

TRANSMISSION

Former Mo. governor pleads case to save \$2.3B Clean Line

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Former Missouri Gov. Jay Nixon (D). Dowd Bennett

ST. LOUIS — Arguing his first case since returning to practicing law, former Missouri Gov. Jay Nixon told a panel of state appellate court judges yesterday that the Public Service Commission erred in rejecting a \$2.3 billion Grain Belt Express transmission line that would bisect the state.

Nixon (D) told the panel of three judges during an hour of oral arguments that the PSC wrongly applied a court order overturning a previous decision to approve a separate transmission line.

The stakes are high for the developer Houston-based Clean Line Energy Partners but also for counties that would reap \$7 million a year in local taxes if the project is built and for cities across Missouri that would save millions of dollars a year by purchasing cheap wind energy.

"This is a case that has significant implications for the future of our state," Nixon said.

The Grain Belt Express line would deliver wind energy from remote southwest Kansas to Indiana to serve more populous areas in the East. The line would have 4,000 megawatts of capacity, with 3,500 MW sent to the PJM Interconnection LLC grid and 500 MW delivered to eastern Missouri, part of the Midcontinent Independent System Operator's grid.

The PSC in August **denied** Clean Line's request to build the 780-mile Grain Belt Express even though the company had proven a need for the project.

The commission, however, said its hands were tied because the Court of Appeals for the Western District of Missouri had rejected a similar decision related to a 100-mile transmission line proposed by Ameren Corp.

That court **ruling** said state utility regulators could not give Ameren approval for the project until each of the counties along the route agreed.

Clean Line, which already has regulatory approvals from three other states that it would cross, quickly appealed the case to the Court of Appeals for the Eastern District in St. Louis.

The company said the Western District got the decision wrong. But in its appeal, Clean Line said the PSC shouldn't have applied the earlier court ruling to its application.

The company contends its application for the Grain Belt Express was filed under a specific subsection of Missouri statute not referenced in the Western District opinion.

The company said it sought a "line" certificate rather than an "area" certificate, which applies to a provision of franchised utility service. The statute requires only applicants seeking the latter approval to first obtain consent of "proper municipal authorities."

'Plain language'

The "plain language" of the law distinguishes a line certificate from an area certificate, Nixon said. "The PSC decision upsets decades of unbroken case law," he said.

Clean Line was joined in its appeal by the Missouri Joint Municipal Electric Utility Commission, which supplies electricity to dozens of municipal utilities across the state and contracted for an option to buy Kansas wind energy delivered via the Grain Belt Express line ([Energywire](#), March 21). Attorneys for a coalition of environmental and renewable energy advocates also intervened in support of Clean Line.

Jennifer Heintz, an attorney for the PSC, argued that the commission made the correct design to deny Clean Line's application.

Heintz noted that she argued the case on the commission's behalf before the Western District, trying to make the distinction between a line certificate and an area certificate. But that court disagreed.

"We [the PSC] didn't have to like it and we didn't have to agree with it," she said. "The Western District told us how to read the law and that we made a mistake."

The PSC was joined in defending its ruling by the Missouri Landowners Alliance, a group of rural landowners that has fought to block the Grain Belt Express project.

If parties in the courtroom agreed on anything yesterday it was that the wording of the 1913 statute governing approval of utility infrastructure projects, last updated a half century ago, is less than clear.

"This isn't a well-drafted statute," said Judge Lawrence Mooney.

Judge Lisa Page also asked attorneys for the PSC and the landowner group about whether county commissions are considered "municipal authorities" under statute and PSC rules.

Page also questioned whether counties, by law, have a role in deciding whether utility regulators grant a certificate for a transmission line.

"I don't see where any county has a dog in the fight" over a certificate, she said.

Shoring up PSC authority

While Nixon's role as an attorney for Clean Line only began a few months ago when the company appealed the PSC's decision, he has close links to many key parties involved in the case.

As governor, he appointed all five commission members who voted unanimously to reject Clean Line's application. Nixon, a Democrat who endorsed the Grain Belt Express project in his final year in office, also initially appointed Page to the court in 2015. None of the judges made any reference to his two terms as governor and referred to him only as "counselor" throughout the proceeding.

In an interview after oral arguments, Nixon reiterated a point made in his argument — that the case is about preserving the independent authority of the PSC, which has the expertise to decide whether a transmission line is needed, and not ceding authority to make those decisions to local governments.

"They [the PSC] make decisions not just for a city or county, but for the state," he said.

In the case of the Grain Belt Express, cities that would take service from the line would save more than \$10 million annually, he said. And the counties the project would cross initially gave their assent to Clean Line, only to see some of them later try to withdraw their approvals.

Clean Line began developing the project in 2010. Twice the company has been turned away from the PSC, and the company has been vague about its next steps if it loses the appeal.

"We are committed to moving this innovative project forward," Mark Lawlor, vice president of development for Clean Line, said in a prepared statement. "With increased customer demand for low-cost renewable energy, new transmission projects are more necessary than ever."

Clean Line has repeatedly stressed the need to get a quick resolution to the case — a reason it unsuccessfully asked the Supreme Court to take on the matter even before the appellate court ruled.

Timing is important because of the phaseout of the federal production tax credit and how the PTC step-down will affect the economics of Kansas wind development and the pricing of wind energy for end-use customers.

Even if the court agrees with Clean Line, the fate of the Grain Belt Express is uncertain.

Judges made clear they can only remand the case to the PSC with a clarification of the statute and cannot instruct the commission to approve the application.

It would be up to the PSC on how to proceed and whether to conduct new hearings or rule again based on evidence in the record.

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