the landowner compensation methodology and Construction Mitigation Payment plan proposed by Grain Belt.

4. Construction of the facilities should comply with the standards described in the Transmission Line Design Study.
5. As recommended by Staff, the transmission line shall be operated as a merchant model free of the subsidies inherent in large transmission facilities built at the direction of the Southwest Power Pool (“SPP”).
6. As recommended by Staff, the authority to construct this line should sunset if Grain Belt has not commenced construction prior to the sunset date. I recommend a sunset date of five years in recognition of the complexity of this project and its construction over four states.

III. LAW GOVERNING TRANSMISSION LINE SITING

I am an economist and a lawyer, which colors how I analyzed the comments and facts of this case. Law involves a determination of what is required by statute and case law. Economics often involves an assessment of public policy and normative analyses (*i.e.*, what ought to be).

As an economist, I believe line siting cases present an application of the economic issues surrounding conflicting property rights and the rights of others to control someone else’s property use. There are three major questions on this issue, generally. First, should a landowner or any other property rights holder be empowered to prevent a utility company from acquiring an easement through eminent domain? Second, should a utility be empowered to acquire an easement through eminent domain over the objections of a landowner or any property rights holders? Lastly, should an adjacent landowner or interested party who objects to transmission lines because they spoil their view be empowered to restrict a utility and landowner from mutually agreeing to place a transmission line on the landowner’s property?

To an economist, line siting presents an application of the Coase Theorem and the allocation and resolution of conflicting property rights. The overarching public policy of the Coase Theorem is that issues surrounding conflicting property rights are best addressed by institutions that facilitate private negotiations between the affected parties, such as landowners and transmission developers.²³ In Kansas, the mechanisms of public meetings, open houses and notice to affected parties can be considered such institutions.

As a lawyer, as a starting point, I view line siting cases (and most utility rate cases for that matter) as an application of the takings and due process clauses of the 5th and 14th Amendments to the U.S. Constitution which provides that “nor [shall anyone] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” It is important to note that the 5th Amendment does *not* prohibit private property from being taken for public purposes; just that there must be due

²³ Docket No. 11-ITCE-644-MIS, Order Granting Siting Permit (July 12, 2011) (containing a description of the Coase Theorem and the allocation of competing property rights in a docket siting a 345 kV transmission line).

process and just compensation.²⁴ Due process includes notice and a fair opportunity to be heard; such as in a public or evidentiary hearing. Just compensation includes the process whereby “fair” payment is determined; that includes, payment for land in cases of eminent domain or rates in the case of utility rate making cases. Also, note the US Supreme Court has held that “public use” under the takings clause can include economic development projects with private sector benefits.²⁵

The starting point of any analysis in line siting is the Kansas statutes and laws governing electric transmission lines. These statutes reflect the public policies enacted by the elected officials who represent Kansans and bind the Commission in the exercise of its authority.

The process set out in Kansas transmission statutes go to the heart of many of the public comments made. I note that the Commission is not a “super legislature” that may override the laws passed by the legislature (or the Supreme Court). Likewise, the Commission is not a “super zoning authority” that regulates local land use policies and aesthetics. For example, many commenters complained about inadequate notice to landowners and the short (120 day) review period. Both the mechanics of notice and the review period are explicitly defined by the statutes enacted by the legislature which the Commission cannot change. If the public is dissatisfied with the statutes, then it is the responsibility of elected officials to make the necessary changes. The Commission cannot change or override the statutes enacted by the Kansas legislature.

K.S.A. 66-1,178 and 66-1,179 generally specify the statutory *process* by which the Commission reviews transmission line siting applications.²⁶ They require that:

1. All electric utilities must obtain a transmission siting permit before beginning construction of an electric transmission line or exercising eminent domain to acquire any interest in land in connection with such construction.
2. An application must be made with the Commission specifying the proposed location and the names and addresses of landowners whose land or interest lies *within 660 feet* of the center line of the proposed route.
3. The Commission *must* hold a public hearing within 90 days of the filing of the application in one of the counties where the proposed line is located.

