

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

GRAIN BELT EXPRESS CLEAN LINE LLC)	
)	
)	
Application for an Order granting Grain Belt)	
Express Clean Line LLC a Certificate of Public)	
Convenience and Necessity pursuant to)	
Section 8-406.1 of the Public Utilities Act to)	Docket No. 15-0277
Construct, Operate and Maintain a High Voltage)	
Electric Service Transmission Line and To)	
Conduct a Transmission Public Utility Business)	
In Connection Therewith and Authorizing Grain)	
Belt Express Clean Line Pursuant to Sections)	
8-503 and 8-406.1(i) of the Public Utilities Act)	
To Construct the High Voltage Electric)	
Transmission Line.)	

**MOTION TO RECONSIDER OF THE ILLINOIS AGRICULTURAL
ASSOCIATION a/k/a THE ILLINOIS FARM BUREAU**

NOW COMES the ILLINOIS AGRICULTURAL ASSOCIATION a/k/a the Illinois Farm Bureau (“Farm Bureau”), by and through its attorneys, Brown, Hay & Stephens, LLP, and Laura A. Harmon, Senior Counsel for the Farm Bureau, and pursuant to Section 200.190 of the Illinois Administrative Code (83 Ill. Adm. Code 200.190) requests that the Illinois Commerce Commission (“Commission”) reconsider its June 16, 2015 Order denying the Motion to Dismiss of the Farm Bureau. In support of this motion, the Farm Bureau hereby states as follows:

INTRODUCTION

On April 10, 2015, Grain Belt Express Clean Line LLC (“GBX”) filed an application under Section 8-406.1 of the Illinois Public Utilities Act (“PUA”) which allows public utilities to seek approval to construct new high voltage transmission line projects on an expedited basis. GBX is not and does not allege in its application that it is a public utility.

On May 18, 2015, the Farm Bureau filed its Motion that is the subject of this Application. The Farm Bureau and other intervenors moved to dismiss GBX's application for a Certificate under Section 8-406.1 since GBX is not a public utility and not qualified to use the expedited review process under Section 8-406.1. For the Commission's convenience, a copy of the Motion is attached as Exhibit 1.

Motions to Dismiss and Strike were also filed by the Concerned Citizens and Property Owners, Rex Encore, and the Landowners Alliance of Central Illinois. The ICC Staff filed a Response To Motions to Dismiss and agreed that GBX "is ineligible to submit Section 8-406.1 applications" and recommended that GBX's application be dismissed without prejudice, and noted that GBE may file an application under Section 8-406. Staff's Response is attached as Exhibit 2.

On June 12, 2015, Administrative Law Judge Janis Von Qualen ("ALJ Von Qualen") issued a Memorandum to the Commission ("Recommendation") recommending that it grant the Motions to Dismiss and allow GBX leave to file an amended Application under Sections 8-406 and 8-503 of the Public Utilities Act. ALJ Von Qualen's Recommendation is attached as Exhibit 3.

During the June 16, 2015 Open Meeting, ALJ Von Qualen responded to a question posed by Commissioner McCabe, and advised the Commission that she is not aware of any Section 8-406.1 proceeding where the applicant did not assert that it was a public utility in its application at the time it was filed and that the question before the Commission is whether or not an entity has to be a public utility to file the application. There was no discussion on the record why the Commissioners moved to deny the Motions to Dismiss. Based upon comments made off the record, there appears to be confusion as to whether the Commission has allowed an application

to proceed under expedited review by a non-public utility. The Commission denied the Motions to Dismiss with a 3-2 vote and served its Notice of Commission Action herein on June 19, 2015 (“Order”). The transcript from the June 16, 2015 Open Meeting is attached as Exhibit 4.

ARGUMENT

The PUA does not support the Commission’s denial of the motions to dismiss. Section 8-406.1 states that a “public utility” may apply for a certificate of public convenience and necessity for the construction of any new high voltage electric service line and related facilities. GBX admits that it is not a public utility and there is no legal or policy rationale which supports allowing a start-up company that has never built a transmission line to use expedited review procedures reserved exclusively for public utilities. The Farm Bureau, Staff, GBX, and ALJ Von Qualen fully briefed this issue and in lieu of regurgitating those arguments, the Farm Bureau adopts those arguments as if fully restated herein and urges this Commission to review those filings and reconsider its Order entered on June 16, 2015.

Most of the landowner intervenors impacted by GBX’s project are farmers and many are members of the Farm Bureau. The Farm Bureau opposes the approval of a 206 mile long merchant transmission line with no apparent need by an inexperienced non-utility and has previously expressed its concern to this Commission that the expedited review process does not ensure that landowners’ due process rights will be adequately protected in this process. While Section 406.1 allows discovery and evidentiary hearings where landowners have an opportunity to be heard, the 225 day time limitation does not allow the Commission to conduct the discovery and hearings in a manner commensurate with the magnitude of legal issues which must be addressed or the property rights at risk. When considering the (1) lack of time, (2) long length of the proposed transmission line, (3) complexity of the legal issues raised by a non-utility seeking

approval of a rare DC merchant line that has not been vetted on the basis of need by any Regional Transmission Authority, and (4) number of intervenors in this proceeding, the unavoidable result is that landowners will not be afforded due process afforded under the fourteenth amendment to the United States Constitution and article I, section 2, of the Illinois Constitution. *Abandonment of Wells Located in Illinois by Leavell*, 343 Ill.App.3d 303, 306, 796 N.E.2d 623 (2003).

In Docket 12-0560, the Commission considered an application filed by an affiliate of GBX under Section 8-406 to construct and operate a merchant DC transmission line across 121 mile of Illinois Farm land. As in Docket 12-0560, the parties dispute whether the proposed project is necessary to provide adequate, reliable, and efficient service to its customers or will promote the development of an effectively competitive market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives. 220 ILCS 5/8-406(b)(1). After more than two years, and providing for traditional rounds of testimony this Commission entered an Order in Docket 12-0560. The 225 day time limitation set forth in Section 8-406.1 does not allow the Commission or the parties to appropriately (1) conduct discovery, (2) prepare and review testimony on complex legal issues (i.e. project need, routing, etc.), and (3) conduct hearings in a manner commensurate with the magnitude of the case.

Moreover, it is unclear why GBX wants to proceed under expedited review before this Commission when it recently requested that the Missouri Public Service Commission (“MPSC”) hold its case in abeyance to allow GBE to submit an additional round of post-hearing testimony to support its application for a certificate of convenience and necessity. The MPSC denied GBX’s request and their application to construct this project. Attached as Exhibit 5 is a Report and Order issued by the MPSC dated July 1, 2015. To be clear, GBX’s proposed project cannot

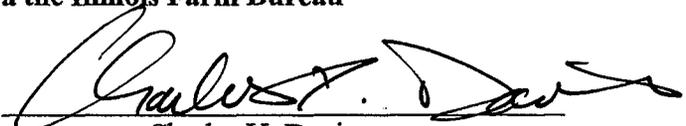
be built unless the Missouri leg of the line is approved by the MPSC, then constructed. In addition to running afoul of due process rights, GBX's hurry up and wait approach wastes the resources and time of the Commission and all parties involved while their application remains denied in Missouri.

CONCLUSION

Public utilities, and only public utilities, may obtain a certificate of public convenience and necessity via section 406.1. GBE, by its own admission, is not a public utility, and its petition should therefore be dismissed under section 406.1. The Farm Bureau requests that this Commission reconsider its decision of June 16, 2015

WHEREFORE, the ILLINOIS AGRICULTURAL ASSOCIATION a/k/a the Illinois Farm Bureau, respectfully requests that the Commission enter an Order granting the Motions to Dismiss that were filed by intervenors herein, provide the parties with the opportunity to provide oral argument on this motion and the previous Motions to Dismiss, and for such other and further relief as may be just and proper.

**ILLINOIS AGRICULTURAL ASSOCIATION
a/k/a the Illinois Farm Bureau**

By: 

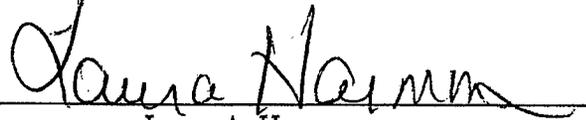
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a/k/a the Illinois Farm Bureau**

By: _____



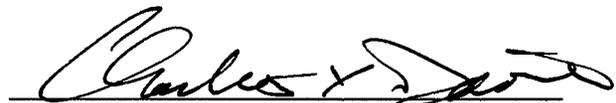
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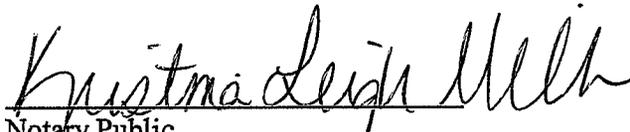
VERIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

Charles Y. Davis, being first duly sworn, deposes and says that he is authorized to execute this Motion; that he has read the above and foregoing document, has knowledge of the facts stated therein; and herewith states that the matters set forth therein are true and in substance and in fact.


Charles Y. Davis

Subscribed and Sworn to before me
This 15th day of July, 2015.


Notary Public

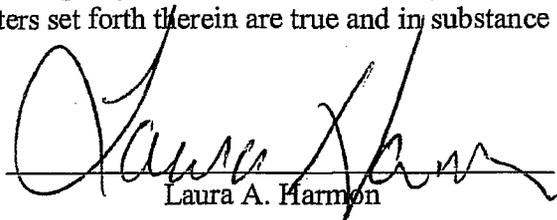


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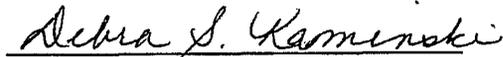
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) SS
COUNTY OF MCLEAN)

Laura A. Harmon, being first duly sworn, deposes and says that she is authorized to execute this Motion; that she has read the above and foregoing document, has knowledge of the facts stated therein; and herewith states that the matters set forth therein are true and in substance and in fact.



Laura A. Harmon

Subscribed and Sworn to before me
This 15th day of July, 2015.



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A handwritten signature in black ink, appearing to read "Christopher M. Webb", is written over a horizontal line.

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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MOTION TO DISMISS OF THE ILLINOIS AGRICULTURAL ASSOCIATION

NOW COMES the ILLINOIS AGRICULTURAL ASSOCIATION a/k/a the Illinois Farm Bureau (“Farm Bureau”), by and through its attorneys, Brown, Hay & Stephens, LLP, and Laura A. Harmon, Senior Counsel for the Farm Bureau, and for its Motion to Dismiss the Verified Petition pursuant to 835 Ill. Admin. Code § 200.190, hereby states as follows:

I. INTRODUCTION

On April 10, 2015, Grain Belt Express Clean Line LLC (“Grain Belt Express”) filed a Verified Application of Grain Belt Express Clean Line, LLC for a Certificate of Public Convenience and Necessity to Construct, Operate and Maintain a High Voltage Electric Transmission Line, and Operate a Transmission Public Utility Business and Authorizing Grain Belt Express Clean Line to Construct the Electric Transmission Line (“Verified Petition”). The Verified Petition seeks from the Commission an Order (1) granting Grain Belt Express a certificate of public convenience and necessity pursuant to Section 8-406.1 of the Illinois Public Utilities Act (the “PUA”) to construct, operate, and maintain a high voltage electric service

transmission line and related facilities (the "Project"), and to conduct a transmission public utility business, (2) authorizing Grain Belt Express, pursuant to Section 8-503 of the PUA to construct the electric transmission line, and (3) granting Grain Belt Express certain other relief in connection with its operations as a public utility. Various parties have intervened in the instant docket, including the Farm Bureau, which consists of over 80,000 farmer members in Illinois. If Grain Belt Express is granted the relief it is requesting in its Verified Petition, the Farm Bureau's agricultural members will be disproportionately affected by the Project.

II. LEGAL STANDARD

Grain Belt Express requests relief under Section 8-406.1 of the PUA, which provides as follows:

A public utility may apply for a certificate of public convenience and necessity pursuant to this Section for the construction of any new high voltage electric service line and related facilities (Project).
(220 ILCS 5/8-406.1(a), emphasis added).

Section 8-406.1(i) provides that "a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order. (220 ILCS 5/8-406.1(i)).

Finally, Grain Belt Express requests relief under Section 8-503 of the PUA, which states:

Sec. 8-503. Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order....
(220 ILCS 5/8-503, emphasis added).

According to the PUA:

“Public utility” means and includes, except where otherwise expressly provided in this Section, every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in:

- (a) the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communications purposes;
- (b) the disposal of sewerage; or
- (c) the conveyance of oil or gas by pipe line.

* * * *

(220 ILCS 5/3-105, emphasis added).

III. ARGUMENT

In its Verified Petition, Grain Belt Express states that it *“will own, control, operate and manage within the State of Illinois, for public use, facilities for the transmission of electricity and therefore will be a public utility”*. (Verified Petition, Paragraph 9, emphasis added). The Farm Bureau acknowledges that numerous legal and policy considerations are normally fleshed-out during Commission proceedings; nonetheless, the Farm Bureau asserts that prior to engaging in any contested fact-driven proceedings related to the Verified Petition, the Commission must, as a matter of law, address a threshold question: Can an entity who desires to be a “public utility” use the expedited review process under Section 8-406.1 which is limited to public utilities? As a non-utility, merchant transmission-only, private enterprise, without any transmission infrastructure (i.e. plant, equipment or property) or history of service in Illinois, which may or may not provide service to Illinois residents, Grain Belt Express does not meet the threshold requirement to file an expedited application pursuant to the PUA. (emphasis added). If Grain Belt Express’ application is granted, the Commission will then be required to issue an order

authorizing or directing construction under 8-503 of the PUA, which is only available to a public utility and is therefore clearly inappropriate in this circumstance.

A. Grain Belt Express admits that it is not a public utility under the PUA.

The Verified Petition is lacking any allegations that Grain Belt Express is a public utility. The Verified Petition phrases its status in the prospective sense, stating that it “will be a ‘public utility’” (Verified Petition, Paragraph 97) and that it “will own, control, operate and manage within the State of Illinois, for public use, facilities for the transmission of electricity and therefore will be a public utility” (*Id.*, Paragraph 9), but it does not state that it is currently a public utility.

