

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

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 Ford,) Docket No. 13-GBEE-803-MIS
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.)

**JOINT MOTION OF GRAIN BELT EXPRESS CLEAN LINE LLC AND
COMMISSION STAFF FOR EXTENSION OF SUNSET TERM**

Grain Belt Express Clean Line LLC (“Grain Belt Express”) and Commission Staff (“Staff”) (collectively, “Joint Movants”) hereby move the State Corporation Commission of the State Kansas (“Commission”) for an Order extending the sunset date related to the Grain Belt Express Project. In support its request, Grain Belt Express states as follows:

A. BACKGROUND

1. On December 7, 2011, the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) issued a certificate of public convenience and necessity to Grain Belt Express in Docket No. 11-GBEE-624-COC (“11-624 Docket” and “11-624 Order”).¹

2. On July 15, 2013, 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 requested the Commission confer upon 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

¹ Order Approving Stipulation & Agreement and Granting Certificate, issued Dec. 7, 2011.

Sullivan 765 kV substation in Sullivan County, Indiana (“Grain Belt Express line” or “Project”).²

3. On November 7, 2013, the Commission issued its *Order Granting Siting Application* in this docket (“13-803 Order”), finding that the Grain Belt Express line is necessary and the proposed route, with certain modifications, is reasonable.³ The Commission stated that the proposed line will make possible the utilization of undeveloped wind energy potential in Kansas and will have significant short-and long-term economic development benefits for Kansas and the Southwest Power Pool (SPP) region.⁴ The Commission also stated that, “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”⁵, finding that, 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.”⁶

4. The 13-803 Order also acknowledged that, prior to commencing construction of the line, Grain Belt Express would need to obtain the siting approvals of the public utility commissions of Missouri, Illinois, and Indiana to begin construction on the direct current portion of the Project located outside the state of Kansas.⁷ The Commission granted Grain Belt Express five years from the date of the 13-803 Order to obtain approvals from the other jurisdictions and begin construction of the Project in Kansas. If construction could not be commenced in that five-year period, Grain Belt Express was to reapply.⁸

² Application in 13-803 Docket, p. 1.

³ 13-803 Order, p. 22, ¶ A.

⁴ 13-803 Order, p. 14, ¶¶ 36, 37; p. 21, ¶57.

⁵ 13-803 Order, p. 13, ¶ 32.

⁶ 13-803 Order, p. 14, ¶ 36.

⁷ 13-803 Order, pp. 19-20, ¶¶50, 51, 53; p. 22, ¶ C.

⁸ 13-803 Order, p. 20, ¶ 55; p. 22, ¶ E.

5. Grain Belt Express has worked diligently over the past five years to obtain the necessary approvals from the Federal Energy Regulatory Commission (FERC), the Missouri Public Service Commission (MPSC), the Illinois Commerce Commission (ICC), and the Indiana Utility Regulatory Commission (IURC) that would allow construction to begin on the Grain Belt Express line. In Indiana, the required approval has been received⁹. Grain Belt Express has also received the required FERC approval.¹⁰

Illinois:

6. On April 10, 2015, Grain Belt Express filed its application with the ICC for a Certificate of Public Convenience and Necessity (Certificate) to construct the transmission line and operate as a transmission public utility in Illinois, pursuant to a provision of the Illinois Public Utilities Act that provides for expedited review of transmission line certificate applications.¹¹ The ICC granted a Certificate to Grain Belt Express on November 12, 2015¹². However, on March 13, 2018, the Appellate Court of Illinois, Fifth District, reversed the ICC decision on the grounds that Grain Belt Express was not entitled to use the expedited Certificate application process of Section 8-406.1 because that process is only available to an existing public utility and Grain Belt Express was not yet a public utility at the time it filed its Certificate

⁹The Indiana Utility Regulatory Commission granted Grain Belt Express' application to operate as a public utility with its Order on Cause No. 44264 on May 22, 2013. No further regulatory approval is needed in Indiana.

¹⁰ On November 15, 2013, Grain Belt Express filed a request with the FERC for authorization to sell transmission rights at negotiated rates; on May 8, 2014, FERC granted Grain Belt Express negotiated rate authority. (FERC Docket No. ER14-409-000.) Receiving this approval allows Grain Belt Express to sell transmission capacity to potential customers of the project, including utilities and other load serving entities or clean energy generators. In addition, Grain Belt Express was granted authorization to negotiate bilateral agreements for 100% of the line's capacity. Generator interconnection to the Grain Belt Express Project will be subject to the open access transmission tariff associated with the project.