²⁴ There is no 5th Amendment equivalent in the Kansas Constitution, but Article 12, Sec 4 of the Kansas Constitution provides that “No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation.” Eminent domain in Kansas is performed subject to the Eminent Domain Procedure Act at K.S.A. 26-501 *et seq.*

²⁵ *Kelo v. City of New London*, 545 U.S. 469, 478-80 (2005) (In *Kelo*, the city of New London sought to directly condemn 115 privately owned properties and transfer them to a private non-profit as part of plan to build a new “village.” This development was projected to create in excess of 1,000 jobs, increase tax and other revenues, and to revitalize an economically distressed area.” Opponents generally argued that such a “taking” was not permissible because it was not a “public use” under the 5th Amendment, but rather a transfer of private property for the developer’s private use.)

²⁶ K.S.A. 66-1,178 and 66-1,179.

4. There be publication of notice of a public hearing in the newspaper of public record and written notice to the affected landowners.
5. The Commission *may* hold an evidentiary hearing.
6. The Commission must issue a final decision no later than 120 days after the application is filed.

It is worth noting that the requirement of notice to landowners within 660 feet of the transmission line and the requirement that the Commission issue a final decision in 120 days were added by the Kansas legislature in 2000.²⁷ In that respect, they represent a relatively recent judgment of and policy adopted by the Kansas legislature that transmission proceedings must be completed in 120 days and that the critical landowner interests are those located within a 1,320 foot path centered on the transmission line.

The *legal standard* to be applied by the Commission in reviewing a transmission siting application and deciding whether to grant a permit is specified in K.S.A 66-1,180, as follows:

The commission *shall* make its decision with respect to the *necessity for* and the *reasonableness of* the location of the proposed electric transmission line, *taking into consideration the benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas.* The commission shall issue or withhold the permit applied for and may condition such permit as the commission may deem just and reasonable and as may, in its judgment, best protect the rights of all interested parties and those of the general public.²⁸

The statutory standard “taking into consideration the benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas” was added by the Kansas legislature in 2003 reflecting a legislative intent and policy that consumer and economic development be considered in an analysis of the necessity and reasonableness of a line. Said differently, the *mandatory* statutory standard (“the Commission shall”) to be applied is consideration of the *necessity* of the line and the *reasonableness* of the line based on consideration of the “benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas.” Thus, the Commission may do one of three things: (1) issue the permit for the proposed line; (2) deny the permit; or (3) issue the permit conditioned on what the Commission concludes would best protect the rights of interested parties and the general public.

The Kansas Constitution includes a provision that strictly limits use of state money to invest in infrastructure projects, reflecting a public policy that private, not public money be used

²⁷ S.B. 257, Ch. 85, (2000).

²⁸ K.S.A. 66-1,180 (emphasis added).

for such facilities and that economic development is a legitimate public policy goal for infrastructure investments.²⁹

In 2001, the Kansas Legislature enacted K.S.A. 79-259 which exempted transmission lines from property taxes for the first 10 years of operations. I interpret this as an expression of legislative intent to promote investment in and deployment of electric transmission facilities in Kansas. In 2005, the Kansas Legislature enacted the Kansas Electric Transmission Authority Act, which created the Kansas Electric Transmission Authority (“KETA”). KETA is a public agency generally empowered to plan, secure financing, and build transmission lines when private entities and public utilities decline to build transmission facilities in Kansas. The purpose of KETA is a reflection of the public policies the Kansas Legislature enacted with respect to electric transmission lines.³⁰

I interpret the Kansas Constitution, K.S.A. 79-259 exempting transmission lines from property taxes for 10 years, and the KETA statutes to express an explicit legislative desire and public policy to promote economic development and facilitate the consumption of Kansas energy through investment in transmission facilities (the KETA statutes and K.S.A. 79-259) and that such investment should be made by private not public entities (the Kansas Constitutional provisions).

Granting a transmission line siting permit does not give a utility *carte blanche* to acquire property through eminent domain or general authority to destroy private property. For example, K.S.A. 66-1,183 specifies that “[i]t shall be the duty of every electric utility which constructs an electric transmission line to restore the land upon which such line is constructed to its condition which existed prior to such construction.”

