

State of Missouri  
Office of Ombudsman for Property Rights

2024 Annual Report



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## **I. Introduction**

The United States Constitution’s Takings Clause states, “nor shall private property be taken for public use, without just compensation.”<sup>1</sup> The Missouri Constitution expands this protection to damaged property, stating “[t]hat private property shall not be taken or damaged for public use without just compensation.”<sup>2</sup> Condemnation of private property using the power of eminent domain must be for a public use and it requires just compensation to the property owner.

Following the Supreme Court of the United States’ decision in *Kelo v. City of New London*<sup>3</sup> the Missouri General Assembly passed House Bill 1944 (2006), which provided additional protections for landowners and created the Ombudsman for Property Rights (the “Ombudsman”).

The Ombudsman assists Missouri citizens “by providing guidance, which shall not constitute legal advice, to individuals seeking information regarding the condemnation process and procedures.”<sup>4</sup> The Ombudsman also documents the use of eminent domain in Missouri along with any issues associated with its use and submits that information in an annual report to the General Assembly.<sup>5</sup>

## **II. Eminent Domain in Missouri During 2024**

Throughout 2024 many entities sought to exercise the power of eminent domain. This report will first address the bills introduced in the 2024 legislative session that impacted the exercise of eminent domain. It will then address three projects that may utilize eminent domain authority, two of which came to light in calls to the Ombudsman. Next, it will briefly address the calls received by the Ombudsman. Finally, it will conclude with suggested legislative changes to address several concerning trends that arose during calls from landowners throughout the year.

### **A. Legislation Related to the Use of Eminent Domain**

Though no laws addressing the use of eminent domain successfully passed through the General Assembly in 2024, several bills sought to limit its use in two ways: (1) limitations on the use of eminent domain for the construction of solar and wind generating facilities; and (2) limitations on the use of eminent domain to take property from religious organizations.

First, several bills sought to limit an entity’s ability to use eminent domain or condemnation to take property for the construction of new wind or solar generating facilities.<sup>6</sup> However, most of

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<sup>1</sup> U.S. Const. amend. V.

<sup>2</sup> Mo. Const. art. I, § 26.

<sup>3</sup> 545 U.S. 469 (2005).

<sup>4</sup> § 523.277 RSMo.

<sup>5</sup> *Id.*

<sup>6</sup> *See, e.g.*, S. 833, 102nd Gen. Assemb., 2nd Reg. Sess. (Mo. 2024); S. 1262, 102nd Gen. Assemb., 2nd Reg. Sess. (Mo. 2024); H.R. 1449, 102nd Gen. Assemb., 2nd Reg. Sess. (Mo. 2024); H.R. 1750, 102nd Gen. Assemb., 2nd Reg. Sess. (Mo. 2024).

these bills included a provision that entities may use eminent domain to condemn property for the construction of the infrastructure necessary to collect and deliver energy generated or manufactured by these types of generating facilities.<sup>7</sup> The bills sought to effectuate these changes by amending § 523.010 RSMo. to include provisions specifying the limitations.<sup>8</sup> Though none of these bills successfully passed both houses of the General Assembly in 2024, at least one bill including these limitations has been pre-filed in both the House of Representatives and Senate ahead of the 2025 legislative session.<sup>9</sup>

Second, at least one bill sought to limit a government entity’s ability take property owned by a religious organization, unless the condemnation was for the development of a public utility.<sup>10</sup> The Committee Substitute for this bill sought to effectuate this change by repealing § 88.073 RSMo. and enacting § 67.015 RSMo. and a new § 88.073 RSMo.<sup>11</sup>

**B. Select Projects that May Utilize Eminent Domain Authority in Missouri**

Three projects that may utilize eminent domain warrant discussion in this Report. The first relates to Ameren Transmission Company of Illinois’s Fairport to Denny to Iowa/Missouri Border Transmission Project. The second is Ameren Missouri’s substation project in Cooper County, Missouri, and the third project is the Grain Belt Express transmission line. Each of these projects is discussed in turn below.