B. Grain Belt is not a public utility as defined under Section 3-105 of the PUA.

In addition to Grain Belt Express failing to plead that it is a public utility, it is also clear that, given the facts plead, it cannot be concluded that it is a public utility as defined by Section 3-105. The text of Section 3-105 is clear and unambiguous. It defines a “public utility” as an entity that “controls, operates or manages” “any plant, equipment or property used or to be used for” “production, storage, transmission, sale, delivery or furnishing” of electricity. 220 ILCS 5/3-105. The Verified Petition is absent any allegation supporting that Grain Belt Express controls, operates or manages any plant, equipment or property used or to be used for production, storage, transmission, sale, delivery or furnishing of electricity.

As an administrative agency, the Commission has only that jurisdiction conferred upon it by the legislature. *Ill.-Ind. Cable Television Ass’n v. Ill. Commerce Comm’n*, 55 Ill. 2d. 205, 207 (1973), *citing*, *Lambdin v. Commerce Comm’n*, 352 Ill. 104, 106 (1933). In drafting the PUA, the legislature has provided for a clear and unambiguous definition of a public utility. The Commission may not, by its own acts, expand its jurisdiction. *Sheffler v. Commonwealth Edison Co.*, 399 Ill. App. 3d 51 (1st Dist. 2010).

When interpreting a statute, our duty is to ascertain and give effect to the intent of the legislature.” *Board of Trustees of the Teachers’ Retirement System of Illinois v. West*, 395 Ill. App. 3d 1028, 1032 (2009). That intent is best derived from the statutory language, which, if unambiguous, must be enforced as written. *Id.* at 1032. “Courts must not construe words and phrases in isolation and, instead, should construe them in light of other relevant portions of the statute so that—if possible—no term is rendered superfluous or meaningless.” *Id.* at 1035. The Commission may only apply the plain language of Section 3-105 and conclude that because Grain Belt Express owns neither electric transmission infrastructure nor property it is not a public utility

C. As a non-utility, Grain Belt Express cannot apply for approval under Section 8-406.1 of the PUA.

In 2010, the PUA was amended to allow public utilities to apply for a certificate of public convenience and necessity under an expedited procedure. Under 406.1(a), *a public utility may apply for a certificate of public convenience and necessity pursuant to this Section* for the construction of any new high voltage electric service line and related facilities (the Project). (emphasis added). If the Commission grants a certificate under expedited review, then Section 8-406.1(i) compels this Commission to include an order under Section 8-503 of the PUA authorizing or directing the construction of the high voltage transmission line.

This Commission’s decision rests upon clear and unambiguous language throughout the expedited review provisions in Section 8-406.1 which require an applicant to be a public utility in order “to apply” for a certificate to construct a transmission line under Section 8-406.1. As an administrative agency, the Commission has only that jurisdiction conferred upon it by the legislature – which is indicated by the plain language of the PUA. *Ill.-Ind. Cable Television Ass’n v. Ill. Commerce Comm’n*, 55 Ill. 2d. 205, 207 (1973), citing, *Lambdin v. Commerce*

Comm'n, 352 Ill. 104, 106 (1933). The Commission may not, by its own acts, extend its jurisdiction. *Sheffler v. Commonwealth Edison Co.*, 399 Ill. App. 3d 51 (1st Dist. 2010).

In considering a motion to dismiss, all of the facts in the Verified Petition must be taken as true, and all reasonable inferences drawn from those facts must be accepted, and all allegations contained in the filing should be construed in the light most favorable to the utility. (*Commonwealth Edison Company, Docket 05-0159, Administrative Law Judge's Ruling dated June 1, 2005*). Under this standard, Grain Belt's Verified Petition is fatally deficient as the legislature limited the ability to use the expedited review process under Section 8-406.1 to public utilities. Grain Belt admits in its Verified Petition that it is not a public utility, but asserts that it *will be a public utility*. Any suggestion that Section 8-406.1 may be used to obtain approval of a proposed high voltage transmission line by an entity that is not already a public utility has no basis in law. Any argument to the contrary invites this Commission to improperly expand the Verified Petition, and permit the expedited review of a non-public utility's application. Grain Belt's request to use the expedited review process is a matter of first impression before the Commission. The Farm Bureau is unaware of any docket where an entity that was not a public utility file an application and requested that the Commission issue an Order under Section 8-406.1.

Grain Belt Express's Verified Petition under expedited review is unprecedented and violates the requirement that an applicant be a public utility to use the expedited review process. The irony that Grain Belt Express, a non-public utility, proposes a project which has not been vetted by a Regional Transmission Authority, then requests that the Commission allow it to use a new alternative process limited to public utilities which forces this Commission and the participants to review and defend arguably the most complex transmission line case ever proposed to the Commission in 225 days, and in the same application requests that this

Commission grant it two and a half years to exercise its requested certificate of need and public convenience (“CPCN”), is not lost on the affected landowners.

The expedited review process under the PUA forces an aggressive schedule upon the participants and this Commission has recently questioned the proprieties of public utilities using the expedited review process for large and complex transmission line projects. For example, the only project which rivals the length of Grain Belt Expresses proposed line is Ameren’s 375 mile long Illinois River Project (Docket 12-0598), which was also filed (by a public utility) under the expedited review provision of the PUA. During the open meeting held on August 20, 2013, this Commission questioned the propriety of using the expedited review process for large transmission line projects. (*See* August 20, 2013, Open Meeting Transcript pp. 9-13; *also see*, August 20, 2013 Order, Docket 12-0598, pp. 7-10, questioning the propriety of using Section 8-406.1 where the “sheer size of this project calls into question how well any entity can anticipate, identify, and address the many facets that are inherent in such a project.”)

In addition to the issues raised by the size of Grain Belt Express’s Project, the fact that Grain Belt Express is not a public utility and is a new non-utility merchant transmission-only private enterprise adds complexity to the issues which must be addressed in this case. Section 406.1 was not drafted and enacted by the legislature for non-public utilities to seek approval of new high voltage transmission line projects. A fact which was not lost on Grain Belt Express’s affiliate Rock Island Clean Line, LLC (“RICL”) in the first petition filed by RICL in Docket 10-0579. In that docket, RICL requested certification as a public utility under Section 8-406(a) and the ICC Staff moved to dismiss RICL’s petition. In its Response to the ICC Staff’s Motion to Dismiss, RICL argued:

Staff’s discussion of this point fails to address the text of recently-enacted §8-406.1 of the PUA (220 ILCS 5/8-406.1, which provides an alternative means (to §8-406(b)) of obtaining a certificate to construct a transmission line. Section 8-

406.1(a) states: “A public utility may apply for a certificate of public convenience and necessity Pursuant to this Section for the construction of any new high voltage service line and Related facilities” (emphasis added in the original) Read literally, this sentence requires an entity to be a public utility in order “to apply” for a certificate to construct a transmission line under §8-406.1. (Rock Island Clean Line LLC’s Response to Commission Staff’s Motion to Dismiss, p. 12 Docket No. 10-0579).

RICL is correct, Section 8-406.1 as a threshold matter requires an applicant to be a public utility to use the expedited review alternative under the PUA. In contrast to the language under Section 8-406(a) and (b), which states that “no public utility shall,” the legislature affirmatively stated that “a public utility may apply” for a certificate under Section 8-406.1. *See* 220 ILCS 5/8-406. There is no ambiguity or Catch 22 argument to manufacture under an analysis of Section 8-406.1.

Here, on the basis of the Verified Petition alone, Grain Belt Express admits that it is not a public utility and it is clear that Grain Belt Express does not currently, in Illinois, own, control, operate, or manage, directly or indirectly, for public use, any plant, equipment, or property used or to be used for or in connection with electric transmission service. Grain Belt Express simply has a business plan, unnamed anchor tenants, and an assertion that its to-be-determined transmission project will likely benefit Illinois consumers. Although Grain Belt Express may have the best of intentions, the Commission is confined by statute, and is not legally permitted to rewrite or expand upon explicit statutory prerequisites in order to accommodate this private merchant project lacking transmission infrastructure in Illinois.

IV. CONCLUSION

Grain Belt Express is not public utility which is a prerequisite to applying under Section 8-406.1 of the PUA. As such, the Commission lacks jurisdiction over the Verified Petition and need not make an analysis under Sections 8-406.1 and 8-503 of the PUA. Therefore, Grain Belt Express’s Verified Petition should be dismissed with prejudice.

WHEREFORE, ILLINOIS AGRICULTURAL ASSOCIATION a/k/a the Illinois Farm Bureau, respectfully requests that the Commission enter an Order dismissing Grain Belt Express Clean Line, LLC's Verified Petition with prejudice, and for such other and further relief as the Commission deems just and proper.

**ILLINOIS AGRICULTURAL ASSOCIATION
a/k/a the Illinois Farm Bureau**

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via electronic transmission on this 18th day of May, 2015.

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

GRAIN BELT EXPRESS CLEAN LINE LLC)	
)	
)	
Application for an Order granting Grain Belt)	
Express Clean Line LLC a Certificate of Public)	
Convenience and Necessity pursuant to)	Docket No. 15-0277
Section 8-406.1 of the Public Utilities Act to)	
Construct, Operate and Maintain a High Voltage)	
Electric Service Transmission Line and To)	
Conduct a Transmission Public Utility Business)	
In Connection Therewith and Authorizing Grain)	
Belt Express Clean Line Pursuant to Sections)	
8-503 and 8-406.1(i) of the Public Utilities Act)	
To Construct the High Voltage Electric)	
Transmission Line.)	

**STAFF OF THE ILLINOIS COMMERCE COMMISSION
RESPONSE TO MOTIONS TO DISMISS**

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”) by and through its undersigned counsel, pursuant to 83 Ill. Admin. Code § 200.190(e) and the May 19, 2015, Notice of Administrative Law Judge’s (“ALJ”) Ruling, and hereby responds to the separate Motions to Dismiss filed by the Illinois Agricultural Association a/k/a the Illinois Farm Bureau (“Farm Bureau”), Concerned Citizens & Property Owners (“CCPO”), and Landowners Alliance of Central Illinois, NFP (“LACI”) filed on May 18, 2015, and by Rex Encore Farms LLC and Rex Encore Properties LLC (collectively, “Rex Encore”) filed on May 20, 2015 in the above-captioned docket.

I. Background

On April 10, 2015, Grain Belt Express Clean Line LLC (“Grain Belt,” “Company” or “Applicant”) filed a Verified Application to the Commission for an order (1) granting Grain Belt a Certificate of Public Convenience and Necessity (“Certificate” or “CPCN”) pursuant to §8-406.1 of the Public Utilities Act (“PUA”), 220 ILCS 5/8-406.1, to construct, operate and maintain a high voltage electric transmission line and related facilities and to operate a transmission public utility business in connection therewith; (2) authorizing Grain Belt, pursuant to §8-503 and §8-406.1(i) to construct the high voltage electric transmission line and related facilities; and (3) granting Grain Belt certain other relief in connection with operations (“Application”). The proposed project originates in Ford County Kansas, and traverses Kansas and northern Missouri for 300 miles; it would enter Illinois approximately 6.5 miles west of New Canton, Illinois, in Pike County, traversing Illinois for approximately 202.7 miles to a location near West Union Clark County, Illinois, where a direct current (“DC”)-to-alternating current (“AC”) converter station will be located, and extend an additional 3.6 miles to the Illinois-Indiana border, where it will continue in Indiana to the AEP 345 kV transmission system.

The following parties have filed Motions to Intervene or entered appearances in this matter: the Farm Bureau, CCPO, LACI, Rex Encore, Ameren Illinois Company d/b/a Ameren Illinois, Mary Ellen Zotos, Rockies Express Pipeline, John Barry Julian and the Illinois Central Railroad Company.

II. Legal Standards

Section 8-406.1

Sec. 8-406.1. Certificate of public convenience and necessity; expedited procedure (in pertinent part) states:

(a) A public utility may apply for a certificate of public convenience and necessity pursuant to this Section for the construction of any new high voltage electric service line and related facilities (Project). . .

(f) The Commission shall, after notice and hearing, grant a certificate of public convenience and necessity filed in accordance with the requirements of this Section if, based upon the application filed with the Commission and the evidentiary record, it finds the Project will promote the public convenience and necessity and that all of the following criteria are satisfied:

(1) That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

(2) That the public utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction.

(3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

(g) The Commission shall issue its decision with findings of fact and conclusions of law granting or denying the application no later than 150 days after the application is filed. The Commission may extend the 150-day deadline upon notice by an additional 75 days if, on or before the 30th day after the filing of the application, the Commission finds that good cause exists to extend the 150-day period. . .

(i) Notwithstanding any other provisions of this Act, a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.

220 ILCS 5/8-406.1 (emphasis added).

Section 3-105

Sec. 3-105. Public utility (in pertinent part) states:

(a) "Public utility" means and includes, except where otherwise expressly provided in this Section, every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in:

(1) the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communications purposes; . . .

220 ILCS 5/3-105 (emphasis added).

Section 8-503

Sec. 8-503 Additions, improvements and new structures; joint construction or other action (in pertinent part) states:

Whenever the Commission, after a hearing, shall find that . . . a new structure or structures is or are necessary and should be erected, to promote the security or convenience of . . . the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such . . . structure or structures be erected at the location, in the manner and within the time specified in said order; provided, however, that the Commission shall have no authority to order the construction, addition or extension of any electric generating plant unless the public utility requests a certificate for the construction of the plant pursuant to Section 8-406 and in conjunction with such request also requests the entry of an order under this Section. If . . . any new structure or structures, which the Commission has authorized or ordered to be erected, require joint action by 2 or more public utilities, the Commission shall notify the said public utilities that such . . . new structure or structures have been authorized or ordered and that the same shall be made at the joint cost whereupon the said public utilities shall have such reasonable time as the Commission may grant within which to agree upon the apportionment or division of cost of such . . . new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such . . . new structure or structures, the Commission shall have authority, after further hearing, to make an

order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured. . .