Exercise of the power of eminent domain is explicitly authorized for public utilities and the procedure by which that power *may* be exercised is specified in the Kansas Eminent Domain Procedure Act.³¹ Knowing that, it is important to emphasize two facts. First, the Commission is *not* involved in eminent domain proceedings that set the price of property acquired – the Commission’s line siting proceeding simply determines the necessity and reasonableness of the proposed route. Second, overwhelmingly, property acquisition along a transmission line does *not* require the parties to resort to eminent domain. The affected parties (*i.e.*, the utility and the landowners) have powerful private economic incentives to reach voluntary agreements rather than resort to court-driven eminent domain proceedings where a judge rather than the parties

²⁹ KAN. CONST. art IX, § 9 (The state shall *never* be a party in carrying on any work of internal improvement except that ... it may, for the purpose of stimulating economic development and private sector job creation in all areas of the state, participate in the development of a capital formation system and have a limited role in such system through investment of state funds authorized in accordance with law.) (emphasis added).

³⁰ K.S.A. 74-99d01(b) (“The purpose for which the Kansas electric transmission authority is created is to further ensure reliable operation of the integrated electrical transmission system, diversify and expand the Kansas economy and facilitate the consumption of Kansas energy through improvements in the state’s electric transmission infrastructure.”).

³¹ K.S.A. 26-501 *et seq.*

determines the value of property. Testimony in this case indicated that eminent domain is rarely used in transmission siting negotiations with landowners.³²

IV. THE PROPOSED ROUTE IS NECESSARY

In past siting decisions, the Commission has interpreted "necessity" consistent with the meaning of "necessity" as used in the phrase "public convenience and necessity." Generally, I understand that standard to be summarized as follows: a project is considered necessary if the public would be significantly disadvantaged, inconvenienced or handicapped by its absence.³³

In this case, the evidence presented indicated that the project was being undertaken to incent the construction of wind farms in southwestern Kansas and carry wind-generated electric energy to eastern markets. Thus, the commercial premise of the project is that but for the transmission line, the wind farms in southwestern Kansas would not be built.

Testimony was presented that indicated that markets to the west, north and south were not economically feasible.³⁴ Thus, the testimony suggested that the route from southwestern Kansas to the east presented the only route to access economically feasible markets.

³² Grain Belt's President and CEO, Michael Skelly testified (Tr. pp 153-155) as follows:

CHAIRMAN SIEVERS: Did you propose this model because as a public utility you would have the power of eminent domain and could condemn property if you had a hold out?

MR. SKELLY: So we do not want to use eminent domain. We want to and are trying to negotiate fair prices with affected landowners and we have -- we are in the process of doing that right now, and when I say fair process, what we are doing, are going to pay 100 percent of the fee value and then we are going to make annual payments for the structures on the land which is sort of a page from the wind notebook where wind farm owners typically pay on an annual basis for each turbine that's located on someone's land. With respect to eminent domain, again, we don't want to use it, but we do have a hard time imagining that you could go from around Dodge City, Kansas, to Southern Indiana without running into a landowner who was opposed and then you would end up with a project that you either couldn't build or it zigged and zagged so much that it would be prohibitively expensive.

CHAIRMAN SIEVERS: Do you have any estimate as to how often you think you might have to utilize eminent domain?

MR. SKELLY: So we looked to examples with other projects at condemnation rates in the low single digits and that's what we aspire to, if not lower than that. I mean, the best would be zero.

³³ See, e.g., In the Matter of the Application of ITC Great Plains, LLC for a Siting Permit for the Construction of a 345 kV Transmission Line in Edwards, Ellis, Ford, Hodgeman, Pawnee and Rush Counties, Kansas, Order Granting Siting Permit, Docket 09-ITCE-729-MIS ¶39 (July 13, 2009)

³⁴ Tr. pp. 106-108. The testimony was as follows:

CHAIRMAN SIEVERS: Okay. Why didn't you go west?

MR. LAWLOR: The short answer is, is probably length to the, you know, to the significant supply, the band centers. There are -- you know, closest, you know, appreciable market would be Colorado, and they have significant wind resources in that state. So beyond that you're talking about, you know, California, Phoenix and Las Vegas. And so we, we acknowledge there is a need for that, but we have a sister project that would actually start farther west, New Mexico in this case, and move power that direction. So it's really a proximity question. Kansas wind resources closer proximity to eastern markets.

CHAIRMAN SIEVERS: Okay. Why didn't you go south, sell into the Dallas market?