¹¹ Section 8-406.1 (220 ILCS 5/8-406.1).

¹² ICC Docket No. 15-0277.

application.¹³ The case was recently remanded to the ICC and, accordingly, on August 28, 2018, the ICC dismissed Grain Belt Express' original petition.¹⁴

7. Under a recent (September 2017) decision of the Illinois Supreme Court, an entity cannot be a "public utility" under the Illinois statute unless and until it owns, controls, operates, or manages property, plant or equipment in Illinois that is used or to be used for utility purpose.¹⁵ The Supreme Court stated that a non-public utility can begin development of a transmission line, including acquisition or construction of property or equipment, without a Certificate, and once it obtains the ownership, management, or control of utility-related property or equipment, may apply for a Certificate to conduct business as a public utility.

8. As a result of these Appellate Court and Supreme Court decisions, Grain Belt Express will need to acquire utility property, plant or equipment in Illinois to be used for the transmission of electricity, before it can submit a new application to the ICC for a Certificate for the Illinois portion of the transmission Project. Grain Belt Express is therefore actively planning to acquire property in Illinois to be used for electricity transmission, which will enable it to file a new certificate application with the ICC.

Missouri:

9. Grain Belt Express' efforts to obtain a "line" certificate of convenience and necessity ("CCN") in Missouri are nearing completion.¹⁶ Although Grain Belt Express' initial line CCN application (filed in March 2014) was denied in July 2015, the MPSC stated that the company had the option to file a new application if additional evidence showed that the Project

¹³ *Concerned Citizens and Property Owners v. Illinois Commerce Commission*, 2018 IL App (5th) 150551.

¹⁴ ICC Docket No. 15-0277, *Order on Remand*, Aug. 28, 2018.

¹⁵ *Illinois Landowners Alliance, NFP v. Illinois Commerce Commission*, 2017 IL 121302.

¹⁶ Missouri law distinguishes between a "line" CCN that is required before a public utility begins construction of a plant or system and an "area" CCN that is required before a public utility provides service to a territory under a franchise that it has been granted. *See* § 393.170.1-2, Mo. Rev. Stat. (2016).

was necessary or convenient for the public service.¹⁷ The MPSC found that there was no dispute that Grain Belt Express possessed the requisite operational qualifications and financial resources.¹⁸

10. Thereafter, on August 30, 2016, Grain Belt Express filed a new line CCN application with the MPSC which provided additional evidence that there was a need for the Project, that it was economically feasible, and that the Project was in the public interest. The new evidence included an executed transmission service agreement with the Missouri Joint Municipal Electric Utility Commission, which showed that its member municipal electric utilities and their customers would save \$9-11 million annually. An opinion issued in August 2017 by four of the five MPSC Commissioners found that there was “a demonstrable need for the service” offered by the Project, that there was “a solid indication of economic feasibility,” and that the Project was in the public interest because it would create “both short-term and long-term benefits to ratepayers and all the citizens of the state.”¹⁹ However, the MPSC concluded as a matter of law that it must deny the line CCN application based upon a recent decision of the Missouri Court of Appeals, *In re Ameren Trans. Co. of Illinois*, 523 S.W.3d 21 (Mo. App. W.D. 2017) (“*ATXI*”).²⁰ The *ATXI* decision denied a CCN to an unrelated transmission project where the applicant had failed to obtain county road-crossing assents.²¹

11. Grain Belt Express promptly appealed the MPSC decision, arguing that the *ATXI* decision was contrary to Missouri law. In a unanimous per curiam decision issued July 17, 2018, the Missouri Supreme Court agreed, declaring that the MPSC’s reliance on *ATXI* was in error

¹⁷ *In re Grain Belt Express Clean Line LLC*, Report and Order at 27 & n. 91, No. EA-2014-0207 (July 1, 2015).

¹⁸ *Id.* at 8-11, 21.

¹⁹ *In re Grain Belt Express Clean Line LLC*, Concurring Opin. at 4-7, No. EA-2016-0358 (Aug. 16, 2017).

²⁰ *Id.*, Report and Order at 11-15 (Aug. 16, 2017).

²¹ *Id.*

and that “it should not be followed.”²² The Court held that Grain Belt Express was not required to obtain county consents before the MPSC could issue a line CCN, and that the Missouri county road-crossing statute did not give counties the authority to stand in the shoes of the MPSC to determine whether a proposed utility project is in the public interest or should be granted a CCN. The Court remanded the case to the MPSC to determine whether the Project is necessary or convenient for the public service.²³ Once the Court issues its mandate, Grain Belt Express will urge the MPSC to promptly issue a line CCN for the Project consistent with the findings of the four Commissioners in their August 16, 2017 opinion.