**1. Ameren Transmission Company of Illinois Fairport to Denny to Iowa/Missouri Border Transmission Project**

The Ombudsman received calls from several individuals potentially affected by Ameren Transmission Company of Illinois’s (“ATXI”) Fairport to Denny to Iowa/Missouri Border Transmission Project (the “FDIM Project”). This project “involves construction of a new, approximately 44-mile, 345kV electric transmission line.”<sup>12</sup> This project “will be located in Worth, Gentry, and De[K]alb counties.”<sup>13</sup> The Midcontinent Independent System Operator, Inc. (“MISO”) identified the need for this project and on October 27, 2023, “chose ATXI to be the Selected Developer for the FDIM Project and recognized MJMEUC [Missouri Joint Municipal Electric Utility Commission] as a project partner.”<sup>14</sup>

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<sup>7</sup> See, e.g., S. 1262, 102nd Gen. Assemb., 2nd Reg. Sess. (Mo. 2024); H.R. 1449, 102nd Gen. Assemb., 2nd Reg. Sess. (Mo. 2024); H.R. 1750, 102nd Gen. Assemb., 2nd Reg. Sess. (Mo. 2024).

<sup>8</sup> *Id.*

<sup>9</sup> S. 199, 103rd Gen. Assemb., 1st Reg. Sess. (Mo. 2024); H.R. 475, 103rd Gen. Assemb., 1st Reg. Sess. (Mo. 2024).

<sup>10</sup> S. 1468, 102nd Gen. Assemb., 2nd Reg. Sess. (Mo. 2024).

<sup>11</sup> *Id.*

<sup>12</sup> James Nicholas Direct Testimony at 3, Comm’n Case No. EA-2024-0302, Docket Item 14.

<sup>13</sup> *Id.*

<sup>14</sup> ATXI Application at 4-10, Comm’n Case No. EA-2024-0302, Docket Item 3.

The individuals who contacted the Ombudsman about the FDIM Project expressed concern with the information that ATXI presented to the landowners potentially affected by the project. They felt as if the information ATXI provided to landowners was inadequate. Particularly, it came to light that ATXI changed the route for the FDIM Project after initial communications with landowners, so that the route presented to the Public Service Commission of the State of Missouri (the “Commission”) for approval was different than the route initially shown to landowners in the area. Individuals were especially concerned because they felt that the route change unfairly affected those landowners who were not affected by the initial route, but were affected by the new route.

ATXI has requested a Certificate of Convenience and Necessity (“CCN”) from the Commission to construct the FDIM Project, which the Commission is considering in Case Number EA-2024-0302. The Commission has held two local public hearings in this case: one in-person hearing on December 9, 2024, and one virtual hearing on December 10, 2024. On December 20, 2024, the Staff of the Commission (“Staff”) filed its Recommendation, noting concern with the notifications ATXI provided to landowners, but ultimately recommending that the Commission approve the CCN after holding another local public hearing and with the imposition of certain specified conditions.<sup>15</sup> As of the date of this Report, the Commission has not yet made a decision in this matter.

## **2. Ameren Missouri Substation in Cooper County, Missouri**

The Ombudsman also received several calls from individuals potentially affected by Ameren Missouri’s request to construct a new substation in Cooper County, Missouri. This project consists of “a new 161 kV substation along with ancillary connecting transmission lines” and reconfiguration of “an existing 69 kV transmission substation.”<sup>16</sup>

The individuals who contacted the Ombudsman about this project expressed concern with the location of the substation, especially its proximity to homes in the area and the effect it will have on their property values.

Ameren Missouri requested a CCN from the Commission for this project, which the Commission is considering in Case Number EA-2025-0028. Several individuals potentially affected by this project intervened in the case before the Commission.<sup>17</sup> In a Joint Filing, Staff noted that discovery in this matter is ongoing.<sup>18</sup> In that same filing, Ameren Missouri asserted that it “continues to negotiate with the Neighboring Residents and address their concerns with the proposed transmission substation.”<sup>19</sup> It further asserted that it “is working to prepare a landscaping plan for

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<sup>15</sup> Staff Recommendation at 2-6, Comm’n Case No. EA-2024-0302, Docket Item 50.