Testimony was also presented that indicated that the demand for renewable energy from the states in the MISO and PJM grids would be 99.7 million MWh in 2015, 157.3 million MWh in 2020 and 194.8 million MWh in 2025.³⁵ This demand greatly exceeds the renewable generation capacity of the MISO and PJM states, which testimony estimated to be 83.1 million MWh in 2010.³⁶ Thus, Grain Belt believes it has a ready market for Kansas wind generated power carried east over its transmission facilities.

Testimony in this case was that the project would enable about 15 million MWhs annually of electricity generated by Kansas wind farms to be delivered and sold into the Midcontinent Interconnection Operator ("MISO") and PJM grids.³⁷ As described below and contained in the Economic Development Study, testimony was presented that indicates that the construction and operations of the wind farms and manufacture of wind turbine components in Kansas would add between \$2.3 and \$3.3 billion to the Kansas economy.³⁸

Based on the record, it seems obvious that if the project is not built, Kansas will not realize the benefits of the wind farm construction described in the application and that would disadvantage, inconvenience or handicap the public.

V. THE PROPOSED ROUTE IS REASONABLE

In past transmission cases, the Commission has defined a condition as reasonable simply if it is based on substantial, competent evidence.³⁹ But I believe an inquiry into reasonableness is broader than simply asking whether the evidence is substantial and competent. In my view, reasonableness includes an inquiry into whether the condition is just or fair, rational, appropriate under the circumstances, ordinary, customary or usual.

In this matter, the evidence supports a conclusion that the process by which the proposed route was selected and modified was just or fair, rational and appropriate under the

MR. LAWLOR: Similar -- well, Texas has a fairly significant wind resource. They have their own RTO, they have their own grid, as you know, and they are on track to, to meet their demand in the State of Texas with resources in that state.

CHAIRMAN SIEVERS: Okay. Why didn't you go to New Orleans?

MR. LAWLOR: There is, in short, not, not a significant enough market for, you know, a project of this size. We view -- New Orleans is part of the Southeast, where we have yet again a sister project in Oklahoma, the Panhandle, that would feed into that particular region.

CHAIRMAN SIEVERS: Okay. And why didn't you go to Minnesota?

MR. LAWLOR: Again, Minnesota has enough wind resource in their state to meet their relatively small load.

CHAIRMAN SIEVERS: So is it your testimony that the only economically feasible market to sell Kansas wind generated in the southwest is into the MISO and the PJM markets?

MR. LAWLOR: That, that is accurate.

³⁵ David Berry Direct Testimony at pg 21 and Exhibit DAB-4 (July 15, 2013).

³⁶ David Berry Direct Testimony at pg 21 (July 15, 2013).

³⁷ *Id.* at p. 13.

³⁸ *Id.* at p. 11.

circumstances. It was developed through an iterative analysis of various transmission routes seeking public input and analyzing alternative routes until the proposed route was selected.

The process by which the proposed route was selected was described in detail in the Route Selection Study attached to Mr. Gaul's direct testimony. The route selection process sought and received considerable public input and feedback to iterate to the final proposed route. Those public outreach efforts that preceded the public hearings included the meetings described above.

At a high level, Figure 4.5 in the Route Selection Study best illustrates why the northern route is preferable to central or southern routes through Kansas. Simply put, if the line were placed through a southern or central route it would be forced to pass through areas of high population density making the project economically infeasible.

Considerable public comment urged the Commission to require that the line be buried. However, the evidence in the record does not support such a proposal as a reasonable condition. Grain Belt Exhibit 3 presents a comprehensive study of the issues and costs associated with burying 500 kV DC line. The conclusions of that study are that compared to overhead construction, the costs of burying such a line would increase costs between 10 and 20 times the costs of an overhead line.⁴⁰

There was also public comment that focused on the aesthetics of the line and urging the Commission to find that the proposed line is unreasonable because it interferes with the views and nature of life in rural Kansas. In the public hearings, testimony from David Blau, a Kansas farmer, at the Kinsley public hearing stood out to me.

