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	)))))))	Case No. EA-2016-0358

REPLY BRIEF ON REMAND
OF APPLICANT GRAIN BELT EXPRESS CLEAN LINE LLC

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I. Introduction

The Application of Grain Belt Express Clean Line LLC ("Grain Belt Express" or "Company") for a line Certificate of Convenience and Necessity ("CCN") to build the Project under Section 393.170.1[1] continues to be strongly supported by the Missouri Joint Municipal Electric Utility Commission ("MJMEUC"), the Clean Grid Alliance, The Wind Coalition, Sierra Club, the Natural Resources Defense Council, and Renew Missouri, as seen by their initial briefs. The Missouri Department of Economic Development ("DED") and Consumers Council of Missouri expressed their support for the Application as well (Tr. 1795-96, 1797-98). The new owner of the Iron Star Project, ENGIE North America, stands behind the power purchase agreement ("PPA") with MJMEUC (Tr. 1791-92). Support for the Application was expressed by IBEW Local Unions 2 and 53 ("IBEW Unions"), Missouri Industrial Energy Consumers ("MIEC"), the Missouri Retailers Association, Consumers Council of Missouri, and Walmart Stores, Inc. during the earlier stage of this proceeding.

Only two briefs were submitted in opposition. The first was filed jointly by the Missouri Landowners Alliance ("MLA"), the Eastern Missouri Landowners Alliance, d/b/a Show Me Concerned Landowners ("Show Me"), and several landowners.[2] The second brief, submitted by the Missouri Farm Bureau ("Farm Bureau"), opposed the Company's Application primarily for reasons relating to the use of eminent domain.

Staff has acknowledged that the Company and its prospective owner Invenergy Transmission LLC ("Invenergy Transmission" and together with its affiliates, "Invenergy")

[1] All statutory references are to the Missouri Revised Statutes (2016), as amended, unless otherwise noted.
[2] This Initial Brief on Remand was submitted on behalf of MLA, Show-Me, Charles and Robyn Henke, R. Kenneth Hutchinson, Randall and Roseanne Meyer, and Matthew and Christina Reichert. For ease of reference, this brief will be referred to as the "MLA Brief." Except where an argument is asserted only by a particular party, these opponents to the Application will be referred to collectively as "MLA."

possess the necessary operational and financial qualifications to receive a CCN. See Staff Brief at 9. Based on the Missouri Supreme Court's decision in Grain Belt Express Clean Line LLC v. PSC, 555 S.W.3d 469 (Mo. en banc 2018), which removed the legal impediment that the Commission believe existed regarding county assents, and the additional evidence received during the December evidentiary hearing, "Staff recommends the Commission grant the requested CCN and exemptions subject to the conditions" that the Company has agreed to, including Exhibits 205[3] and 206, and elsewhere. See Staff Brief at 35.

Consequently, Grain Belt Express will devote this Reply Brief to countering the legal arguments asserted by MLA, Show Me, and Farm Bureau, and to showing that the overwhelming weight of the factual evidence continues to support the granting of a line CCN to the Company.

II. Grain Belt Express is a Public Utility and Should be Granted a CCN

A. Grain Belt Express Owns Electric Plant and is an Electrical Corporation under Section 393.170.1

Neither MLA nor Farm Bureau questioned the Company's position that it owns "electric plant," as defined in Section 386.010(14). Staff agreed that "[c]ertainly, Grain Belt has acquired certain real estate (i.e., easements), and intends to acquire substantially more," on which will be erected "fixtures and personal property … to be used for or in connection with or to facilitate the … transmission … of electricity …." See Staff Brief at 8. Staff concluded that Grain Belt Express is an electrical corporation and thus a public utility subject to the Commission's jurisdiction and eligible for a line CCN. Id.