<sup>16</sup> Ameren Mo. Application at 1, Comm’n Case No. EA-2025-0028, Docket Item 2.

<sup>17</sup> Comm’n Ord. Granting Applications to Intervene & Ord. Directing Filing, Comm’n Case No. EA-2025-0028, Docket Item 6.

<sup>18</sup> Resp. to Ord. Directing Filing & Status Rep. at 2, Comm’n Case No. EA-2025-0025, Docket Item 9.

<sup>19</sup> *Id.*

discussion with the Neighboring Residents.”<sup>20</sup> The Commission has ordered the parties to this matter to file a proposed procedural schedule no later than January 27, 2025.<sup>21</sup> At the time of this Report, the Commission has not yet made a decision in this matter.

### **3. Grain Belt Express Transmission Line**

Perhaps one of the most notable projects in Missouri that may use eminent domain is the electric transmission line known as the “Grain Belt Express.” The Commission issued Grain Belt Clean Line LLC (“GBCL”) a CCN to construct the Grain Belt Express transmission line in 2019.<sup>22</sup> Then, on October 12, 2023, the Commission granted Grain Belt Express LLC’s<sup>23</sup> (“GBE LLC”) request to amend that CCN.<sup>24</sup>

Below is a short description of the original Grain Belt Express project, a description of the amended CCN, and brief discussion of the 2024 events that may impact the Grain Belt Express.

#### **a. GBCL’s Original Certificate of Convenience and Necessity**

On March 20, 2019, following a remand from the Supreme Court of the State of Missouri, the Commission issued an Order granting GBCL’s application for a CCN to build the Grain Belt Express transmission line.<sup>25</sup> This CCN included an approximately 780-mile, overhead, multi-terminal +600 kilovolt high-voltage, direct current transmission line and associated facilities.<sup>26</sup> The project was to span across Kansas, Missouri, Illinois, and Indiana, including approximately 206 miles in Missouri.<sup>27</sup> Originally, the Grain Belt Express line would deliver approximately 500 megawatts of electricity to Missouri.<sup>28</sup> The original route of the Grain Belt Express line is shown below:

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<sup>20</sup> *Id.*

<sup>21</sup> Comm’n Ord. Directing Filing at 2, Comm’n Case No. EA-2025-0028, Docket Item 10.

<sup>22</sup> Comm’n Rep. & Ord. on Remand, Comm’n Case No. EA-2016-0358, Docket Item 758.

<sup>23</sup> On May 27, 2020, Grain Belt Express Clean Line LLC notified the Commission that it had changed its name to Grain Belt Express LLC. Letter at 1, Comm’n Case No. EN-2020-0385, Docket Item 1. On June 9, 2020, the Commission recognized the name change. Comm’n Ord. Recognizing Name Change at 2, Comm’n Case No. EN-2020-0385, Docket Item 5.

<sup>24</sup> Comm’n Rep. & Ord. at 70-76, Comm’n Case No. EA-2023-0017, Docket Item 287.

<sup>25</sup> *See generally* Comm’n Rep. & Ord. on Remand, Comm’n Case No. EA-2016-0358, Docket Item 758.

<sup>26</sup> *Id.* at 9.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*



Original Grain Belt Express Proposed Route. Thomas F. Shiflett Direct Testimony, Schedule 4 “Construction Plan for the Grain Belt Express Clean Line” at 70, Comm’n Case No. EA-2016-0358, Docket Item 10.