220 ILCS 5/8-503 (emphasis added).

Section 8-406

Sec. 8-406, Certificate of public convenience and necessity (in pertinent part) states:

(a) No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

(b) No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. . .

220 ILCS 5/8-406 (emphasis added).

III. Response to Movants

A. The Commission Should Dismiss the Application

The Farm Bureau asserts that the Commission must, as a matter of law, address “a threshold question: Can an entity who desires to be a ‘public utility’ use the expedited review process under Section 8-406.1, which is limited to public utilities?” (Farm Bureau Motion, 3.) Rex Encore asserts that Grain Belt is improperly attempting to leverage Section 8-406.1 to gain authority to act as a utility, and that such authority must first be obtained under Section 8-406(a). (Rex Encore Motion, 1-2.) LACI indicates that, by stating in its Application that it “will be a ‘public utility,’” Grain Belt admits that it is not a public utility, and, therefore, does not meet the statutory definition of “public utility” under Section 3-105. (LACI Motion, 4.) Staff agrees that (1) Section 8-406.1 requires an applicant to be a “public utility” as defined in Section 3-105 of the PUA, (2) Section 8-406.1 does not provide for an applicant to request authority to be a public utility, which must first be obtained under Section 8-406(a), and (3) the Company’s Petition fails to assert or show that it is a public utility as defined in Section 3-105.

Section 3-105 states, in pertinent part, that a “public utility” “owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage” in the transmission of electricity. 220 ILCS 5/3-105. Grain Belt states that it will “own, control, operate and manage, within the State of Illinois, for public use, facilities for the transmission of electricity and therefore will be a ‘public utility’” as defined in Section 3-105. (Application, at ¶¶ 9, 97.)

Grain Belt has not, however, shown or asserted that it is currently a “public utility” as defined in Section 3-105.

A similar question was raised in *Rock Island Clean Line LLC (“Rock Island”)*, Docket no. 12-0560, in which the applicant, Rock Island Clean Line LLC (an affiliate of Grain Belt), requested authorization for a CPCN under Section 8-406(a) to operate as a public utility and under Section 8-406(b) to build a high voltage transmission line. The Commission said, in assessing Section 8-406, that “the PUA allows non-utility applicants to both become public utilities and to subsequently operate, for public use, plant and equipment that transmit electricity.” *Rock Island*, ICC Order Docket No. 12-0560, 26 (Nov. 25, 2014) (pet. for review pending); *Commonwealth Edison v. ICC et al*, Appellate Court Of Illinois, Third Judicial District, Case Nos. 3-15-0099, 3-15-0103 & 3-15-0104.¹ *Rock Island* is distinguishable from the current proceeding because, unlike Section 8-406, Section 8-406.1 contains no provisions under which a non-utility may request and be granted authority to be a public utility; *i.e.*, it contains no equivalent to Section 8-406(a). Grain Belt’s Application contains no request to transact business as a public utility under Section 8-406(a). It contains no cite to provisions or language in Section 8-406.1 that allow Grain Belt to request authority to transact business as a public utility in Illinois, or for the Commission to grant such authority. Nor, despite the absence of any such provisions or language, has Grain Belt explained or supported its assumption that a grant of Section 8-406.1 authority automatically carries with it the equivalent of a Section 8-406(a) authorization to transact business in the state of Illinois

¹ Staff notes that the issue of whether Section 8-406 allows a non-utility to simultaneously request authority under Sections 8-406(a) and (b) is currently on review in the Illinois Appellate Court, Third Judicial District.

as a public utility. Grain Belt has provided no precedent for such an assumption or support for such a departure or interpretation, and Staff is not aware of any such precedent or support to do so. There is certainly no support for the notion that Section 8-406.1 was intended to supersede the Section 8-406(a) CPCN requirement.

In this case, the filing is defective on its face because it requests authority to transact business in this state under a provision that does not provide such authority. As Rex Encore notes, Grain Belt “fails to seek authority under Section 8-406(a) to operate as a utility.” (Rex Encore Motion, 1.) Rex Encore further notes that the Commission analyzes whether an applicant should be a public utility separately from whether a project should be approved under Section 8-406(b) or Section 8-406.1. *Id.* at 2. Staff agrees that this is a separate determination and believes that a CPCN under Section 8-406(a) is a prerequisite for filing under Section 8-406.1 for authorization for expedited construction of a high voltage electricity line. Given that the authorization under Section 8-406.1 is limited to “construction” of any new high voltage electric service line, the most logical interpretation of Section 8-406.1 is that it is intended to apply to existing public utilities.

The expedited nature of the provision is most likely intended to enable these existing public utilities to quickly build such high voltage electricity lines as may be necessary to meet obligations pursuant to membership in a regional transmission organization. There is no evidence to suggest that the provision was intended to enable entities to negate, ignore or supersede Illinois law in the process, including but not limited to the requirements under Section 8-406(a) that “no public utility shall transact any business in Illinois until it shall have obtained a certificate from the Commission that

public convenience and necessity require the transaction of such business.” 220 ILCS 5/8-406(a). Such authorization for the “transaction of such business,” as requested by Grain Belt in its Application is simply not available under the plain language of Section 8-406.1 which, if met, would only authorize “construction.”

Moreover, the Application also requests authorization to “operate and maintain” under a provision that does not contemplate such authorization. As explained above, Section 8.406.1 authorization is limited to “construction.” The request to operate and maintain is more properly brought under Section 8-406. As such, the Application is defective on its face and should be dismissed.

B. Fast Track to Eminent Domain Not Appropriate Here

The Farm Bureau points out that if the Commission grants a certificate under the expedited review process of Section 8-406.1, then Section 8-406.1(i) requires this Commission to also include an order under Section 8-503 of the PUA authorizing or directing the construction of the high voltage transmission line. (Farm Bureau Motion, 5.)

Section 8-503 of the PUA states, in pertinent part, that:

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order; ...

220 ILCS 5/8-503.

The automatic grant of a Section 8-503 order under the Section 8-406.1 process is significant because, by the express terms of Section 8-509 of the PUA, an order under Section 8-503 is a prerequisite to obtaining authority to use eminent domain to acquire property rights under Section 8-509. Section 8-406.1 becomes essentially a fast track to eminent domain authorization.

It is still not clear whether the Company has met the requirements of a Section 8-503 order. While Grain Belt has not requested authority pursuant to Section 8-509 of the PUA to acquire land and land rights through eminent domain in its Application here, it is entirely possible that it could seek such authority going forward. (See Application, ¶76.) Indeed, while the Company said that it would not pursue that option unless it is unsuccessful in obtaining all land and rights-of-way needed after making reasonable efforts to acquire the land rights through negotiations and voluntary transactions, it did not commit to rule out that option. Id.

Since it is unclear at this time that there would be a basis to issue an expedited CPCN, and given the enormity of the project itself, there is less of a justification to take the extraordinary step of ordering the Project's construction under Section 8-503 that would be inherent within the Section 8-406.1 approach. Staff recommends, therefore, that the Commission dismiss this Application without prejudice.

C. Dismissal Without Prejudice is Warranted; Company has an Alternative.

Staff agrees that a dismissal without prejudice is warranted given the Company's lack of eligibility to file under Section 8-406.1, as well as other deficiencies in the Company's application. Furthermore, there is a more appropriate alternative through which the Company may seek authorization to transact business as a public utility and

to construct its proposed transmission line; Grain Belt may file applications under Section 8-406. Unlike the current Application filed pursuant to Section 8-406.1, in an Application pursuant to Section 8-406 the Applicant may explain whether and how it would meet the Section 3-105 definition of a “public utility.” It would also enable the Commission to address Grain Belt’s request to transact business in the state of Illinois as a public utility and would enable stakeholders to have an opportunity to be heard on the merits of those issues. In addition, a proceeding initiated under Section 8-406 would enable the Applicant to explain whether and how the proposed transmission project would serve the public convenience and necessity and otherwise satisfy the Act’s certification standards.

D. Oral Argument is Unnecessary and Should be Denied

CCPO requests an oral argument before the full Commission. (CCPO Motion, 6.) Staff believes that oral argument is not required or necessary and would not be an effective use of the Commission’s resources. First, on the issue of jurisdiction, it is clear that the Commission has jurisdiction over requests for CPCN’s made pursuant to Sections 8.406 and 8-406.1 of the PUA regardless of the applicant’s status as a public utility. The Commission is fully within its authorization by the General Assembly to assess whether an applicant under both or either sections has properly filed and/or met any and all other requirements under the PUA. Second, it is not necessary for this Commission to make a determination of whether Grain Belt is or is not a ‘public utility’ as defined by Section 3-105 at this time as the filing is defective on its face for other reasons as demonstrated above, and, therefore, should be dismissed without prejudice. In any event, whether or not Grain Belt meets the definition of a “public utility” as

defined by Section 3-105, it is clear that Grain Belt has not received a certificate to operate as a public utility in the State and, therefore, Grain Belt is ineligible to submit Section 8-406.1 applications.

Finally, the current calendar under which the Commission must operate in this expedited docket has a limited and condensed statutory timeframe for the Commission to act. The matter has been sufficiently vetted in these pleadings, and further delay on the matter would be inefficient and disruptive. As such, Staff recommends that the request for oral argument in this matter be denied and the Application be dismissed without prejudice as discussed above.

IV. CONCLUSION

WHEREFORE, for the reasons stated above, Staff respectfully requests that the CCPO request for oral argument be denied and the Grain Belt Application be dismissed without prejudice. Staff further requests any and all other appropriate relief.

Respectfully submitted,

/s/

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Counsel for Staff of the
Illinois Commerce Commission

Dated: June 3, 2015

Docket No.: 15-0277
Meeting Date: 06-16-15
Deadline: 11-24-15

MEMORANDUM

TO: The Commission

FROM: Jan Von Qualen
Administrative Law Judge

DATE: June 12, 2015

SUBJECT: Grain Belt Express Clean Line LLC

Application for an Order Granting Grain Belt Express Clean Line LLC a Certificate of Public Convenience and Necessity pursuant to Section 8-406.1 of the Public Utilities Act to Construct, Operate and Maintain a High Voltage Electric Service Transmission Line and to Conduct a Transmission Public Utility Business in Connection Therewith and Authorizing Grain Belt Express Clean Line pursuant to Sections 8-503 and 8-406.1(i) of the Public Utilities Act to Construct the High Voltage Electric Transmission Line.

RECOMMENDATION: Grant Grain Belt Express Clean Line LLC leave to file an amended Application under Sections 8-406 and 8-503 of the Public Utilities Act.

I. PROCEDURAL HISTORY

On April 10, 2015, Grain Belt Express Clean Line LLC ("GBX") filed an application under Section 8-406.1 of the Illinois Public Utilities Act ("PUA") 220 ILCS 5/5-101 et seq. with the Illinois Commerce Commission ("Commission"). The Application requests a certificate of convenience and necessity ("Certificate") to construct, operate, and maintain a roughly 202-mile long \pm 600-kilovolt electric transmission line which will traverse Illinois from near Canton to a converter station in Clark County. On May 18, 2015, Motions to Dismiss were filed by Concerned Citizens & Property Owners ("CCPO"), Illinois Agricultural Association ("Farm Bureau"), and Landowners Alliance of Central Illinois, NFP ("LACI"). On May 20, 2015 Rex Encore Farms LLC and Rex Encore Properties LLC (collectively "Rex Encore") filed a Motion to Strike and to Dismiss. On June 3, 2015, GBX and Commission Staff ("Staff") filed responses. On June 11, 2015, CCPO, Farm Bureau, and Rockies Express Pipeline LLC ("REP") filed replies to GBX. Rex Encore adopted REP's reply. On June 11, 2015,

GBX filed a reply to Staff's response. On June 12, 2015 LACI filed a Motion for Leave to File Instantly and a Reply.

II. OVERVIEW

The Motions to Dismiss (collectively "Motions") are based on the premise that being a public utility is a precondition for filing an application for a Certificate under §8-406.1¹. They argue that GBX is not currently a public utility, and thus, is not qualified to avail itself of the expedited review process under §8-406.1. The Motions rely on §8-406.1, §8-406, §8-503, and the definition of public utility in §3-105 to conclude that in order to file an application under §8-406.1, an entity must already be a certificated public utility under §8-406(a). They say that the threshold issue is whether GBX is a qualified applicant pursuant to §8-406.1 and assert it is not.

The parties moving for dismissal (collectively "Movants") state that §8-406.1 allows a public utility to apply for a Certificate "for the construction of any new high voltage service line and related facilities" only. They assert that nowhere in §8-406.1 is there a provision allowing an applicant to request a Certificate or other authority to transact or operate a business as a public utility. Movants assert that this is in sharp contrast to §8-406, which expressly allows an applicant to seek a Certificate to transact business in Illinois as a public utility. They conclude that if GBX were to proceed under §8-406.1 and obtain a Certificate for the proposed construction, it would be left with the authority to build the line, but without authority to operate it. Movants state that GBX's Application fails to cite language in §8-406.1 or other legal authority to support its request for approval to conduct or operate a transmission public utility business. Movants assert that it is evident from the plain language and meaning of the statute that the legislature intended that the §8-406.1 expedited review be available only to public utilities already operating as such.

III. ARGUMENTS

A. Statutory Construction

The arguments of both Movants and GBX rely on the rules of statutory construction. They agree that when interpreting a statute, the intent of the legislature must be given effect. The parties agree that words and phrases should not be construed in isolation but in light of other relevant portions of the statute.

Movants argue that legislative intent is best derived from the statutory language, which must be enforced as written if not ambiguous. They assert that §8-406.1 and §3-105 are clear and unambiguous and therefore must be enforced as written. They argue that by limiting the availability of §8-406.1 to public utilities, the legislature is in effect directing entities that are not presently public utilities to apply for a Certificate under §8-406.

¹ Unless stated otherwise all statutory references are to the PUA.