Other Development Activities:

12. For a detailed discussion regarding additional development activities on the part of Grain Belt Express, please see the Affidavit of Mr. Michael Peter Skelly, attached hereto as **Attachment A.**

B. REQUEST FOR EXTENSION OF THE KANSAS PERMIT SUNSET DATE

13. In granting Grain Belt Express’ certification, the Commission found substantial competent evidence had been provided to support the granting of a Transmission-Only certificate for the Project contemplated by Grain Belt Express.²⁴ The Commission also found that “the need for long-distance multi-state transmission projects such as the Grain Belt Express...will promote the development of wind generation facilities in Kansas, which will provide benefits to Kansas and other areas of the country.”²⁵ The Commission further found that “it is in the public interest to promote the development of wind energy resources, which is vital to economic growth in the state. Clean Line’s Project promotes both Kansas’ wind energy resources and introduces

²² *Grain Belt Express Clean Line LLC v. Public Serv. Comm’n*, 2018 WL 3432778, No. SC 96993 (Mo. en banc, July 17, 2018).

²³ *Id.*

²⁴ 11-624 Order, ¶17.

²⁵ 11-624 Order, ¶50.

diversity in the transmission line system...”²⁶, and that “there is not another public utility that is providing this service.”²⁷

14. In approving Grain Belt Express’ siting permit, the Commission again found that the proposed Grain Belt Express line provides benefits to electric customers both inside and outside of Kansas, and it provides economic development benefits in Kansas.²⁸ As noted previously, the Commission stated that, “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”²⁹, finding that, 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.”³⁰ The following Commission findings in the 13-803 Order regarding the benefits of the Project for Kansas are still valid:

- a. The Project will facilitate the development and export of wind resources from western Kansas to load and population centers in Missouri, Illinois, Indiana, and states farther east, without duplicating existing transmission service or facilities.³¹
- b. The Project will displace other, less environmentally friendly sources of energy, and will provide economic benefits to Kansas in the form of landowner contracts, more jobs from the construction of the line and increased employment in wind-related industries in Kansas, increased production of wind turbine components and additional tax revenue for local and State governments.³²

²⁶ 11-624 Order, ¶52.

²⁷ 11-624 Order, ¶57.

²⁸ 13-803 Order, p. 14, ¶ 37.

²⁹ 13-803 Order, p. 13, ¶ 32.

³⁰ 13-803 Order, p. 14, ¶ 36.

³¹ 13-803 Order, p. 8, ¶ 21; p. 10, ¶ 24; p. 21, ¶ 57.

³² 13-803 Order, pp.9-10, ¶¶ 22, 23; p. 13, ¶ 33.

- c. The proposed line will expand renewable generation resources and transmission infrastructure in Kansas using HVDC technology, which allows for better control and transfer of significantly more power with less power loss over long distances, and utilizes narrower rights of way, shorter structures, and fewer conductors.³³
 - d. The Project will benefit wholesale competition in the electricity market.³⁴
 - e. The Project promotes current and past policy initiatives in Kansas which support wind development and construction of transmission.³⁵
15. The nature and terms of the Project have not changed from those the Commission considered and approved when issuing a Transmission-Only certificate in the 11-624 Docket, and approving the line siting permit in the 13-803 Order. Specifically,
- a. The Project is a multi-terminal ± 600 kV HVDC transmission line, an HVDC converter station and associated transmission facilities.
 - b. The sizes and structures of the poles, foundation piers, conductors, span lengths and right-of-way parameters are the same as presented in the 13-803 Docket.³⁶
 - c. The proposed route is the same, 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.³⁷
 - d. Grain Belt Express' plans for obtaining contracts with landowners, easements and for maintenance of the line and easements have not changed.³⁸

³³ 13-803 Order, pp. 8-9, ¶22.

³⁴ 13-803 Order, p. 10, ¶ 24; p. 13, ¶¶ 34, 35.

³⁵ 13-803 Order, pp. 11-12, ¶ 28.

³⁶ 13-803 Order, pp. 3-4, ¶¶ 8, 9.

³⁷ The Commission found that 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 Grain Belt Express witness Timothy Gaul.” (13-803 Order, pp. 14-15, ¶ 39.)

³⁸ 13-803 Order, p. 4, ¶¶ 9, 10; pp. 10-11, ¶ 25.