Notably for purposes of this Report, the Commission in its March 20, 2019 Report and Order concluded that “Grain Belt’s Project will serve the public use, and [GBCL] qualifies as a public utility.”<sup>29</sup> This finding allowed GBCL to utilize the power of eminent domain to acquire involuntary easements to construct the Grain Belt Express line.<sup>30</sup>

The Commission’s March 20, 2019 Report and Order also included a provision that required GBCL to file an updated application with the Commission “[i]f the design and engineering of the project is materially different from how the Project is presented in [GBCL’s] Application.”<sup>31</sup>

**b. GBE LLC’s Application to Amend the Certificate of Convenience and Necessity**

On October 12, 2023, the Commission granted GBE LLC’s request to amend Grain Belt’s CCN in three ways and imposed several conditions.<sup>32</sup> These amendments included relocating a converter station and increasing its size, relocating an AC connector line (known as the Tiger Connector), and constructing the project in two phases.<sup>33</sup> The Grain Belt Express line’s updated route is shown below:

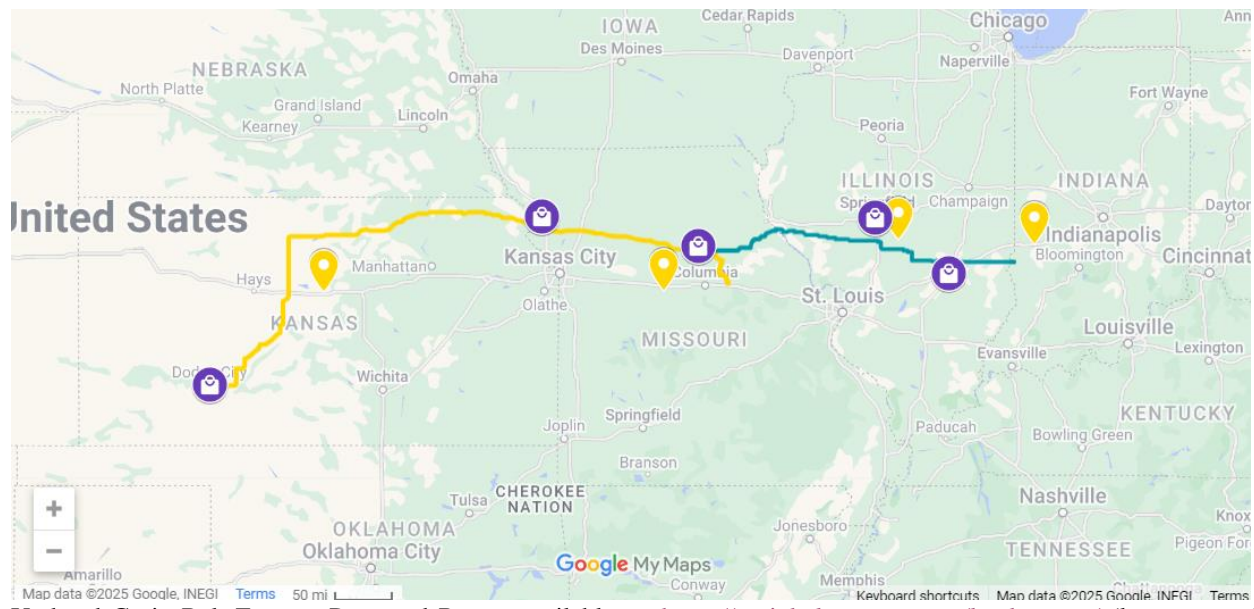
<sup>29</sup> *Id.* at 38.

<sup>30</sup> *See* § 523.010 RSMo.

<sup>31</sup> Comm’n Rep. & Ord. on Remand at 52, Comm’n Case No. EA-2016-0358.

<sup>32</sup> Comm’n Rep. & Ord. at 70-76, Comm’n Case No. EA-2023-0017, Docket Item 287.

<sup>33</sup> *Id.* at 70.



Updated Grain Belt Express Proposed Route, available at: <https://grainbeltexpress.com/landowners/> (last accessed Jan. 1, 2025).

