

**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 Construct, Operate and Maintain) **Docket No. 15-0277**
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.)

**GRAIN BELT EXPRESS CLEAN LINE LLC’S
RESPONSE TO MARY ELLEN ZOTOS’ MOTION IN LIMINE
REGARDING ICC STAFF DIRECT TESTIMONY**

Grain Belt Express Clean Line LLC (“Grain Belt Express”), by and through its undersigned attorneys, hereby responds to Intervenor Mary Ellen Zotos’ (“Zotos”) Motion in Limine to exclude from evidence certain portions of the direct testimony of Commission Staff (“Staff”) witness Yassir Rashid or, alternatively, certain portions of the direct testimony of Staff witness Richard Zuraski (the “Motion”).

1. On April 10, 2015, Grain Belt Express filed its Application for an order granting Grain Belt Express a Certificate of Public Convenience and Necessity Pursuant to §8-406.1 of the PUA (220 ILCS 5/8-406.1) to construct, operate and maintain an electric transmission line and authorizing Grain Belt Express pursuant to §8-503 and §8-406.1(f) of the PUA (220 ILCS 5/8-503, 8-406.1(f)) to construct the electric transmission line. Grain Belt Express also filed supporting direct testimony and exhibits, including the direct testimony of Grain Belt Express witnesses Wayne Galli (Grain Belt Express Exhibits 2.0 through 2.4) and David Berry (Grain Belt Express Exhibits 11.0 through 11.12).

2. On July 14, 2015, Staff filed the direct testimony of various witnesses, including the testimony of Yassir Rashid (Staff Exhibit 1.0) and Richard Zuraski (Staff Exhibit 3.0).¹

3. In the Motion, Zotos incorrectly asserts that, pursuant to Illinois Rule of Evidence 403 (“Rule 403”), the Commission should exclude certain portions of Mr. Rashid’s direct testimony as “needlessly cumulative” or repetitive of Mr. Zuraski’s direct testimony. Motion at ¶7. Zotos cites the following portions of Messrs. Rashid’s and Zuraski’s direct testimony as purportedly “cumulative”:

- Mr. Rashid states that his investigation of the project examines “whether constructing the proposed project is the least-cost means for [Gran Belt Express] to satisfy the needs of Illinois ratepayers” and he concludes “that the project meets the least-cost standard.” (Staff Ex. 1.0, lines (“ll.”) 123-25, 212-35).
- Mr. Zuraski testifies as to whether the Project “meets the least-cost method” and “concludes that it does meet the standard.” (Staff Ex. 3.0, ll. 48-49, 59, and 197-202).

4. Zotos offers nothing more to establish that Mr. Rashid’s testimony is cumulative or redundant to Mr. Zuraski’s testimony. Indeed, Zotos cannot do so because the substance of each of the Staff witness’s testimony on the topic of “least-cost” is completely different.

5. Mr. Rashid’s direct testimony as to whether the Grain Belt Express Project is the “least-cost” means to meet its objectives is expressly responsive to the direct testimony of Grain Belt Express witness Wayne Galli. (See Staff Ex. 3.0, ll. 212-235.) In his direct testimony, Dr. Galli provided a comparative analysis of the cost to construct five different AC transmission lines (that deliver 4,000 MW of electricity over 780 miles; i.e., the anticipated distance between the Project Resource Area and the terminus of the Project) to the cost to construct a 780-mile,

¹ Zotos’ Motion incorrectly identifies Mr. Zuraski’s Direct Testimony as Staff Exhibit 2.0. Staff Exhibit 2.0 is the Verified Statement of Staff witness Janis Freetly.

660 kV, 4,000 MW capacity HVDC transmission line. (Grain Belt Express Ex. 2.0, ll. 250-280).

Mr. Galli's least-cost analysis compared the following cost-items:

- The per-mile cost for the transmission lines (structures, conductors, insulators and hardware);
- Right-of-way costs;
- For the AC transmission lines, the costs for four substations, two transformers per substation, Static VAR Compensators, series capacitors, shunt capacitors, and shunt reactors; and
- For the 780-mile HVDC transmission line, the costs for three HVDC converters stations (which the Project will have), including the costs for all equipment needed at each converter, such as transformers, buswork, switchgear, capacitors and reactors. (Grain Belt Express Ex. 2.0, ll. 269-280).

6. Dr. Galli's engineering analysis also compared the annual power losses (and associated lost revenue) on the AC transmission lines and on the HVDC transmission line. (Grain Belt Express Ex. 2.0, ll. 281-284). His engineering analysis showed that the HVDC line will be less expensive to construct than any of the alternative AC transmission lines and that the HVDC line will also have lower electrical losses. (*Id.*, ll. 285-288). As a Staff *engineer*, Mr. Rashid responded to Mr. Galli's *engineering* analysis.