Movants assert that §8-406.1(a) allows a "public utility" to apply for a Certificate "for the construction of any new high voltage electric service line and related facilities (Project)." They distinguish between a Certificate for operating a transmission line and a Certificate for constructing the line. Movants note that §8-406.1 does not include a provision allowing an entity to become a "public utility," or for an applicant, other than a "public utility," to request a Certificate or other authority to transact or operate a business as a public utility. Movants assert that this is in sharp contrast to §8-406, which expressly allows an applicant to seek a Certificate to transact business in Illinois as a public utility. Movants state that the §8-406(a) finding that the public convenience and necessity require the transaction of public utility business is not the equivalent to or implied by the §8-406.1 findings required to support a particular project. They assert that the analysis of whether an entity should be a "public utility" is separate from an analysis under the factors enumerated in §8-406(b) and §8-406.1 to determine whether a project should be approved. The Movants argue that GBX cannot leverage §8-406.1 approval, to construct a particular transmission line, to gain authority to act as a public utility. According to them, §8-406.1 establishes a special, expedited process, for public utilities only, to apply for a Certificate for the construction of a new high voltage electric service line and facilities, but §8-406.1 establishes no process analogous to §8-406(a), whereby an applicant can obtain permission to act as a public utility. They conclude that if GBX were to proceed under §8-406.1 and obtain a Certificate for the proposed construction, it would be left with the authority to build the line, but without authority to operate it.

Staff concurs with Movants' argument on this point. It states that the GBX Application requests authorization to "operate and maintain" under a provision that does not contemplate such authorization. Staff notes that Rock Island Clean Line LLC ("Rock Island") requested relief under both §8-406(a) and (b) in Docket No. 12-0560. Staff asserts that §8-406.1 contains no equivalent to §8-406(a) and that GBX did not request authority to transact business as a public utility under §8-406(a). Staff finds no support for the notion that §8-406.1 was intended to supersede §8-406(a).

GBX asserts that legislative intent should be ascertained from a consideration of the entire act, its nature, its object, and the consequences that would result from construing it one way or another. It warns that words and phrases must not be construed in isolation, but rather in light of other relevant portions of the statute. GBX states that it is proper to compare statutes *in pari materia* or to consider statutes on related subjects in ascertaining legislative intent.

Comparing §8-406.1 and §8-406, GBX points out that they both use the term "public utility", rather than "applicant" or "entity," to describe who may request and be granted a Certificate under their provisions. GBX states that in Docket No. 12-0560, the Commission rejected the argument that the wording of §8-406 precludes an entity, that is not yet a public utility, from being able to apply for and be granted a Certificate to construct a transmission project under §8-406. It says that the Commission observed that the key issue was whether the applicant satisfied the criteria in §8-406 for issuance

of a Certificate, and that the Commission found no legislative intent to preclude new entrants, who were not public utilities from requesting and being granted a Certificate under §8-406.

GBX asserts that there is no more basis to conclude the legislature intended to preclude new entrants from requesting and obtaining a Certificate using §8-406.1 than there is for §8-406. It reasons that under both sections, the question is whether the applicant is able to demonstrate that its proposed electric transmission line satisfies the substantive criteria for issuance of a Certificate. GBX says the substantive criteria, found at §8-406(b) and §8-406.1(f) are the same: the applicant's capability to manage and supervise construction and to finance the construction without significant adverse financial consequences.

REP disputes GBX's assertion that "public utility" is used to describe who may request and be granted a Certificate in both §8-406 and §8-406.1. It states that in §8-406.1, "A public utility may apply for a [Certificate]..." describes a prerequisite for who may apply. REP distinguishes §8-406, saying nothing in §8-406 requires an applicant to be a public utility before seeking a Certificate under those provisions. It states §8-406 (a) and (b) both refer to "public utility" in the context of operational restrictions that apply unless and until the required Certificate is obtained.

The Movants and GBX disagree on the legislative intent underlying §8-406.1. The Movants and Staff opine that §8-406.1 was most likely intended to enable existing public utilities to quickly build such high voltage electric transmission lines as may be necessary to meet obligations pursuant to membership in a regional transmission organization ("RTO"). GBX finds it apparent that the intent underlying §8-406.1 was to create and make available (subject to conditions) an alternative, more expeditious process for obtaining a Certificate to construct and operate a specific type of utility facility – a new high voltage electric transmission line – than the no-deadline process under §8-406, and nothing more. GBX states its decision to file for a Certificate under §8-406.1 was informed by the experience of Rock Island, for which the §8-406 proceeding took 25 months. As a result, GBX argues that filing under §8-406 is not a reasonable alternative.

B. Past Orders under §406 and §406.1

GBX asserts that it does not need to separately request a Certificate under §8-406(a). It cites a number of orders issued under §8-406.1, where the Commission has granted the applicant a Certificate for the construction, operation and maintenance of the proposed new high voltage electric service line and related facilities, and the transaction of an electric public utility business in connection therewith. In its Reply, GBX asserts that legislative inaction indicates legislative acquiescence to the agency's interpretation and application of the statute. It asserts that it is the grant of the Certificate that authorizes the applicant to operate as a public utility. GBX states that the Motions ignore the inclusion of "franchise, license, or right to engage in the transmission of electricity" in the §3-105 definition of public utility. It asserts the

Certificate, when issued, is a "franchise, license, or right..." GBX emphasizes that 8-406(a) only prohibits a business from transacting any business until it has a Certificate, it does not provide a basis or criteria for granting a Certificate. GBX states that the grant of the Certificate, authorizing it to construct and operate a public utility facility, will enable it to satisfy the definition in §3-105 and become a public utility.

In support of its argument, GBX cites to the Staff argument supporting its Motion to Dismiss in Docket No. 10-0579. In that docket, Rock Island Clean Line LLC ("Rock Island") requested a Certificate to operate as a public utility pursuant to §8-406(a), but not a Certificate to construct facilities pursuant to §8-406(b). Staff argued:

Section 8-406 does not contemplate granting a Certificate under Subsection (a)... The plain meaning of Subsection (a) is that public utilities are prohibited from transacting any business without a Certificate. Subsection (b) provides the mechanism whereby a public utility may obtain a Certificate.

In order to grant a Certificate, it would be necessary to make findings that the Petitioner had met criteria that evidenced its capability to be a public utility. Subsection (a) does not discuss any procedure or criteria for acquiring a Certificate.

GBX states that the Staff Motion was never ruled on, but Rock Island eventually conceded Staff's argument and withdrew its filing in Docket No. 10-0579 shortly before it filed its application in Docket No. 12-0560 for a Certificate to construct the Rock Island transmission project.

REP replies that contrary to GBX's arguments, each of the Commission decisions cited by GBX bolster the views of Staff and Movants. It states in each of those §8-406.1 cases the Commission made an explicit finding that the applicant was a public utility. REP notes that none of the applicants in those cases were a newly formed non-utility at the time of filing. REP asserts that less than one year ago, the Commission required GBX's affiliate Rock Island to obtain authority under §8-406(a) before it could be authorized to construct the proposed transmission line under the Commission's "traditional" §8-406(b) Certificate procedures. It says under GBX's interpretation of §8-406.1 and §8-406(g), that would be unnecessary. REP states that under GBX's interpretation, a newly formed transmission developer could not only obtain expedited issuance of a Certificate to construct new facilities, but could avoid any scrutiny whatsoever under §8-406(a), simply by filing under §8-406.1. It asserts that nothing in §8-406(g) or §8-406.1 strips the Commission of its authority or responsibility under §8-406(a).

C. §8-406(g)

GBX states that §8-406(g), which was added to §8-406 in the same legislation that adopted §8-406.1, states that if approval has been obtained pursuant to §8-406.1,

compliance with the requirements of §8-406 that would otherwise apply is not required. GBX asserts that this would include any separate requirement that might otherwise apply to obtain a Certificate as a public utility pursuant to §8-406(a).

REP and LACI dismiss the GBX §8-406(g) argument, stating that it is clear that the §8-406 requirements it references are those that address the same authority granted under Section §8-406.1, i.e., they do not continue to apply duplicatively. They state that §8-406(g) applies to a "public utility." They assert that it cannot be read to excuse a non-utility applicant from the requirement to qualify as a "public utility." REP asserts that GBX's argument ignores the language of §Section 8-406.1(a) that allows only a "public utility [to] apply for a [Certificate]." REP states that as well as the introductory prerequisite, the balance of §Section 8-406.1 refers to "utility" or "public utility" thirteen times in describing the specific requirements under the expedited Certificate process.

D. §8-503

The parties also disagree about §8-503 considerations. Movants find it significant that §8-503 relief applies only to public utilities. They assert that GBX is not a public utility and describe the proposed transmission line as a private merchant project. Staff joins in these concerns. It states that a §8-503 order, authorizing or directing construction is a prerequisite to §8-509 eminent domain authority. Staff observes that §8-406.1 requires a §8-503 order at the time a Certificate is approved. Thus, it states that §8-406.1 is a fast track for eminent domain authority and opines that such a fast track to eminent domain is not appropriate in this situation. In response to the Movants' arguments, GBX asserts that the substantive criteria for a §8-503 order are incorporated into §8-406.1. In addition it notes that §8-406.1 does not mandate a grant of §8-509 eminent domain authority and that it did not request that authority in its application.

E. Other Arguments

The Movants and GBX point out other rationales for their respective interpretations of the statute. Movants state that limiting applications under §8-406.1 makes perfect sense: the Commission would have knowledge of the management, supervisory, and financial capabilities of an existing public utility. In addition, Movants assert that they would be severely prejudiced by allowing the docket to proceed as an expedited case under §8-406.1. They point out the length of the line, the number of counties through which the line will pass, the number of parcels of land that would be crossed by either the Proposed or Alternative Route.

In response, GBX notes that the legislature has not limited the availability of the §8-406.1 procedure based on the length of the proposed transmission line or on any other measure of the potential complexity of the case. It notes and recounts the additional requirements including significant obligations to provide notice of the proposed project and additional fees. GBX argues that the legislature found these additional obligations to be appropriate and warranted in light of the finite time period for

a §8-406.1 order. It dismisses Staff's assertion that the procedure was most likely intended to enable existing public utilities to quickly build high voltage transmission lines as necessary to meet obligations to an RTO, as wholly speculative and unsupported conjecture. It similarly dismisses Staff's statement as to the appropriateness of the use of 8-406.1, as having nothing to do with the sufficiency of the Application or the statutory question.

IV. REQUESTED RELIEF

The Movants and Staff ask that the Application be dismissed. GBX states the Motions should be denied. Alternatively, it states that if the Commission grants the Motions, dismissal of the application would not be necessary. GBX suggests in that case, the Commission should direct GBX to amend its Application and proceed under §8-406 and §8-503. It reiterates that §8-406 and §8-406.1 contain the same substantive criteria for granting a Certificate for a new high voltage electric service line, and states the application, exhibits and direct testimony set forth the information and evidence that support granting the Certificate under either provision. It requests that in that case the Commission should impose a deadline for a final order and suggests 11 months, as is required in traditional rate cases.

V. RECOMMENDATION

I believe the criteria for issuance of a Certificate to construct new high voltage electric service line and facilities can not be substituted for the necessary elements, identified in §3-105, for an entity to be a "public utility." The "public utility" issue was litigated extensively in Docket No. 12-0560. There is no mention of operating or conducting a public utility business in §8-406.1. Public use is not mentioned in §8-406.1. It appears the sole purpose of §8-406.1 is to provide an expedited procedure for approval of a Certificate for construction of a new high voltage electric service line. On its face, the statute requires the application be filed by a public utility. There is nothing in the statute to indicate any change in the definition of public utility for purposes of a Certificate for construction of a new high voltage electric service line. It is for the Commission to make a finding that an entity meets the definition of public utility; it should not be assumed as GBX appears to do.

I recommend the Commission grant GBX leave to file an amended application and such testimony/exhibits as necessary consistent with the requirements of §8-406 and §8-503. I do not recommend adoption of a deadline. There is no statutory deadline for §8-406 and §8-503 proceedings. GBX indicates it finds the 25 month duration of Docket No. 12-0560 to be excessive, but a review of that record shows that more than 400 land owners were notified; by agreement the evidentiary hearing in the matter was set 14 months after the filing of the application; there were post hearing motions, responses and replies; and because it was the first merchant electric transmission project in Illinois, there were matters of first impression. To the extent the Commission wishes this docket to move forward expeditiously, it should so indicate. The parties can

be expected to proceed accordingly, and there would remain some flexibility which may be necessary.

VI. DEADLINE

Under the current schedule, all pre-filed testimony is to be filed by August 4 and the evidentiary hearing is scheduled for August 17 through 20, 2015. The deadline for a final Commission order under §8-406.1 is November 24, 2015.

JVQ

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BEFORE THE
ILLINOIS COMMERCE COMMISSION
REGULAR OPEN MEETING
(PUBLIC UTILITY)
Tuesday, June 16, 2015
Chicago, Illinois

Met, pursuant to notice, at 10:30 A.M.,
at 160 North La Salle Street, Chicago, Illinois.

- PRESENT:
- BRIEN J. SHEAHAN, Chairman
 - ANN McCABE, Commissioner
 - SHERINA E. MAYE, Commissioner
 - MIGUEL DEL VALLE, Commissioner
 - MR. JOHN R. ROSALES, Commissioner

SULLIVAN REPORTING COMPANY, by
CHRISTINE KOWALSKI
CSR NO. 084-004422

1 CHAIRMAN SHEAHAN: Good morning. Are we ready
2 to proceed in Springfield with our regular Bench
3 Session.

4 CHIEF CLRRK: Yes, we are.

5 CHAIRMAN SHEAHAN: Pursuant to the Open
6 Meetings Act, I call the June 16, 2015 Bench Session
7 of the Illinois Commerce Commission to order.

8 Commissioners McCabe, del Valle, and
9 Rosales are -- strike that.

10 Commissioners McCabe, del Valle, and
11 Maye are present with me in Chicago. We have a
12 quorum.

13 We have no requests to speak and will,
14 therefore, move into our regular Public Utility
15 Agenda. We do not have any items for consideration
16 today on our Transportation Agenda.