**c. 2024 Updates on the Grain Belt Express**

On October 15, 2024, the Missouri Court of Appeals, Western District issued an opinion stating that Chariton County could not prevent GBE LLC from constructing the Grain Belt Express by withholding its assent to “the manner in which the overhead transmission lines are constructed to ensure the safety and use of the county’s public roads.”<sup>34</sup> As background, though Chariton County had previously given its assent, it later rescinded that assent “until utility status has been approved by the” Commission.<sup>35</sup> The Commission later approved utility status for the Grain Belt Express, but Chariton County declined to provide the requested assent.<sup>36</sup> After a 2023 trial, the trial court concluded that Chariton County was “prohibited from taking any action, adopting any ordinance, resolution, or regulation governing Grain Belt, including taking any action that regulates the construction of overhead transmission lines pursuant to Section 229.100.”<sup>37</sup> In its 2024 opinion, the Western District concluded that GBE LLC must obtain assent from Chariton County and affirmed the trial court’s decision that Chariton County could take no action, including withholding its assent, “to prevent Grain Belt from constructing the overhead transmission lines on the count[er]’s public roads per the route approved by the [Commission].”<sup>38</sup> On December 16, 2024, Chariton County requested transfer to the Missouri Supreme Court. As of the date of this Report, it does not appear that the Missouri Supreme Court has acted on Chariton County’s request.

<sup>34</sup> *Grain Belt Express, L.L.C. v. Chariton Cnty., Mo.*, 2024 Mo. App. LEXIS 737, at \*15-\*16 (Mo. Ct. App. Oct. 15, 2024).

<sup>35</sup> *Id.* at \*2.

<sup>36</sup> *Id.* at \*3-\*4.

<sup>37</sup> *Id.* at \*5.

<sup>38</sup> *Id.* at \*16.



Also on October 15, 2024, Ms. Cheri Meadows filed a complaint against GBE LLC before the Commission, requesting that the Commission order GBE LLC to move the Tiger Connector.<sup>39</sup> GBE LLC filed a Response to Ms. Meadows’s Formal Complaint and the Commission ordered its Staff to file a Report about the Complaint no later than January 17, 2025.<sup>40</sup>

Approximately two months later, on December 16, 2024, the Department of Energy announced that it would no longer be considering the Grain Belt Express as a National Interest Electric Transmission Corridor.<sup>41</sup> This does not appear to affect whether the project will move forward.

Finally, the website dedicated to the Grain Belt Express asserts that “Phase 1 will be ready to start construction-related activities as soon as 2025, pending regulatory reviews.”<sup>42</sup> It further states that “[s]urvey and engineering field work is currently underway along certain Phase 1 route segments, with landowners being notified in advance for any expected work on their property.”<sup>43</sup>

### **C. Ombudsman Calls Received from Missouri Landowners**

In 2024, approximately seventy (70) Missouri landowners contacted the Ombudsman regarding eminent domain activities in counties and municipalities across the State. This represents an approximately 20% increase from 2023 (58 calls) and an approximately 70% increase from 2022 (41 calls).

These calls typically follow the receipt of a sixty-day notice or contact from an entity advising the landowner that the entity seeks to acquire an interest in the owner’s real property. Though the Ombudsman endeavors to provide all individuals with the assistance that they request, given the statutory limitation on the guidance the Ombudsman can provide,<sup>44</sup> all individuals do not receive the answers they request.

The Ombudsman provided guidance to landowners on a wide range of topics, including, but not limited to:

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<sup>39</sup> GBE LLC Response to Formal Complaint at 4, Comm’n Case No. EC-2025-0136, Docket Item 7.

<sup>40</sup> Comm’n Ord. Directing Staff to File a Recommendation & Setting a Time for Responses at 1, Comm’n Case No. EC-2025-0136, Docket Item 6.

<sup>41</sup> See Nat’l Int. Elec. Transmission Corridor Designation Process, U.S. Dep’t of Energy, available at: <https://www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process> (last accessed Jan. 1, 2025); see also Allison Kite, *Grain Belt Route Removed from Federal Transmission Program—But Project Will Go Forward*, Mo. Independent (Dec. 17, 2024), <https://missouriindependent.com/2024/12/17/grain-belt-route-removed-from-federal-transmission-program-but-project-will-go-forward/> (last accessed Jan. 1, 2025).

<sup>42</sup> Landowner Updates, Project Status, available at: <https://grainbeltexpress.com/landowners/> (last accessed Jan. 1, 2025).