7. The testimony of Staff economist Mr. Zuraski was responsive to the levelized cost analysis and present value revenue requirements ("PVRR") analysis offered by Grain Belt Express witness David Berry.² Specifically, Mr. Zuraski addresses Mr. Berry's economic studies that shows producing energy at wind farms in western Kansas and delivering it to MISO and PJM through the Grain Belt Express transmission line is less expensive than other alternatives to generate electricity, including producing energy through new natural gas generation or through a comparable amount of new wind plants in Illinois. Mr. Berry also presented economic analyses showing that the alternative of western Kansas wind farms plus the Grain Belt Express Project

² See lines 52 to 54 of Mr. Zuraski's direct testimony where he states that he will be referencing the testimony of Grain Belt Express witnesses Berry, Skelly, Cleveland, McDermott and Loomis.

has a lower PVRR than the status (*i.e.*, relying on current market sources). (Grain Belt Express Ex. 11.0 at pp. 38-45.) *See* Staff Exhibit 3.0, ll. 66-81. Mr. Berry demonstrated that the Project is less expensive than these other options by preparing financial models that calculated the levelized cost of energy produced by Kansas wind farms and delivered to MISO and PJM by the Project, and the PVRR for the Kansas wind farms plus the Project, as compared to the alternatives. (Grain Belt Express Ex. 11.0 at pp. 38-45.) Mr. Zuraski, a Staff economist, responded to Mr. Berry's economic analyses.

8. Accordingly, there is nothing "cumulative" about the testimony offered by Messrs. Rashid and Zuraski, as their testimony as to "least-cost" is responsive to distinct studies proffered by two different Grain Belt Express witnesses. While Messrs. Galli and Berry each offer testimony (to which Messrs. Rashid and Zuraski separately respond) that demonstrate the Project is the least-cost option as compared to several alternatives, that is where the similarities end. *See Dahan v. UHS of Bethesda, Inc.*, 295 Ill. App. 3d 770, 781 (1st Dist. 1998) (testimony of three expert witnesses as to the defendant's failure to order a blood test was not cumulative because the witnesses each testified as a neurologist, hematologist and internist); *Hunt v. Harrison*, 303 Ill. App. 3d 54, 57-58 (1st Dist. 1999) (testimony of the decedent's reverend regarding the decedent's relationship with its children was not "cumulative" to the testimony of two of the decedent's children on the same topic because the reverend was an independent witness who could offer a different perspective on the decedent's relationship with his children); *Steele v. Provena Hospitals*, 2013 IL App (3d) 110374, ¶78 (testimony of two expert witnesses regarding defendant's failure to diagnose chicken pox was not cumulative because one expert had emergency room experience and specialized in infectious diseases and the other expert specialized in emergency care).

9. Further, even if Zotos could show that the testimony of Messrs. Rashid and Zuraski was in fact cumulative, Rule 403 requires that Zotos *also* show that the probative value

of this testimony is “*substantially outweighed* by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence” (emphasis added). Zotos fails to make a single argument that shows the probative value of this purportedly cumulative testimony is *substantially outweighed* by any of the dangers identified in Rule 403.³ See *Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.*, 159 Ill. 2d 137, 168-169 (1994) (rejecting defendants’ argument that redaction of plaintiff’s financial statements created the risk of jury confusion because defendant made no showing of how the redaction could confuse the jury).

10. Nor can Zotos make such a showing. This proceeding will be before an Administrative Law Judge and, ultimately, an expert tribunal (not a jury) who can understand and distinguish between the testimonies of Messrs. Rashid and Zuraski, so there is no risk of confusion. Further, there is no risk of delay as there is a schedule in place for the evidentiary hearings and the witnesses on the “least-cost” issue are already known.

11. Accordingly, the Motion should be denied.

WHEREFORE, for the reasons set forth above, Grain Belt Express Clean Line LLC respectfully requests that Zotos’ Motion in Limine to exclude from evidence certain portions of the direct testimony of Staff witness Yassir Rashid or, alternatively, certain portions of the direct testimony of Staff witness Richard Zuraski be denied.

³ Zotos does assert that the testimony of Messrs. Rashid and Zuraski on the topic of “least-cost” risks inviting a proliferation of witnesses all testifying on the same subject in a “race for numerical superiority.” Motion at ¶7. However, as described in ¶10 above, there is no real likelihood that the “risk” Zotos identifies will cause any actual delay since the witnesses and their testimony are already known.

Respectfully submitted,

GRAIN BELT EXPRESS CLEAN LINE
LLC

By: /s/ Owen E. MacBride

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