17 The record will reflect that
18 Commissioner Rosales has just joined us.

19 There are a number of edits to the
20 Minutes of our May 20, 2015 Bench Session.

21 Are there any objections to approving
22 the Bench Session Minutes of May 20, 2015 as edited?

1 (No response.)

2 Hearing none, the Minutes are
3 approved.

4 Item E-1 involves ComEd's Modification
5 of its Administrative Claims Procedure.

6 Are there any objections to granting
7 Staff's recommendation that the Commission not
8 investigate the filing?

9 (No response.)

10 Hearing none, Staff's recommendation
11 that the Commission not investigate the filing is
12 granted.

13 Item E-2 concerns MidAmerican's update
14 to its electric and gas tariffs.

15 Are there any objections to not
16 suspending the filings?

17 (No response.)

18 Hearing none, the filings are not
19 suspended.

20 Item E-3 involves a Petition to
21 Determine the Applicability of Section 16-125(e)
22 liability to events caused by the August 23rd, 2007

1 storm.

2 Are there any objections to granting
3 ComEd's Motion to Dismiss?

4 (No response.)

5 Hearing none, the Motion is granted
6 and the case is dismissed.

7 Item E-4 involves Ameren's
8 reconciliation of revenues collected under Riders EDR
9 and GER.

10 Are there any objections to approving
11 the Proposed Orders?

12 (No response.)

13 Hearing none, the Orders are approved.

14 Items E-5 through E-7 involve
15 dismissal of various consumer complaints against
16 ComEd.

17 Are there any objections to
18 considering these items together and granting the
19 parties' Motions to Dismiss?

20 (No response.)

21 Hearing none, the Motions are granted
22 and the Complaints are dismissed.

1 Items E-8 through 12 are Petitions for
2 the confidential treatment of various reports.

3 Are there any objections to
4 considering these items together and approving the
5 Proposed Orders?

6 (No response.)

7 Hearing none, the Orders are approved.

8 Item E-13 is an Order approving a
9 Settlement and Stipulation regarding Nordic Energy's
10 alleged violations of the Public Utilities Act.

11 Are there any objections to approving
12 the proposed Order?

13 (No response.)

14 Hearing none, the Order is approved.

15 Item E-14 concerns Ameren's Petition
16 for a Certificate of Public Convenience and Necessity
17 to Construct, Operate, and Maintain a New High
18 Voltage Electric Service Line in Macon County,
19 Illinois.

20 Are there any objections to approving
21 the Proposed Order?

22 (No response.)

1 Hearing none, the Order is approved.

2 Items E-15 through 19 are various
3 Applications requesting Certificates of Service
4 Authority to Operate as Agents, Brokers, or
5 Consultants pursuant to the Public Utilities Act.

6 Are there any objections to
7 considering these items together and approving the
8 Proposed Orders?

9 (No response.)

10 Hearing none, the Orders are approved.

11 Items E-20 and 21 are Applications for
12 Electric Installer Authority under the Public
13 Utilities Act.

14 Are there any objections to
15 considering these items together and approving the
16 Proposed Orders?

17 (No response.)

18 Hearing none, the Orders are approved.

19 Item E-22 concerns Clean Line Energy's
20 Grain Belt Transmission Line. The Commission has two
21 issues before it this morning. The first is a
22 request for Oral Argument, and the second is Motions

1 to Dismiss regarding Grain Belt's Application for a
2 Certificate of Public Convenience and Necessity.

3 Is there a Motion to Deny the request
4 for Oral Argument?

5 COMMISSIONER MAYE: So moved.

6 CHAIRMAN SHEAHAN: Is there a second?

7 COMMISSIONER McCABE: Seconded.

8 CHAIRMAN SHEAHAN: It's been moved and
9 seconded.

10 Is there any discussion?

11 (No response.)

12 All those in favor of denying the
13 request for Oral Argument, say aye.

14 (Chorus of ayes.)

15 Opposed, say nay.

16 (No response.)

17 Motion carries and the request for
18 Oral Argument is denied.

19 The second issue before us are Motions
20 to Dismiss made by Concerned Citizens & Property
21 Owners; the Illinois Agricultural Association; and
22 the Landowners Alliance of Central Illinois.

1 I will move that we deny the Motions
2 to Dismiss.

3 Is there a second?

4 COMMISSIONER MAYE: Seconded.

5 CHAIRMAN SHEAHAN: Is there any discussion?

6 Commissioner McCabe?

7 COMMISSIONER McCABE: I want to ask the --
8 Judge Von Qualen a few questions.

9 CHAIRMAN SHEAHAN: Judge, are you with us?

10 CHIEF CLRRK: Yes. She is here.

11 COMMISSIONER McCABE: First, are you aware of
12 any Section 8-406.1 proceeding where the Applicant
13 did not assert that it was a public utility in its
14 Application at the time of Application?

15 JUDGE VON QUALEN: No, I'm not.

16 COMMISSIONER McCABE: And GBX has not asserted
17 that it is a public utility?

18 JUDGE VON QUALEN: That's true. It has not.
19 It asserted that it will be a public utility if the
20 Commission grants the certificate that it is
21 requesting.

22 COMMISSIONER McCABE: Okay. So that may answer

1 my next question.

2 If the Motions to Dismiss are denied,
3 can the Commission address the question of whether
4 Grain Belt is a public utility at any other point in
5 the proceeding?

6 JUDGE VON QUALEN: I didn't -- I think the --
7 what the Motions to Dismiss say is that the --
8 whether or not Grain Belt is a utility is a threshold
9 question.

10 In other words, the question right now
11 before the Commission is whether or not an entity has
12 to be a public utility in order to file the
13 Application.

14 Grain Belt did not say that it was a
15 public utility. It said that it would be a public
16 utility if the certificate was granted.

17 COMMISSIONER McCABE: Okay. Thank you.

18 CHAIRMAN SHEAHAN: Is there any other
19 discussion?

20 (No response.)

21 All those in favor of denying the
22 Motions to Dismiss, say aye.

1 (Chorus of ayes.)

2 Opposed, say no.

3 COMMISSIONER McCABE: No.

4 COMMISSIONER DEL VALLE: No.

5 CHAIRMAN SHEAHAN: The vote is three to two,
6 and the Motions to Dismiss are denied.

7 Moving on to Items G-1 through 4.
8 They're Orders denying Complaints and Motions to
9 Dismiss filed against North Shore/Peoples Gas
10 regarding billing/charges.

11 Are there any objections to
12 considering these items together and approving the
13 Proposed Orders?

14 (No response.)

15 Hearing none, the Orders are approved.

16 Item G-5 concerns requests from the
17 Attorney General, City of Chicago, and CUB for the
18 Commission to take Administrative Notice of the Final
19 Liberty Audit Report and to make it part of the
20 record and a Motion to Require Additional Hearings
21 concerning AMRP in Docket No. 14-0496.

22 We'll consider each of these requests

1 separately.

2 Is there a Motion to deny the request
3 to take Administrative Notice of the Final Liberty
4 Audit Report and to make it part of the record in
5 Docket No. 14-0496?

6 COMMISSIONER MAYE: So moved.

7 CHAIRMAN SHEAHAN: Is there a second?

8 COMMISSIONER ROSALES: Seconded.

9 CHAIRMAN SHEAHAN: Is there any discussion?

10 (No response.)

11 All those in favor of denying the
12 request to make the report part of the record -- to
13 take Notice of it and make it part of the record, say
14 aye.

15 (Chorus of ayes.)

16 Opposed, say no.

17 COMMISSIONER DEL VALLE: No.

18 CHAIRMAN SHEAHAN: The Motion is four to one,
19 and the request for Administrative Notice and having
20 it become part of the record is denied.

21 Is there a Motion to deny GCI's Motion
22 to Require Additional Hearings regarding AMRP?

1 COMMISSIONER ROSALES: So moved.

2 CHAIRMAN SHEAHAN: Is there a second?

3 COMMISSIONER MAYE: Seconded.

4 CHAIRMAN SHEAHAN: Is there any discussion?

5 (No response.)

6 All those in favor of denying the
7 Motion to Require Additional Hearings, say aye.

8 (Chorus of ayes.)

9 Opposed, say no.

10 COMMISSIONER DEL VALLE: No.

11 CHAIRMAN SHEAHAN: Motion is four to one, and
12 the Motion Requiring Additional Testimony is denied.

13 Item G-6 concerns Peoples Gas's
14 Petition for authority to issue up to \$125 million in
15 long-term debt.

16 Are there any objections to approving
17 the Proposed Order?

18 (No response.)

19 Hearing none, the Order is approved.

20 Item G-7 concerns Agera Energy's
21 Application for a Certificate of Service Authority.

22 Are there any objections to approving

1 the Proposed Order?

2 (No response.)

3 Hearing none, the Order is approved.

4 Items T-1 and 2 are Orders regarding
5 the withdrawal or cancellation of Certificates of
6 Service Authority.

7 Are there any objections to
8 considering these items together and approving the
9 Proposed Orders?

10 (No response.)

11 Hearing none, the Orders are approved.

12 Items T-3 and 4 are --

13 JUDGE KIMBREL: Excuse me, Mr. Chairman. Are
14 you going to hold the Order approving the Application
15 in Docket 14-0496?

16 CHAIRMAN SHEAHAN: Now, which item is that on
17 the Agenda?

18 COMMISSIONER MAYE: G-5.

19 JUDGE KIMBREL: G-5, Mr. Chairman.

20 CHAIRMAN SHEAHAN: I'm sorry, Judge. Can you
21 explain that again.

22

1 (Whereupon, a discussion was had
2 off the record.)

3 CHAIRMAN SHEAHAN: Oh, okay. My apologies.
4 Thanks for the clarification.

5 Is there a Motion to hold the Order?

6 COMMISSIONER McCABE: So moved.

7 CHAIRMAN SHEAHAN: Is that what we need, Judge,
8 a Motion to hold the Order? We're not going to deal
9 with it today.

10 JUDGE KIMBREL: Right.

11 CHAIRMAN SHEAHAN: Yeah. Okay.

12 Is there a second?

13 COMMISSIONER ROSALES: Seconded.

14 CHAIRMAN SHEAHAN: All those in favor, say aye.

15 (Chorus of ayes.)

16 Opposed, say no.

17 (No response.)

18 Okay. The Order is held.

19 Moving back to Items T-1 and 2, Orders
20 regarding the withdrawal or cancellation of
21 Certificates of Authority.

22 Are there any objections to

1 considering these items together and approving the
2 Proposed Orders?

3 (No response.)

4 Hearing none, the Orders are approved.

5 Items T-3 and 4 are Petitions for the
6 confidential treatment of various reports.

7 Are there any objections to
8 considering these items together and entering the
9 Proposed Orders?

10 (No response.)

11 Hearing none, the Orders are entered.

12 Item T-5 is a Modification of a 9-1-1
13 Emergency Telephone Numbering System for Dolton,
14 Illinois.

15 Are there any objections to approving
16 the Proposed Order?

17 (No response.)

18 Hearing none, the Proposed Order is
19 approved.

20 Item T-6 is Business Telecom's
21 Petition to Change Corporate Form.

22 Are there any objections to approving

1 the Proposed Order?

2 (No response.)

3 Hearing none, the Order is approved.

4 Item T-7 is Frontier and Adams
5 TelSystems' Joint Petition for Approval of an
6 Agreement Amending the Terms of an Interconnection
7 Agreement.

8 Are there any objections to approving
9 the Proposed Order?

10 (No response.)

11 Hearing none, the Order is approved.

12 Item W-1 concerns Aqua Illinois'
13 update to its water and sewer tariffs.

14 Are there any objections to not
15 suspending the filing?

16 (No response.)

17 Hearing none, the filing is not
18 suspended.

19 Item W-2 concerns Aqua Illinois'
20 Petition for approval of the issuance of \$23 million
21 in long-term debt.

22 Are there any objections to approving

1 the Proposed Order?

2 (No response.)

3 Hearing none, the Order is approved.

4 Items M-1 through 3 are Orders
5 initiating proceedings to determine liability for
6 alleged violations under the Illinois Underground
7 Utility Facilities Damage Prevention Act.

8 I believe we have some questions.
9 Commissioner del Valle.

10 COMMISSIONER DEL VALLE: Thank you,
11 Mr. Chairman. I have some process questions because
12 we have three of these Orders and this is the first
13 time I've seen these on the Agenda.

14 And so my question is, given the dates
15 on some of these reported violations -- one of them
16 goes back to 2008 and another was 2011. And I'm
17 talking about the three orders here -- I'm sorry --
18 not just the first one here.

19 What is our process for dealing with
20 these -- these problems? Because I was kind of taken
21 aback by the number of years that have passed
22 since -- since these violations took place.

1 CHAIRMAN SHEAHAN: I believe we have Staff in
2 Springfield to answer that.

3 Bill, are you available?

4 MR. BILL RILEY: Yes, Mr. Chairman. This is
5 Bill Riley, Manager of One-Call Enforcement.

6 To answer the Commissioner's question,
7 a lot of our focus -- I have two investigators that
8 work for me. We handle about 300 reported incidents
9 a year, and a lot of our focus has been on the
10 initial investigation of those reported incidents and
11 giving a Staff review, making our findings, and then
12 going through the Advisory Committee appeal process
13 if that is necessary.

14 So the -- getting to the third stage
15 of the enforcement proceeding, which is a hearing
16 before the Commission, has been kind of put on the
17 back burner. What has brought these specific cases
18 to the forefront is continued violations.

19 We've received another four reported
20 incidents from Lammers and Gleeson Asphalt. Gleeson
21 has not been cooperative with Staff's investigations,
22 so our thought is by bringing these old cases before

1 the Commission, hopefully we can -- we can bring
2 these more to the attention of Gleeson and get some
3 cooperation from them.

4 The same goes with CJ Now. Again,
5 that -- again, that -- the initial case is pretty
6 old, but we had another violation recently. That's a
7 2013 case that we want to, I guess, bring these to
8 the attention of CJ and try to bring them to
9 compliance with the Act.

