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Former Gov. Nixon leads legal challenge over denied wind transmission project

By Bryce Gray St. Louis Post-Dispatch Nov 29, 2017



Missouri Governor Jay Nixon answers questions from the media from his office on Friday, May, 13, 2016, following the legislature's last day of the legislative session in Jefferson City. Photo by Christian Gooden, cgooden@post-dispatch.com

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Led by former Gov. Jay Nixon, a St. Louis-based legal team representing developers of the Grain Belt Express transmission line have filed a brief challenging the multistate project's recent denial by Missouri regulators.

Clean Line Energy, the Houston-based company behind the project, had signaled after its latest rejection in August that an appeal would be imminent. Briefs outlining the company's arguments were filed Tuesday in the Eastern District of the Missouri Court of Appeals, with Nixon, now a partner at the Clayton law firm Dowd Bennett, spearheading the case.

The stalled infrastructure project would span four states, bringing wind energy from Kansas to Missouri, Illinois and Indiana, and into the grid beyond. Every state along its path has long since granted approval, except Missouri.

Though out of elected office, the state's 55th governor sees the proposed 780-mile transmission line as an opportunity to remain involved with an issue of statewide — or even broader — importance.

"I do think the policy implications of all of this are real, significant and important," said Nixon, citing the widespread demand for the project's wind energy, which is projected to save certain cities, like Kirkwood, \$10 million per year.

"When you can lower baseline costs for electricity for everybody — for homes and businesses — that makes us more competitive," he said. "I don't want Missouri to be left on the sidelines for these important investments, not just now, but for years to come."

The brief filed in the case lays out several arguments claiming that "the PSC erred in denying Grain Belt Express' application," focusing criticism on the commission's deference to a controversial court ruling from the Western District of the Missouri Court of Appeals.

That earlier decision surrounding Ameren's Mark Twain Project, a 95-mile transmission line proposed for the northeastern part of state, ruled that assent from each individual county along the project's path would first be required before the PSC could grant approval.

“Basically the case law and the way that the regulations have properly worked for the last 100 years would be dramatically upset by the policy laid out in that case,” Nixon said. “You can’t take away the PSC’s authority to make thoughtful, important decisions about this in a careful and proper way.”

Critics have said that the Western District’s reasoning sets a precedent that would make it profoundly challenging for any large-scale infrastructure projects to garner approval in Missouri in the future, if the dissent of a single county along their path could trip them up.

Those critics included several of the PSC commissioners themselves — all of whom were appointed by Nixon.

“The courts got this one wrong and it’s going to have big policy implications,” said Commissioner Scott Rupp, when he “reluctantly” voted to deny the project’s latest application.

During the August vote, four commissioners, including PSC Chairman Daniel Hall, voiced support for the project before voting against it, citing the precedent from the Mark Twain ruling.

Though an appeal was expected, some following the Grain Belt Express case initially suggested that its rejection could be challenged at the federal level, on the grounds that it interrupted interstate commerce. But Nixon said he believes it is best that Missouri address this issue within its own borders and court system.

Oral arguments in the case are set to be heard in February. That process could be bypassed, however, if the case is taken up by the state Supreme Court, as Clean Line has requested.