Visual esthetics. While this man-made structure that impedes our ability to see across the vast Kansas landscape is a bit of an eyesore, with progress comes sacrifice. At one time, this land wasn't cluttered with center pivot irrigations either, but now it's a part of our everyday landscape and is essential to the farming industry in this region. I bet not many would be willing to give up the center pivots now.⁴¹

Moreover, the Commission is not a zoning authority and aesthetic considerations are not included in the statutory criteria the Commission must consider in evaluating line siting applications. I found no legal authority that suggests that the Commission must make such an evaluation as part of its decision making in these cases.

VI. BENEFITS TO CONSUMERS INSIDE AND OUTSIDE OF KANSAS

Grain Belt's Executive Vice President of Strategy and Finance, David Barry, sponsored a study of the benefits of the project to consumers in and outside of Kansas.⁴² The general approach taken was to develop a simulation model of electric demand in the MISO and PJM

⁴⁰ Burial Study, pg. 28.

⁴¹ Blau Testimony, Kinsley, pg. 49.

⁴² Bob Cleveland and Gary Moland, Grain Belt Express Project Benefits Study (Oct. 30, 2012) (Exhibit DAB-3 attached to David Barry's prefiled direct testimony (hereinafter cited as "*Benefits Study*")).

states, to make assumptions about future demand in those states in 2019, and to simulate how the sale of Kansas wind energy into these markets would affect aggregate electric generation costs (which drive the prices consumers pay) and emissions levels of various pollutants (which affect health). Four future scenarios were assumed for the analysis:

Business As Usual - Energy demand grows under a moderate economic recovery with no major changes to existing environmental policy, generating technologies, fuel commodity prices, or other key energy market assumptions.

Slow Growth - Continuation of depressed economic conditions characterized by slow demand growth, continued low fuel commodity prices, and minimal transmission/generation expansion.

Robust Economy - Strong recovery in economic activity characterized by accelerated growth in electrical demand, higher fuel prices and emission allowances prices, and increased activity in new generation and transmission projects.

Green Economy - Expansion in environmental policy including carbon regulation and a federal renewable portfolio standard under robust economic conditions including high demand growth, an increase in fuel prices, and increased activity in new generation and transmission projects.⁴³

Using PRODMOD software, the impacts of selling Kansas wind energy into the PJM and MISO markets were simulated and the following results were reported:

2019 DEMAND COST SAVINGS IN \$ MILLIONS				
Area/Region	Business as Usual	Slow Growth	Robust Economy	Green Economy
Indiana	13	14	79	89
PJM	421	310	830	379
Midwest ISO	119	30	370	78

Environmental Benefits of Grain Belt Express Project				
Environmental Improvement	Business as Usual	Slow Growth	Robust Economy	Green Economy
Reduction in NO _x (tons)	15,538	7,254	3,504	3,556
Reduction in SO _x (tons)	9,868	9,730	6,374	7,841
Reduction in CO ₂ (tons)	7,434,958	10,345,743	5,704,144	5,402,264
Reduction in Hg (lbs)	83	110	46	96
Reduction in Water (Mgal)	3,150	3,915	2,556	2,800

Thus, Grain Belt's analysis of consumer benefits is that consumers—largely in the PJM and MISO states—benefit by reducing the cost of electric power ranging between \$354 million

⁴³ Benefits Study pg 1.

annually to \$546 million annually depending on the assumption one makes about demand levels in 2019. Grain Belt also asserts that consumers also benefit by reductions in emissions levels.

The Commission is not an environmental regulator and estimating the economic benefits with any precision based on assumptions six years from now over many states included in the PJM and MISO footprints seems questionable to me. However, there was no competing evidence in the record to suggest that consumers would not benefit in some manner. Certainly, the simulation model does provide some indication of the range and magnitude of benefits.

At a conceptual level, Grain Belt does not have the power to force anyone to purchase its power. Thus, if utilities in the MISO and PJM markets purchase power from Grain Belt, they must believe that the purchase makes them better off in some manner—either by reducing emissions mandates, meeting a state renewable portfolio standard, or reducing costs. In my view, if there is a viable market for Kansas wind energy in eastern states—the business premise upon which this project is based – then there must be some benefit to be gained in eastern states.