10 COMMISSIONER DEL VALLE: So you say enforcement
11 has kind of been put on the back burner in the past.
12 Are we still going to continue to prioritize the
13 multiple offenses?

14 MR. BILL RILEY: Yeah. We'll probably -- we'll
15 be bringing those first. We have another -- another
16 company that we'll be sending a Staff report to you
17 shortly. I think there's three or four violations.

18 And, again, I wouldn't necessarily
19 characterize it that enforcement has been put on the
20 back burner. Like I said, we're -- we're reviewing
21 all of -- all of the cases we receive with a Staff
22 review and through the Advisory Committee process if

1 that's necessary.

2 Again, the cases that are being
3 brought before you have been reviewed twice, once by
4 Staff and also by the Advisory Committee. So there
5 has been a force of action taken. But by and large,
6 we've been ignored, so that's why we're -- we're
7 going to the -- to the third stage of the process
8 with these.

9 COMMISSIONER DEL VALLE: So you think that by
10 taking action, then some of these folks will think
11 twice about the ignoring the initial position that we
12 take -- or the initial investigation and the results?

13 MR. BILL RILEY: Yeah, I hope so, as well as
14 being in line with compliance in the future.

15 COMMISSIONER DEL VALLE: All right. Thank you.

16 COMMISSIONER MAYE: Bill, is there any type of
17 statute of limitations, so to speak, under the Act or
18 there's no --

19 MR. BILL RILEY: There is with regard to the
20 initial investigations. All -- the initial
21 investigation has to start within two years of a
22 suspected violation.

1 COMMISSIONER MAYE: Oh. So as long as the
2 investigation occurred within that time period, then
3 it's okay to -- then we're good to go? Is that what
4 you're saying?

5 MR. BILL RILEY: Yes. That's correct.

6 COMMISSIONER MAYE: Okay. All right. Thank
7 you.

8 COMMISSIONER McCABE: And, Mr. Riley, I noticed
9 in all three cases, they had ignored the penalties
10 that had been assessed so far.

11 In this proceeding, in addition to
12 bringing them into compliance, might it also entail
13 greater penalties or fines?

14 MR. BILL RILEY: If possible. That would --
15 that would be up to the -- to the ALJ to decide and
16 the Commission ultimately to decide that.

17 COMMISSIONER McCABE: Okay. Thanks.

18 CHAIRMAN SHEAHAN: Any other questions?

19 (No response.)

20 Are there any objections to
21 considering these items together and approving the
22 Proposed Orders?

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(No response.)

Hearing none, the Orders are approved.

We have an item on our agenda
regarding potential litigation, which is FERC
Docket No. ER10-1791.

Is there a Motion to enter Closed
Session?

COMMISSIONER McCABE: So moved.

CHAIRMAN SHEAHAN: Is there a second?

COMMISSIONER ROSALES: Seconded.

CHAIRMAN SHEAHAN: All those in favor, say aye.

(Chorus of ayes.)

Opposed, say nay.

(No response.)

The Motion carries and we will enter
into closed session.

1 CHAIRMAN SHEAHAN: We are back in Open Session.
2 Our last item on the Agenda is the Annual Report on
3 Cable and Video Service Deployment by Providers
4 Granted State-Issued Cable and Video Service
5 Authorization.

6 Is there a Motion to approve the
7 Report?

8 COMMISSIONER McCABE: So moved.

9 CHAIRMAN SHEAHAN: Is there a second?

10 COMMISSIONER ROSALES: Seconded.

11 CHAIRMAN SHEAHAN: Any discussion?

12 (No response.)

13 All those in favor, say aye.

14 (Chorus of ayes.)

15 Opposed, say nay.

16 (No response.)

17 The ayes have it and the Report is
18 approved.

19 Judge Kimbrel, do we have any other
20 matters to come before the Commission today?

21 JUDGE KIMBREL: No, there's nothing further,
22 Mr. Chairman.

1 MR. BILL VANDERLAAN: Excuse me, Mr. Chairman.
2 You need to vote on the FERC Docket.

3 CHAIRMAN SHEAHAN: Oh, thank you. Thank you.

4 MR. BILL VANDERLAAN: Thank you.

5 CHAIRMAN SHEAHAN: I had forgotten.

6 So we'll move back to FERC Docket
7 ER10-1791.

8 Is there a Motion to approve comments
9 regarding that Docket and to forward those comments
10 to FERC?

11 COMMISSIONER McCABE: So moved.

12 CHAIRMAN SHEAHAN: Is there a second?

13 COMMISSIONER MAYE: Seconded.

14 CHAIRMAN SHEAHAN: Any discussion?

15 (No response.)

16 All those in favor, say aye.

17 (Chorus of ayes.)

18 Opposed, say nay.

19 (No response.)

20 The Motion passes and you're
21 authorized, Bill, to forward those comments to FERC.

22 MR. BILL VANDERLAAN: Thank you, sir.

1 CHAIRMAN SHEAHAN: Thank you for pointing that
2 out.

3 Judge Kimbrel, do we have any other
4 items before us?

5 JUDGE KIMBREL: Nothing further, Mr. Chairman.

6 CHAIRMAN SHEAHAN: Commissioners, any other
7 business to discuss?

8 (No response.)

9 Hearing none, the meeting is
10 adjourned. Thank you.

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Application of Grain Belt Express)
Clean Line LLC for a Certificate of Convenience and)
Necessity Authorizing It to Construct, Own, Operate,)
Control, Manage, and Maintain a High Voltage, Direct)
Current Transmission Line and an Associated Converter)
Station Providing an Interconnection on the Maywood –)
Montgomery 345 kV Transmission Line)

File No. EA-2014-0207

REPORT AND ORDER

Issue Date: July 1, 2015

Effective Date: July 31, 2015

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Grain Belt Express)
Clean Line LLC for a Certificate of Convenience and)
Necessity Authorizing It to Construct, Own, Operate,)
Control, Manage, and Maintain a High Voltage, Direct) **File No. EA-2014-0207**
Current Transmission Line and an Associated Converter)
Station Providing an Interconnection on the Maywood –)
Montgomery 345 kV Transmission Line)

APPEARANCES

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IBEW LOCAL UNIONS 2, 53, and 1439:

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SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

On March 26, 2014, Grain Belt Express Clean Line LLC ("GBE") filed an application with the Missouri Public Service Commission ("Commission") for a certificate of convenience and necessity ("CCN") to construct, own, operate, control, manage and maintain a high voltage, direct current transmission line and associated facilities within Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri, as well as an associated converter station in Ralls County.

The Commission issued notice of the application and provided an opportunity for interested persons to intervene. The Commission granted intervention to the following parties: Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, Missouri Farm Bureau Federation, David and Jackie McKnight, Matthew and Christina Reichert, Randall and Roseanne Meyer, Rockies Express Pipeline LLC, Sierra Club, The Wind Coalition, Wind on the Wires, Infinity Wind Power, United for Missouri, Inc., Missouri Department of Economic Development – Division of Energy, Missouri Industrial Energy Consumers, Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, TradeWind Energy, Inc., International Brotherhood of Electrical Workers Locals 2, 53 and 1439, and Transource Missouri LLC. The Commission granted the petition of Energy for Generations, LLC to file an amicus curiae brief. The Office of the Public Counsel filed a notice stating that it did not intend to participate in the evidentiary hearing.

Several of the intervenors stated their opposition to the GBE application, and at the unopposed request of an intervenor the Commission held a prehearing conference and

established a procedural schedule. The Commission conducted local public hearings for members of the general public in each of the eight counties where the proposed transmission line would be located.¹ The Commission held an evidentiary hearing on November 10, 12, 13, 14 and 21, 2014.² During the evidentiary hearing, the parties presented evidence relating to the following three unresolved issues previously identified by the parties: (1) Does the evidence establish that the high-voltage direct current transmission line and converter station for which GBE is seeking a certificate of convenience and necessity are necessary or convenient for the public service? (2) If the Commission grants the CCN, what conditions, if any, should the Commission impose? (3) If the Commission grants the CCN, should the Commission exempt GBE from complying with the reporting requirements of Commission rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175, and 4 CSR 240-3.190(1), (2) and (3) (A)-(D)? Final post-hearing briefs were filed on December 22, 2014, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.³

On February 11, 2015, the Commission directed GBE to file additional information for its review, but subsequently decided that the supplemental information requested was not necessary to make a decision and did not receive any supplemental information into the record of the hearing. On June 10, 2015, GBE filed a request for the Commission to hold this proceeding in abeyance to allow time for GBE to provide the Commission with additional information and analysis in support of its application for a certificate of

¹ Transcript, Vols. 2-9. The Commission admitted 50 exhibits into evidence that were submitted during the local public hearings.

² Transcript, Vols. 10-17. The Commission admitted the testimony of 40 witnesses and 126 exhibits into evidence during the evidentiary hearing.

³ "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

convenience and necessity. This request is still pending and will be ruled on in this Report and Order. GBE recommends in its motion that the Commission refrain from issuing a Report and Order now and permit the company additional time to gather information that was not provided in its response to the Commission's Order Directing Filing of Additional Information issued on February 11, 2015.

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Grain Belt Express Clean Line LLC is a limited liability company organized under the laws of the State of Indiana. GBE is a wholly-owned subsidiary of Grain Belt Express Holding LLC, a Delaware limited liability company, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC, a Delaware limited liability company.⁴

2. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.⁵ Staff participated in this proceeding.

⁴ Ex.100, Skelly Direct, p. 3.

⁵ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

Description of the Project

3. The transmission line proposed to be constructed by GBE in the application is an approximately 750-mile, overhead, multi-terminal +600 kilovolt (“kV”) high-voltage, direct current (“HVDC”) transmission line and associated facilities (collectively, the “Project”).⁶

4. The Project would extend approximately 370 miles from near Dodge City, Kansas to the Kansas-Missouri border where it would cross the Missouri River and continue approximately 206 miles in Missouri. It would then proceed approximately 200 miles in Illinois, where it would interconnect with the Sullivan 765 kV substation in southwestern Indiana near the Illinois/Indiana border.⁷

5. The Project would have three converter stations. One converter station would be located in western Kansas, where wind generating facilities would connect to the Project via alternating current (“AC”) lines. The two other converter stations in eastern Missouri and eastern Illinois would deliver electricity to the AC grid through interconnections with transmission owners in the systems of Midcontinent Independent System Operator, Inc. (“MISO”) and PJM Interconnection, LLC (“PJM”), respectively.⁸

6. The Missouri portion of the Project encompasses:

(a) Approximately 206 miles of an HVDC transmission line that would cross the Missouri River south of St. Joseph and continue across the state in an easterly direction to south of Hannibal in Ralls County, where the line would cross the Mississippi River into Illinois, and

⁶ Ex. 100, Skelly Direct, p. 8.

⁷ Ex. 111, Galli Direct, p. 4; Ex. 100, Skelly Direct, p. 3-4.

⁸ Ex. 111, Galli Direct, p. 4-5.

(b) An associated converter station and AC interconnecting facilities in Ralls County.⁹

7. The Project would offer point-to-point transmission service from its western converter station in Ford County, Kansas to its two points of interconnection located in Missouri and at the Illinois/Indiana border.¹⁰

8. In Missouri, the Project would interconnect with the Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) system along an AC transmission line connecting the Maywood 345 kV substation and the Montgomery 345 kV substation. The connection would be made via a single 345 kV circuit from the converter station to a nearby tap point along the transmission line connecting Maywood to the Montgomery 345 kV substation. This Missouri interconnection would allow the delivery of up to 500 megawatts (“MW”) of power into the MISO energy market.¹¹

9. In Indiana, the Project would interconnect with the Indiana Michigan Power system, a subsidiary of American Electric Power Company, at the Sullivan substation located near the Illinois/Indiana border. This final point of interconnection would provide direct access to the 765 kV network in PJM via two 345/765 kV transformers in AEP’s Sullivan 765 kV substation. This interconnection point would enable the delivery of up to 3,500 MW of power into the PJM energy market.¹²

10. The tower structures for the Project would consist of either traditional self-supporting lattice structures, tubular steel monopole structures, self-supporting lattice mast structures, or guyed “vee” and guyed lattice mast structures, depending on specific

⁹ Ex. 104, Gaul Direct, Schedule TGB-2, p. 157.

¹⁰ Ex. 111, Galli Direct, p. 4.

¹¹ Ex. 111, Galli Direct, p. 4-5.

¹² *Id.*

conditions at particular locations or in particular segments of the Project. The current designs for lattice towers and tubular steel monopoles allow for up to 1,500-foot spans for lattice towers and up to 1,200-foot spans for tubular steel monopoles or self-supporting lattice mast structures. There would typically be four lattice structures per mile or five tubular steel monopoles or lattice masts per mile. Most structures would be between 110 to 150 feet tall, with taller structures likely required at river crossings and in certain other situations where longer span lengths are required.¹³

11. In conducting a route selection study to determine the proposed route of the transmission line in Missouri, GBE and its consultants solicited and received input from community members, local officials, federal and state government agencies, and non-governmental organizations and associations. Twenty-four meetings of community leaders were held with more than 250 participants attending from more than 40 counties. Thirteen open house meetings for the general public were held with more than 1,200 people attending.¹⁴

Applicant's qualifications and financial resources

12. Michael P. Skelly is the president of GBE and chief executive officer of Clean Line Energy Partners LLC, the GBE parent company. Mr. Skelly has been involved in the renewable energy business for over 20 years and has significant experience in evaluating and developing wind energy resources.¹⁵

13. Dr. Wayne Galli is the executive vice president of transmission and technical services for Clean Line Energy Partners LLC and oversees the planning, engineering, design, construction and other technical activities for the Project. Dr. Galli has over

¹³ *Id.* at p. 7-8 and Schedule AWG-2 at p. 2-3.

¹⁴ Ex. 101, Lawlor Direct, p. 7-11; Ex. 104, Gaul Direct, p. 7-8.