<sup>43</sup> *Id.*

<sup>44</sup> See § 523.277 RSMo. (mandating that the Ombudsman “provid[e] guidance, which shall not constitute legal advice, to individuals seeking information regarding the condemnation process and procedures”).



- (1) procedural requirements to be followed in circuit court;
- (2) when a property owner may be entitled to damages beyond the appraised price of the land itself;
- (3) the effect of the language of the easement; and
- (4) what is required to constitute good faith negotiations.

Many callers express frustration with the eminent domain process, stating that they are powerless to fight against the entities that seek to condemn their property. Oftentimes they wonder whether they can make any difference.

### **III. Conclusion and Suggested Legislative Changes**

It is clear that many entities continue to use eminent domain in Missouri. Many of the calls the Ombudsman received throughout 2024 raised concerns that the eminent domain process is structured in a way that strongly favors the condemning authority and that landowners have little to no ability to contest the exercise of condemnation once an entity decides to take their property. One area of concern is the lack of legal counsel for landowners. Though the Ombudsman provides “guidance . . . regarding the condemnation process and procedures,” by statute the Ombudsman cannot provide legal advice to those individuals.<sup>45</sup> In many instances though the amount of likely damages is low enough that hiring an attorney could offset or exceed the amount of damages from the taking.

The lack of legal counsel for landowners remains a concern for condemnations and condemnation hearings, especially where the landowner wants to challenge the condemnation but cannot afford legal counsel.

The Ombudsman suggests that the legislature consider changes that would protect landowners by requiring a condemning authority to

- (1) advise a landowner of his or her rights in condemnation prior to making an offer to acquire the landowner’s property;<sup>46</sup>
- (2) provide all relevant information regarding the project and the requested taking to the landowner and allowing for a cause of action should the condemning authority provide false information; and

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<sup>45</sup> § 523.277 RSMo.

<sup>46</sup> Notably § 523.250 RSMo. requires a condemnor to provide this information “[a]t least sixty days before filing of a condemnation petition . . . .” § 523.250.1 RSMo. However, it is the Ombudsman’s understanding that some individuals do not receive this information until after they have been in negotiations regarding the appropriate price to acquire their property. To ensure that all landowners understand their rights prior to engaging in negotiations to sell their property or an easement on their property, the Ombudsman suggests that the legislature consider a change that would require a condemning authority to provide this information prior to their initial offer to the landowner.

- (3) make an affirmative showing of public use and necessity that the landowner could dispute prior to the circuit court entering an order of condemnation.<sup>47</sup>

It has also come to the Ombudsman's attention that no laws or regulations exist governing setbacks on the installation of commercial solar projects on an individual's property. This can lead to concerns from neighbors who do not want these installations close to their property lines. An individual who contacted the Ombudsman suggested that the legislature may also consider enacting laws that govern these types of projects.

For questions about this report, please contact Lindsay VanGerpen, Senior Counsel, at (573) 751-5565 or [lindsay.vangerpen@opc.mo.gov](mailto:lindsay.vangerpen@opc.mo.gov).

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<sup>47</sup> At this time, it is the Ombudsman's understanding that if a landowner would like to contest the necessity of the proposed taking, he or she "must plead and prove fraud, bad faith, or an arbitrary or unwarranted abuse of discretion of the condemnor in its claim of 'necessity'..." *Missouri Pub. Serv. Comm'n v. H & W Inv. Co.*, 602 S.W.2d 41, 43 (Mo. Ct. App. 1980); see *Mapco, Inc. v. Williams*, 581 S.W.2d 402, 405 (Mo. Ct. App. 1979). The landowner may make these allegations in either a motion to dismiss or an answer asserting affirmative defenses in the Circuit Court. Either or both filings should likely be filed within thirty days of receiving service of the condemnation petition. See Mo. R. Civ. P. 55.27, 55.25.

This standard puts the burden on the landowner to not only know that this filing is required, but also to gather the information and evidence necessary to make these showings. Where many landowners cannot afford legal representation or the value of the condemnation does not justify the cost of representation, this burden is quite high.