VII. ECONOMIC DEVELOPMENT BENEFITS IN KANSAS

Grain Belt’s Executive Vice President of Strategy and Finance, David Barry sponsored a study of the economic development benefits of the project in Kansas.⁴⁴ The study used the Jobs and Economic Development Impact (“*JEDI*”) model developed by the National Renewable Energy Laboratory (“*NREL*”), which, in turn used the IMPLAN input-output economic model to estimate macro-economic development impacts of the project.

Estimates of the economic development impacts were presented separately for the construction and operation of the transmission facility, construction and operation of the wind farms, and the manufacture of wind turbine components in Kansas.

The table below summarizes the economic development impacts associated with the construction process of the Grain Belt line in Kansas (\$ figures are in millions of \$):⁴⁵

Estimated State-Level Economic Development Impacts Associated with Construction Activities		
Component		Impact
Installation of Structures	Jobs	4,149
	Salaries	\$235.1
	Output	\$594.6
Manufacture of Structures	Jobs	592
	Salaries	\$36.5
	Output	\$134.0
Manufacture of Wire	Jobs	176

⁴⁴ Economic Development Study.

⁴⁵ *Id.* at Table 3.3.

Estimated State-Level Economic Development Impacts Associated with Construction Activities		
Component		Impact
	Salaries	\$12.2
	Output	\$67.5
Architectural Services	Jobs	438
	Salaries	\$29.2
	Output	\$61.6
Rights of Way	Jobs	313
	Salaries	\$6.8
	Output	\$47.4
Financial	Jobs	108
	Salaries	\$3.7
	Output	\$22.8
Electric Power	Jobs	23
	Salaries	\$1.8
	Output	\$9.9
Installation of Converters	Jobs	1,221
	Salaries	\$69.2
	Output	\$174.9
Totals	Jobs	7,021
	Salaries	\$394.4
	Output	\$1,113.0

At a high level and taken at face value, these estimates mean that the construction phase will add about 7,000 jobs to the Kansas economy, grow wages and benefits paid into the Kansas workforce by about \$394 million and as the money spent flows through the Kansas economy, total economic output will grow by about \$1.1 billion. When the line is operational, the Economic Development Study reports that the operations and maintenance will add 135 jobs to the Kansas economy, grow annual wages/salaries by \$7.6 million, and increase aggregate state output by \$17.7 million.⁴⁶

In addition to economic development benefits associated with the Grain Belt transmission line, estimates were presented of the economic development impacts of wind generation built in response to the availability of the Grain Belt transmission line. To develop those estimates, the Economic Development Study identified impacts based on assumptions about the proportion of wind turbine components that were made in Kansas. The Economic Development Study identified seven companies that manufacture wind turbine components⁴⁷ and modeled two scenarios; one where 30% of the wind turbine components used in the wind farms connected to the Grain Belt line were manufactured in Kansas and another where 90% of the wind turbine

⁴⁶ *Id.* at p. 2, Table ES-2.

⁴⁷ *Id.* at p. 30, Table 4.1.

components were manufactured in Kansas. The Economic Development Study assumed that 4,000 MW of wind turbine capacity would be built and connected to the Grain Belt line.

The table below summarizes the Kansas impacts of wind farm construction and operations associated with the Grain Belt line:

Reported Economic Development Impacts of Wind Farm Construction and Operations			
		30% Scenario	90% Scenario
During Construction	Jobs	15,542	19,656
	Salaries	\$778.8	\$1,026.1
	Output	\$2,283.5	\$3,267.7
During Operational Years (annual figures)	Jobs	528	528
	Salaries	\$25.0	\$25.0
	Output	\$73.3	\$73.3

Thus, at a high level and taking the figures at face value, the Economic Development Study reports that the wind farm construction induced by the Grain Belt line would create between 15,000 and 19,000 jobs during the construction phase, grow Kansas wages and salaries by between \$778 million and \$1 billion, and add between \$2.3 and \$3.3 billion to the Kansas economy.

Certainly, input-output models have their critics, and they are only as good as the inputs into and assumptions of the model, but the JEDI and IMPLAN models are widely used as mechanisms to assess economic development impacts. I find the results to be a credible assessment of the general magnitude of the economic development impacts of the proposed line.

CERTIFICATE OF SERVICE

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13-GBEE-803-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Granting Siting Permit was served by electronic mail this 7th day of November, 2013, to the following parties who have waived receipt of follow-up hard copies:

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