¹⁵ Ex. 100, Skelly Direct, p. 1.

15 years of experience in the electric transmission industry. Dr. Galli has developed HVDC transmission lines in Texas and served as the supervisor of operations engineering at Southwest Power Pool.¹⁶

14. GBE secured the services of POWER Engineers, Inc. to serve as consulting engineer for the Project. POWER Engineers, Inc. is a consulting firm founded in 1976 that has significant experience in the design and construction of transmission facilities throughout the United States.¹⁷

15. The owners of Clean Line Energy Partners LLC are GridAmerica Holdings, Inc., Clean Line Investor Corp., Michael Zilkha, and Clean Line Investment, LLC. GridAmerica Holdings, Inc. is a subsidiary of National Grid USA, which is a subsidiary of National Grid plc. National Grid plc and its affiliates are one of the largest investor-owned utility companies in the world with \$75 billion in assets and over \$22 billion in annual revenue. It has extensive experience building, owning, and operating transmission networks in the United States and the United Kingdom. National Grid plc. has made and continues to make available to GBE its engineering, procurement, safety, construction and project management skills and resources.¹⁸

16. National Grid plc made a \$48.2 million equity investment in Clean Line Energy Partners LLC to develop HVDC transmission projects in exchange for an ownership interest.¹⁹

17. Clean Line Investor Corp. is a subsidiary of ZAM Ventures, L.P., which is one of the principal investment vehicles for ZBI Ventures, LLC. ZAM Ventures, L.P. has a

¹⁶ Ex. 111, Galli Direct, p. 1-2.

¹⁷ Ex. 111, Galli Direct, p. 7-8.

¹⁸ Ex. 100, Skelly Direct, p. 8-9; Ex. 103, Blazewicz Surrebuttal, p. 3-5.

¹⁹ Ex. 103, Blazewicz Surrebuttal, p. 5.

consolidated net worth of \$500 million based on U.S. GAAP measurements. ZBI Ventures, LLC is owned by Ziff Brothers, a multi-billion dollar family investment fund.²⁰

18. Michael Zilkha and his family have a proven track record of making successful and productive investments in the energy industry.²¹

19. GBE estimates that the total cost of the Project would be approximately \$2.2 billion, with \$500 million of this estimate attributable to the portion of the project to be located in Missouri.²²

20. The initial development of the Project has being financed by equity investors, but once the Project reached the point of beginning construction it would be financed at the project level against the strength of its future, contracted revenues.²³

21. GBE would rely on specific revenue contracts with shippers or transmission service customers in order to support the financing of the Project. The Project is a merchant, "shipper pays" transmission line whose costs would probably not be recovered through either the SPP, MISO, or PJM cost allocation processes. GBE would ultimately recover its Project costs by selling transmission service to wind generators and/or load-serving entities that use the line.²⁴

22. GBE does not currently have any memorandums of understanding with potential utility purchasers of wind energy from the Project²⁵, and has no commitments of any kind from any load-serving utilities to buy capacity on the proposed transmission line.²⁶

²⁰ Ex. 204, Murray Rebuttal, p. 4-5.

²¹ Ex. 100, Skelly Direct, p. 9.

²² *Id.* at p. 8.

²³ Ex. 118, Berry Direct, p. 37-38.

²⁴ *Id.* at p.5-7; *But see*, Ex. 202, Stahlman Rebuttal, p. 7.

²⁵ Transcript, Vol. 10, p. 152-153.

²⁶ Transcript, Vol. 12, p. 417.

23. The Project would be unique and novel in Missouri, since GBE is proposing to build a transmission line that crosses parts of three regional transmission organizations based on a business model, not an identified reliability need.²⁷

Need for the Project

24. GBE alleges that the Project is necessary in order for Missouri electric utilities to meet the requirements of the Missouri Renewable Energy Standard ("RES"), for other utilities to meet the renewable energy portfolio standard requirements of other states in MISO and PJM, and for providing transmission capacity for wind generators in Kansas to reach electricity markets in MISO and PJM.²⁸

25. In general, the RES is a Missouri state law requiring investor-owned electric utilities to generate or purchase electricity generated from renewable energy resources in the amount of at least 10% of its sales each calendar year beginning in 2018 and 15% of sales beginning in 2021.²⁹ Missouri investor-owned utilities can meet the RES requirements using renewable energy credits ("RECs"), and those RECs do not have to be associated with energy that is delivered to or generated in Missouri.³⁰

26. The RES sets a rate impact limit on any renewable energy of not increasing retail rates by more than one percent.³¹ GBE did not submit evidence comparing the rate impact of the Project to an alternative resource plan to demonstrate that the Project meets the requirements of the RES 1% rate cap.³²

²⁷ Ex. 201, Beck Rebuttal, p. 2; Transcript, Vol. 17, p. 1746.

²⁸ Ex. 118, Berry Direct, p. 3.

²⁹ Sections 393.1025(3) and 393.1030.1, RSMo Supp. 2013; Commission Rule 4 CSR 240-20.100. All statutory references are to the Missouri Revised Statutes (2000), as amended and cumulatively supplemented.

³⁰ Ex. 201, Beck Rebuttal, p. 9.

³¹ Section 393.1050, RSMo; Commission Rule 4 CSR 240-20.100(5).

³² Ex. 401, Proctor Surrebuttal, p. 7-10.

27. Three of the four investor-owned electric utilities in Missouri (The Empire District Electric Company, Kansas City Power & Light Company, and KCP&L Greater Missouri Operations Company) have existing capacity and new contracts that are projected to not only supply enough RECs for each to meet the 15% RES requirement for 2021, but also for each to have excess RECs to sell.³³

28. The fourth Missouri utility, Ameren Missouri, stated in its 2014 Integrated Resource Plan that it needs a total of 400 MW of additional wind energy by 2026.³⁴ Ameren Missouri plans to meet its need for additional wind energy through wind resources located within MISO, including areas in Missouri.³⁵ Ameren Missouri has the ability to meet its 2021 RES requirements without purchasing renewable energy transported over the Project.³⁶

29. While the injection of wind energy via the Project would improve the reliability of the Missouri bulk electric system³⁷, that system is not currently unreliable and Missouri utilities are not now violating any reliability standards.³⁸ It would be cheaper and take less time to build a medium-size natural gas plant in Missouri to achieve the same capacity benefit as the Project.³⁹

30. GBE did not submit the Project to the MISO regional planning process for evaluation of need and effectiveness. This process identifies high-voltage transmission projects that will provide value in excess of cost under a variety of future policy and

³³ Ex. 201, Beck Rebuttal, p. 9

³⁴ Ex. 334, section 9, p. 7, Table 9.3.

³⁵ Ex. 137, section 1.3, p. 8.

³⁶ Transcript, Vol. 15, p. 1158.

³⁷ Ex. 109, Zavadil Direct, p. 3.

³⁸ Transcript, Vol. 12, p. 702.

³⁹ *Id.* at 701-702.

economic conditions. Since GBE elected not to participate, the Project has not been evaluated for need and effectiveness in the MISO footprint.⁴⁰

31. MISO has a robust transmission planning process which is effective at planning and building transmission.⁴¹ In 2011, MISO approved 17 high-voltage transmission projects intended to facilitate the development of wind energy within the MISO footprint.⁴²

32. Illinois and the parts of MISO to the west of that state have some of the best wind energy resources in the United States. North Dakota, South Dakota, Minnesota, Missouri, and Iowa, combined, have enough wind resources (2.838 million MWs) to meet the current electricity needs of the United States at least two times over.⁴³

Economic feasibility of the Project

33. GBE has not finished the SPP, MISO and PJM study processes, which would provide a complete estimate of the expenditures necessary to construct the Project.⁴⁴

34. Several of the SPP, MISO, and PJM studies already completed are insufficient because they were based on GBE's original project design and are inconsistent with the Project's current design, which was changed after the studies were completed.⁴⁵

35. Transmission upgrades in addition to the \$2.2 billion construction estimate for the Project will be necessary to connect the Project to MISO and PJM. The cost of those transmission upgrades is currently unknown, but unless GBE absorbs those costs they

⁴⁰ Ex. 301, Gray Rebuttal, p. 6-7; Ex. 302, Gray Surrebuttal, p. 1.

⁴¹ Transcript, Vol. 14, p. 942-943.

⁴² Ex. 301, Gray Rebuttal, p. 6.

⁴³ Transcript, Vol. 14, p. 962-963.

⁴⁴ Ex. 202, Stahlman Rebuttal, p. 7.

⁴⁵ *Id.*

would either be passed through to utility customers via regional transmission organization cost allocations or would increase the delivery rate of wind energy to Missouri.⁴⁶

36. GBE has not yet developed operational, maintenance, or emergency restoration plans for the Project, which adds uncertainty to the estimates of routine costs.⁴⁷

37. Staff witness Sarah Kliethermes testified credibly that the production modeling studies performed by GBE to support its claim of economic feasibility were insufficient and unreasonable because GBE failed to consider a number of important factors and data inputs.⁴⁸

38. The GBE production modeling studies do not support the GBE allegation that the Project would result in lower retail electric rates for consumers.⁴⁹

39. Construction of the Project would create transmission congestion in Missouri, which leads to wasted fuel and fuel expense, and also increase other costs related to wind integration and ramping capacity.⁵⁰

40. Levelized cost analysis provides a way to compare investment alternatives that have differing investment costs, expenses, and asset lives. In regulated utility analysis, levelized costs represent the per-year revenue requirement to cover the return of and on investment as well as annual expenses over the life of the asset. It is an appropriate method to use in comparing resources that run at 100% of their capacity, which are sometimes called base-loaded generation resources.⁵¹

⁴⁶ *Id.* at p. 9-12.

⁴⁷ *Id.* at 11.

⁴⁸ Ex. 206, Kliethermes Rebuttal, p. 3-4, 19-20; Ex. 401, Proctor Surrebuttal, p. 7.

⁴⁹ Ex. 206, Kleithermes Rebuttal, p. 5-11.

⁵⁰ *Id.* at pp 17-18, 23-30.

⁵¹ Ex. 400, Proctor Rebuttal, p. 2.

41. GBE witness David Berry used levelized cost analysis as a screening tool to determine which base-loaded resources are most economic.⁵²

42. Witness Michael Proctor testified on behalf of Show Me Concerned Landowners. Dr. Proctor received a PhD in economics from Texas A&M University, taught economics and management science at Purdue University and the University of Missouri, and worked from 1977-2009 at the Missouri Public Service Commission, where he was the Chief Economist.⁵³

43. Witness Proctor's analysis of levelized cost and economic feasibility of the Project is more credible than the testimony of witness Berry because Dr. Proctor's assumptions and analysis are more reasonable and persuasive, including, but not limited to, matters such as calculation of levelized energy costs, capacity costs, capacity factors, annual expenses, revenue requirement credits, transmission costs and losses, and comparing Kansas wind resources to combined cycle generation and MISO wind resources.

44. Only if the levelized cost of the Project is lower than all other alternatives could the Project possibly be included in the least-cost generation mix for meeting Ameren Missouri's need for capacity and energy without the Missouri RES being imposed as a condition.⁵⁴

45. Only if the levelized cost of the Project is lower than all other renewable energy alternatives could the Project possibly be included in the least-cost generation mix

⁵² *Id.* at p. 3.

⁵³ *Id.* at p. 1.

⁵⁴ Ex. 401, Proctor Surrebuttal, p. 10.

for meeting Ameren Missouri's need for capacity and energy with the Missouri RES being imposed as a condition.⁵⁵

46. Compared to wind energy resources from either Kansas or Missouri, such as the Project, levelized cost analysis shows that natural gas-fired combined cycle generation is the most cost-effective generation alternative for meeting Ameren Missouri's need for base-load generation.⁵⁶

47. Areas within MISO, such as northwest Iowa and eastern South Dakota, have a higher capacity factor wind than what can be found in the best wind regions of Missouri.⁵⁷

48. Wind energy generated within the MISO footprint, but not in Missouri, is a lower cost alternative to wind energy generated by the Project.⁵⁸

49. The purchase of RECs by a Missouri electric utility is a more economical way of meeting the RES requirements in Missouri than by purchasing wind energy generated from a wind farm in Kansas and transmitted via the Project.⁵⁹

Public interest

50. As of November 20, 2014, the Commission had received approximately 7,200 public comments regarding the proposed transmission line, most of which opposed the Project. Only one or two other cases before the Commission have ever generated a comparable volume of public comments.⁶⁰

⁵⁵ *Id.*

⁵⁶ Ex. 400, Proctor Rebuttal, p. 23.

⁵⁷ *Id.* at p. 26.

⁵⁸ *Id.* at p. 36.

⁵⁹ Ex. 401, Proctor Surrebuttal, p. 3.

⁶⁰ Ex. 200, Dietrich Rebuttal, p. 3; Transcript, Vol. 17, p. 1646.

51. At the local public hearings conducted in the eight counties through which the proposed transmission line was proposed to cross, the Commission heard testimony from approximately 280 witnesses, the majority of whom opposed it.⁶¹

52. For one landowner, the proposed transmission line would be 400 feet from the front door of her bed and breakfast business and would mar the view of the farm landscape for guests.⁶² For another landowner, the proposed line would run through the only suitable site for a home on that parcel of property.⁶³

53. Farmers on whose property the Project is proposed to be constructed could experience problems relating to soil compaction, interference with irrigation equipment, aerial applications to crops and pastures, and problems maneuvering large equipment around towers.⁶⁴

54. The study by GBE witness David Loomis alleging economic benefits from the Project to Missouri did not address the displacement of jobs and energy production in Missouri due to the Project. The Project would probably make Missouri-based wind projects less likely to be constructed.⁶⁵

55. The study performed by witness Loomis did not attempt to identify any negative economic impacts to Missouri as a result of the construction of the Project.⁶⁶

56. Wind energy is currently accessible to buyers in MISO and PJM. MISO wind capacity and output continue to grow, generating 7.4% of all energy for MISO in 2013 compared to 3.5% just three years earlier.⁶⁷

⁶¹ Transcript, Vols. 2-9.