- e. The line continues to be a merchant transmission line. Its cost will not be recovered through the SPP cost allocation process, but instead, will be borne by Clean Line's investors and the transmission customers of Grain Belt Express.³⁹
- f. Grain Belt Express continues its commitment to pay local governments a one-time Construction Mitigation Payment fee of \$7,500 per mile in lieu of the property taxes from which the Project is exempted by Kansas law during the first ten years.⁴⁰
- g. Grain Belt Express' financial, managerial and technical ability to undertake the proposed Project remains strong.⁴¹
- h. The demand for the services to be provided by the Grain Belt Express line continues for potential wind farm owners in Kansas and renewable energy purchasers in markets east of Kansas.⁴²

16. The only change being requested in this Joint Motion is the extension of the date by which construction must commence to accommodate the protracted proceedings in Missouri and Illinois. Granting this extension does not change the facts upon which the Commission based its finding when issuing the Transmission-Only certificate for the Project, or when approving the line siting permit in the 13-803 Docket, that the Grain Belt Express line is in the public interest for Kansas.

17. Over the past eight years, Grain Belt Express and has spent tens of millions of dollars on the Grain Belt Express Project.⁴³ The November 7, 2018 date established by the

³⁹ 13-803 Order, pp. 2-3, ¶ 5.

⁴⁰ 13-803 Order, p. 11, ¶ 26.

⁴¹ 13-803 Order, p. 11, ¶ 27.

⁴² 13-803 Order, p. 12, ¶¶ 29-31.

⁴³ Grain Belt Express submits quarterly status reports about the Project to Commission Staff, in conjunction with the compliance filings made in Docket No. 14-GBEE-527-CPL.

Commission in the 13-803 Order was developed with the intent of allowing Grain Belt Express adequate time to obtain a final decision from other jurisdictions on its siting applications without leaving the Kansas siting permit completely open-ended.⁴⁴ At the time, five years was believed to be sufficient time to conclude the proceedings in the other jurisdictions; however, the legal delays that subsequently arose in Missouri and Illinois were not anticipated.⁴⁵ Because of the legal proceedings that became necessary in Missouri and the additional ICC proceedings in Illinois to complete the certification process, Grain Belt Express does not expect to begin construction of the Project in Kansas prior to November 7, 2018, and thus requests the sunset date be extended five years, until November 7, 2023, to allow ample opportunity for the permitting process and pre-construction activities to be completed so that the Project can move forward and its many benefits can be realized for Kansas. Grain Belt Express remains committed to the successful development of the Project and is confident that the necessary approvals and pre-construction activities can be completed in this period.

18. Joint Movants have provided notice of this request for extension to the parties in this docket.⁴⁶

WHEREFORE, for the reasons set forth above, Joint Movants hereby respectfully request the Commission issue an order approving this Joint Motion, thereby extending to November 7, 2023, the sunset date for commencing construction in Kansas of the Grain Belt Express line.

⁴⁴ As represented in the 13-803 Order, the parties at that time expected construction of the line to start as early as 2016 with completion as early as 2018. (13-803 Order, p. 4, ¶ 11.)

⁴⁵ Grain Belt Express has kept the Commission and its Staff apprised of the status of proceedings in other jurisdictions via the quarterly project updates submitted since the issuance of the 13-803 Order. (13-803 Order, p. 21, ¶ 56.)

⁴⁶ Notice was mailed to the entities and individuals included on the service list, as reflected on the Commission's website.

Respectfully submitted,

lsl Terri Pemberton

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For Commission Staff

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Washington, Marshall, Nemaha, Brown, and)
Doniphan Counties Pursuant to K.S.A. 66-)
1,177, et seq.

AFFIDAVIT OF MICHAEL PETER SKELLY

I, Michael Peter Skelly, being of sound mind and body, and being first duly sworn under oath, do hereby testify as to the following to be true based on my own personal knowledge:

1. I am over eighteen (18) years old, have not been convicted of a felony, and am competent to testify.
2. I am Chairman of Grain Belt Express Clean Line.
3. I have appeared before the Commission in Docket Nos 11-GBEE-624-COC and 13-GBEE-803-MIS.
4. In addition to diligently seeking all required regulatory approvals, as discussed in the *Joint Motion of Grain Belt Express Clean Line LLC and Commission Staff for Extension of Sunset Term*, to which this Affidavit is attached as Attachment A, Grain Belt Express has also been actively engaged and invested in other important development activities. First, Clean Line has continued developing and improving the Project route in the four states. Following the siting approval in Kansas, Grain Belt Express continued extensive public outreach processes and concluded the primary routing (siting) studies in Missouri in 2014 and in Illinois in 2015.

5. Second, Grain Belt Express has made significant progress with electric interconnection studies and agreements with the relevant regional transmission organizations. Electric interconnection studies and agreements with the Southwest Power Pool, Inc., (SPP) are now complete. To briefly review the progress with SPP, on September 6, 2013, the SPP Transmission Working Group approved the Criteria 3.5 studies inclusive of additional analysis that assessed the Project at the tap of the Clark County to Spearville/Ironwood 345 kV line. Following the completion of Criteria 3.5 studies, Grain Belt Express and ITC Great Plains LLC (“ITC”) entered into a Facilities Study Agreement on September 30, 2014. On March 19, 2015, ITC completed the Facilities Study. The Facilities Study identified the required attachment facilities, as well as about \$21 million of improvements needed to physically interconnect Grain Belt Express’ Kansas converter station to ITC’s 345 kV system in Ford County, Kansas. On October 17, 2016, an Interconnection Agreement was executed by ITC Great Plains, Southwest Power Pool, and Grain Belt Express for the Project’s Kansas converter station to ITC’s 345 kV system in Ford County, Kansas. SPP filed the Interconnection Agreement with FERC on November 3, 2016 in Docket No. ER17-296-000 which was subsequently accepted by FERC on December 21, 2016.

6. Grain Belt Express has also made significant progress in the PJM Interconnection (PJM) process, although that process is moving more slowly than the similar process with SPP. PJM is currently finalizing the retool of the system impact study, which reflects recent developments from higher queued interconnection positions above Grain Belt Express. In June 2018, Grain Belt Express provided support to PJM on how to accurately model the dynamic performance of the HVDC system associated with the Project. Once the retooled system impact study is completed, PJM will provide the estimated costs for the system upgrades and attachment

facilities required to interconnect the Project to the PJM system as well as the associated construction schedule. Furthermore, completion of the PJM retool system impact study will allow Grain Belt Express to begin the affected system impact study that PJM has identified is required with PJM's neighboring system, Louisville Gas & Electric.

7. Once PJM has completed its retooled system impact study and Grain Belt Express is able to meet the readiness milestones for the Midcontinent Independent System Operator, Inc., (MISO) interconnection process, Grain Belt Express plans to enter the MISO Definitive Planning Phase (DPP). Coordination of the MISO study progress with that of PJM will allow for the results of the PJM studies to be incorporated into the scope of the MISO DPP studies which is prudent given the injection of power into PJM near the Ameren Illinois seam with AEP Indiana. Furthermore, in the meantime, Grain Belt Express has completed a MISO stakeholder process regarding the interconnection of HVDC projects to the MISO grid, which resulted in a recent MISO FERC tariff filing.¹

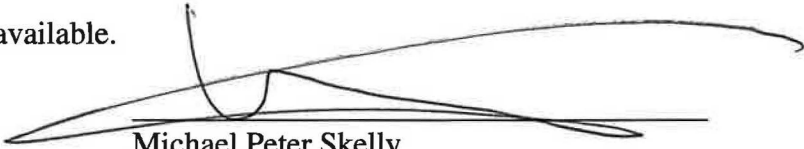
8. Grain Belt Express is also extremely advanced with HVDC engineering studies. The Project now has HVDC Performance Specifications developed in November 2016 that describe how that Project needs to operate, and, from November 2017, equipment specifications and ratings to align with the Performance Specifications. These specifications are for the Project as a multi-terminal, line commutated converter HVDC Project rated to deliver 500 MW to MISO and 3,500 MW to PJM from the SPP-controlled transmission system at the windward converter station.

9. On January 21, 2015, Grain Belt Express commenced an open solicitation process for capacity on the Project and published further solicitation notices in 2016. Responses to the

¹ Attachment X: <https://cdn.misoenergy.org/Attachment%20X109843.pdf>.

ATTACHMENT A

solicitation were extremely strong, with over 20,000 MW of service requests received from 15 respondents for the 4,000 MW of service available.

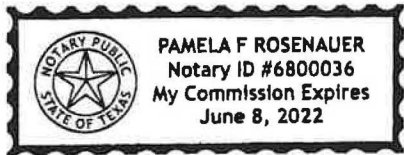


Michael Peter Skelly
Chairman
Grain Belt Express Clean Line LLC

STATE OF TEXAS)
) ss
COUNTY OF HARRIS)

On this 5th day of September, 2018, Michael Peter Skelly appeared before me personally and executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and Commonwealth aforesaid, the day and year first above written.



Notary Public

My appointment expires: June 8, 2022

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above *Joint Motion* was electronically served, hand-delivered or mailed, postage prepaid, this 6th day of September, 2018 to:

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