⁶² Ex. 552, Reichert Rebuttal, p. 7-10; Transcript, Vol. 17, p. 1637.

⁶³ Ex. 575, Meyer Rebuttal, p. 3.

⁶⁴ Ex. 403, Kruse Rebuttal, p. 2-14; Ex. 304, McElwain Rebuttal, p. 3-4.

⁶⁵ Ex. 202, Stahlman Rebuttal, p. 16.

⁶⁶ Transcript, Vol. 17, p. 1465-1478; Ex. 301, Gray Rebuttal, p. 12-13.

⁶⁷ Ex. 206, Kleithermes Rebuttal, Sch. SLK 2 and SLK-4-21.

57. The U.S. Environmental Protection Agency's Clean Power Plan is currently in the preliminary stages of development before a specific rule is proposed. The amount and to what degree the Project would help Missouri comply with those guidelines will not be known until after the EPA rule is proposed in 2015, the state compliance plan is developed, reviewed and accepted by the EPA, and Missouri state rules are promulgated by the Missouri Department of Natural Resources in 2016.⁶⁸

III. Conclusions of Law

GBE filed its application for a certificate of convenience and necessity. The Commission's authority to approve the Project when necessary or convenient for the public service, including the authority to impose reasonable conditions, is stated in Section 393.170, RSMo.⁶⁹ GBE is an "electrical corporation"⁷⁰ and "public utility"⁷¹ owning,

⁶⁸ Ex. 208, Lange Surrebuttal, p. 2; Transcript, Vol. 17, p. 1714-15.

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

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

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

⁷⁰ "Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others. (emphasis added).

⁷¹ "Public utility" includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter.

operating, controlling or managing “electric plant”⁷². While the Commission only has authority over facilities that are devoted to public use⁷³, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to consumers is a “necessary and important link” in the distribution of electricity and qualifies as a public utility⁷⁴.

Missouri Landowners Alliance and Show Me Concerned Landowners have raised a legal issue in the briefs that questions the Commission’s statutory authority to grant a CCN in this case. Those parties point to subsection 2 of section 393.170, RSMo, which requires that “[b]efore such certificate shall be issued...a verified statement of the president and secretary of the corporation [shall be filed with the commission], showing that it has received the required consent of the proper municipal authorities”. The relevant consent mentioned in this section refers to section 229.100, RSMo, which requires assent of the county commission before a company may erect poles for the suspension of electric light or power wires under or across the public roads or highways of that county.⁷⁵ Those two parties allege that some of the required consents have been rescinded. As a result of the

⁷² “Electric plant” includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power. (emphasis added)

⁷³ *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Commission of Missouri*, 275 Mo. 483, 205 S.W. 36, 39 (1918); *State ex rel. Buchanan County. Power Transmission Co. v. Baker*, 320 Mo. 1146, 1153, 9 S.W.2d 589, 591 (1928).

⁷⁴ *The Empire District Electric Company v. Progressive Industries, Inc.*, Report and Order, 13 Mo.P.S.C. (N.S.) 659, 669 (April 2, 1968); *State ex rel. Buchanan County. Power Transmission Co. v. Baker*, 9 S.W.2d at 592.

⁷⁵ “No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such county therefor; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission.”

Commission's decision below, the Commission need not address this question of statutory authority at this time.

Since GBE brought the application, it bears the burden of proof.⁷⁶ The burden of proof is the preponderance of the evidence standard.⁷⁷ In order to meet this standard, GBE must convince the Commission it is "more likely than not" that its allegations are true.⁷⁸

The first issue for determination is whether the evidence establishes that the high-voltage direct current transmission line and converter station for which GBE is seeking a certificate of convenience and necessity are necessary or convenient for the public service. When making a determination of whether an applicant or project is convenient or necessary, the Commission has traditionally applied five criteria, commonly known as the Tartan factors, which are as follows:

- a) There must be a need for the service;
- b) The applicant must be qualified to provide the proposed service;
- c) The applicant must have the financial ability to provide the service;
- d) The applicant's proposal must be economically feasible; and
- e) The service must promote the public interest.⁷⁹

⁷⁶ "The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue". *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

⁷⁷ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 Mo. banc 1996).

⁷⁸ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

⁷⁹ *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).

It is important to note that these factors have been developed and implemented by the Commission itself, not by the legislature or the courts, so the Commission is not bound to strictly follow past decisions where it is reasonable to deviate from those standards.

With regard to GBE's qualifications and financial ability to provide the service, GBE has provided competent and substantial evidence to support its claim. No party seriously disputed these two factors, so the Commission concludes that GBE has met its burden of proof demonstrating that GBE is qualified and has the financial ability to provide the service described in its application for a certificate of convenience and necessity.

Need for the Project

When determining whether the project is necessary or convenient for the public service, the "term 'necessity' does not mean 'essential' or 'absolutely indispensable', but that an additional service would be an improvement justifying its cost".⁸⁰ The Commission finds that it is more appropriate to consider aspects of the Project related to the effect on Missouri utilities and consumers rather than how it might affect Kansas wind developers or utilities and consumers from other states.⁸¹

GBE asserts that its project is necessary for Missouri investor-owned utilities to meet the renewable energy standards of Sections 393.1020 and 1030, RSMo. This law requires that those utilities obtain 15% of their electricity from renewable resources by 2021. However, the evidence showed that the Project is not needed for Missouri investor-owned utilities to meet the requirements of the RES. The Empire District Electric Company, Kansas City Power & Light Company, and KCP&L Greater Missouri Operations Company

⁸⁰ *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993).

⁸¹ "The PSC is a state agency established by the Missouri General Assembly to regulate public utilities operating within the state." *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm'n of State*, 103 S.W.3d 753, 756 (Mo. 2003).

have existing renewable energy capacity and new contracts that are projected to supply enough RECs to meet the RES requirements and have excess RECs to sell. Ameren Missouri states in its 2014 IRP that it needs 400 MW of additional wind energy to comply with the RES, but its plan anticipates obtaining that wind energy within MISO. In addition, GBE has not presented sufficient evidence to show that increases to retail rates for Ameren Missouri customers for wind energy provided by the Project would fall within the RES one percent rate cap. All the investor-owned electric utilities in Missouri have the ability to meet the 2021 RES requirements without purchasing renewable energy transported over the Project.

The Project is not needed for grid reliability because GBE did not submit the Project to the regional planning process, has not identified any existing deficiency or inadequacy in the grid that the project addresses, and has not shown that the project is the best or least-cost way to achieve more reliability. Although GBE elected not to submit the Project to the MISO regional transmission process, MISO has an effective planning process to enable states in the MISO footprint, which includes portions of Missouri, to meet RES requirements using renewable wind resources. Since areas of MISO have some of the best wind energy resources in the United States, it is more likely that the large amount of available MISO wind can satisfy the needs of Missouri utilities for wind energy compared to the smaller amount of Kansas wind that GBE proposes to inject into MISO at the Missouri converter station. The Commission concludes that GBE has failed to meet its burden of proof to demonstrate that the service it proposes in its application for a certificate of convenience and necessity is needed in Missouri.

Economic Feasibility of the Project

GBE has not presented adequate evidence to show that the Project is economically feasible. Staff made credible criticisms of the GBE studies and pointed out the large amount of important information that is not known about the impact of the Project on Missouri. Interconnection studies with SPP, MISO and PJM have not been completed or are inconsistent with the Project's current design, plans for operations, maintenance or emergency restoration have not yet been developed by GBE, and GBE production modeling studies do not support GBE's claims that retail electric rates would decrease. In addition, there is a good chance that Project costs would increase beyond what was estimated by GBE due to transmission upgrades, congestion, wind integration and the need for additional ramping capacity.

Dr. Michael Proctor presented credible evidence that Ameren Missouri would have lower-cost alternatives than the Project for meeting its need for capacity and energy, both with and without considering the renewable energy requirements of the Missouri RES. GBE failed to perform adequate studies and present sufficient evidence on this analysis, which the Commission would need to properly evaluate economic feasibility of the Project. Dr. Proctor's analysis showed that natural gas-fired combined cycle generation is the most cost-effective generation alternative, and that wind energy from areas of MISO or through the purchase of RECs are a lower cost alternative to wind energy generated by the Project. Therefore, the Project is not the least-cost alternative for meeting Missouri's future needs for either energy and capacity or renewable energy, so it is highly unlikely to meet the Commission's rule for 1% rate impact limitation from renewable energy. It is more likely that a reasonable and prudent Missouri electric utility, such as Ameren Missouri, would

choose to obtain wind energy either within MISO or through the purchase of RECs rather than from the Project. The Commission concludes that GBE has failed to meet its burden of proof that the service described in its application for a certificate of convenience and necessity is economically feasible.

Public Interest

Public policy must be found in a constitutional provision, a statute, regulation promulgated pursuant to statute, or a rule created by a governmental body.⁸² The public interest is a matter of policy to be determined by the Commission.⁸³ It is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served.⁸⁴ Determining what is in the interest of the public is a balancing process.⁸⁵ In making such a determination, the total interests of the public served must be assessed.⁸⁶ This means that some of the public may suffer adverse consequences for the total public interest.⁸⁷ Individual rights are subservient to the rights of the public.⁸⁸ The "public interest" necessarily must include the interests of both the ratepaying public and the investing public⁸⁹.

⁸² *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81, 96 (Mo. banc 2010).

⁸³ *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980). The dominant purpose in creation of the Commission is public welfare. *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

⁸⁴ *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993). That discretion and the exercise, however, are not absolute and are subject to a review by the courts for determining whether orders of the P.S.C. are lawful and reasonable. *State ex rel. Public Water Supply Dist. No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

⁸⁵ *In the Matter of Sho-Me Power Electric Cooperative's Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993 WL 719871 (Mo. P.S.C.).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

⁸⁹ The Missouri Supreme Court has previously held that the Commission must consider the interests of the investing public and that failure to do so would deny them a right important to the ownership of property. *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393 (Mo. banc 1934).

The *Tartan* case stated that the public interest determination “is in essence a conclusory finding as there is no specific definition of what constitutes the public interest. Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest.”⁹⁰ Since the Commission has concluded that GBE has not met two of the *Tartan* factors, by that standard GBE cannot show that the Project promotes the public interest. However, the Commission will also consider further some of the specific public benefits of the Project claimed by GBE.

As Staff witnesses point out, as a result of GBE’s inadequate production modeling studies, GBE’s claims that the Project would lead to lower renewable energy compliance costs, lower wholesale electric prices, lower retail electric rates, and reduce the need to generate electricity from fossil-fueled power plants are not sufficiently supported by the record. Moreover, the Project is not needed to satisfy the Missouri RES requirements. Although GBE argues that the Project will make wind energy more accessible to MISO and PJM customers, the evidence shows that wind energy is already accessible in those regions and, at least in MISO, has more than doubled as a percentage of total energy generated in the last three years. GBE alleges that the Project would result in economic benefits, but its studies are not reliable, as they fail to consider any negative economic impacts resulting from job displacement and energy production. Finally, GBE touts the Project as a way for Missouri to access affordable clean energy as increasing environmental regulations increase costs for coal plants. It is too soon to say what the impact of the proposal will be on Missouri.

⁹⁰ *In re Tartan Energy*, 3 Mo.P.S.C. 3d at 189.

The Commission acknowledges the substantial opposition to the Project expressed by business owners, farmers, and individual landowners across whose properties the Project was proposed to cross. The volume of public comments received in this case demonstrates the level of involvement of individuals who may be affected by this Project. Additionally, several people testified sincerely about their concerns relating to the Project. Those concerns were conveyed by farmers who could experience problems related to soil compaction, interference with irrigation equipment, aerial applications to crops and pastures and difficulty in moving large equipment around the towers proposed as part of the Project. For one landowner who owns a bed and breakfast, the view of that business would be marred for any guests staying at the bed and breakfast. In this case the evidence shows that any actual benefits to the general public from the Project are outweighed by the burdens on affected landowners. The Commission concludes that GBE has failed to meet its burden of proof to demonstrate that the Project as described in its application for a certificate of convenience and necessity promotes the public interest.

The remaining two disputed issues in this case each assumed that GBE was granted a certificate of convenience and necessity. In its conclusions of law above, the Commission determined that GBE has not met the criteria for obtaining such a certificate, so the Commission need not consider the remaining two disputed issues.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that GBE has failed to meet, by a preponderance of the evidence,

its burden of proof to demonstrate that the Project as described in its application for a certificate of convenience and necessity is necessary or convenient for the public service. Therefore, the Commission will deny the GBE application and the motion to hold the case in abeyance.⁹¹

THE COMMISSION ORDERS THAT:

1. Grain Belt Express Clean Line LLC's request to hold the case in abeyance filed on June 10, 2015, is denied.
2. Grain Belt Express Clean Line LLC's application for a certificate of convenience and necessity filed on March 26, 2014, is denied.
3. This order shall become effective on July 31, 2015.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

Stoll, W. Kenney, and Rupp, CC., concur;
R. Kenney, Chm., and Hall, C., dissent,
with separate dissenting opinions to follow;
and certify compliance with the provisions
of Section 536.080, RSMo.

Bushmann, Senior Regulatory Law Judge

⁹¹ As some parties have recently noted, GBE has the option to file a new application for a CCN at any point if it eventually gathers information it feels would make a better case for this project or a new project. See *Staff's Response to the Recommendation of Grain Belt Express Clean Line LLC*, EFIS No. 544, and *Response of the Missouri Landowners Alliance to Recommendation of Grain Belt Express to Hold Case in Abeyance*, EFIS No. 540.

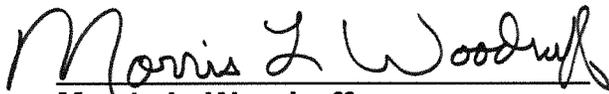
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 1st day of July 2015.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

July 1, 2015

File/Case No. EA-2014-0207

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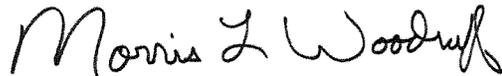
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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,


Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.