None of the landowner interveners except Show Me argue that Grain Belt Express is not an electrical corporation or a public utility. See MLA Brief at 3-14. Show Me continues to insist

[3] The conditions agreed to by the Company and Rockies Express Pipeline LLC ("REX") in Exhibit 205 are accurately described in the Post-Supplemental Evidentiary Hearing Brief submitted by REX.

that the PSC cannot exercise its authority in this case because the Company will have no Missouri retail customers and because its sales to wholesale customers in Missouri and elsewhere will be governed by regulations and policies of the Federal Energy Regulatory Commission ("FERC").[4] MLA Brief at 4. See Order Conditionally Authorizing Proposal and Granting Waivers, Grain Belt Express Clean Line LLC, No. ER14-409-000, 147 FERC ¶ 61,098 (2014). Such reasoning has never been accepted by this Commission, which has granted line CCNs to numerous transmission-only companies in Missouri that do not have retail customers.

1. Missouri Appellate Cases

Show Me relies on a century-old case concerning a brewery's sale of excess power generated at its facility to private citizens within three blocks of that facility. See MLA Brief at 6-9. In State ex rel. M.O. Danciger & Co. v. PSC, 205 S.W. 36, 39 (Mo. 1918), the issue was whether a brewery's selective sale of excess power generated at the brewery made it a "public utility" such that it owed a duty to provide electric service to all who requested it. The Court found that the statutory provisions defining "electric plant" and "electrical corporation" necessarily connote the concept of public service "[s]ince the sole right of regulation depends upon the public interest." Id. at 40. It further stated that "[w]e are not to be understood as saying that an electric plant constructed solely for private use could not, by professing public service, become by such profession, and by the furnishing of general public service, a public utility." Id. However, finding that there was "no explicit professing of public service," the Court concluded that the brewery had not devoted itself to a public use and therefore could not be regulated by the PSC. Id.

The Grain Belt Express Project, in no uncertain terms, professes to serve the public. Under FERC protocols, Grain Belt Express must broadly solicit interest in the Project, the rates that Grain

[4] Farm Bureau apparently agrees with this position. See Farm Bureau Brief at 4.

Belt Express negotiates must be just and reasonable, without undue discrimination or preference, and the service must not impair regional reliability and operational efficiency. Tr. 2039-40 (K. Zadlo). See Grain Belt Express Clean Line LLC, 147 FERC ¶ 61,098 at Para. 9 (2014). Furthermore, the facts in the record show that the interests of the public will be served by the Project. In response to questions from Commissioner Hall, Mr. Berry testified that the price of "delivered wind energy from western Kansas would be even cheaper [today] than it was previously," and that as "[w]ind turbine prices continue to come down," it is "correct" that these "lowered energy production costs … would translate to lower rates for … Missouri ratepayers in the MISO footprint." See Tr. 1956-59. "If utilities have a lower cost to serve, either immediately or over time, they pass along those lower costs to consumers through their cost-based rates." Tr. 1959 (D. Berry). The Grain Belt Express agreement with MJMEUC specifically meets the demand of its customers for renewable energy at low prices. Tr. 2129-33 (Grotzinger). Because the Project offers "a compelling project whose economics make a lot of sense," "it's good for consumers" and the public at large. Tr. 1816, 1822 (Skelly). As four Commissioners previously found, the Project will serve the public interest. See Concurring Opin. at 5-7 (Aug. 16, 2017).

Staff agrees that "[e]xtended discussion . . . is unnecessary" as to whether the Commission may lawfully grant a line CCN to Grain Belt Express if it determines the Project is necessary or convenient for the public service. See Staff Brief at 7. Staff previously observed that the Project "would be an indiscriminate offering of utility service to the public requiring a certificate of convenience and necessity from this Commission." See Staff Initial Brief at 2 (Apr. 10, 2017). Citing Danciger, Staff correctly asserted that "[t]he hallmark of a public utility is the offering of utility service to the public without discrimination." Id. at 3. Unlike the brewery in Danciger, the Company is a public utility because it will offer indiscriminate transmission service through an

open access transmission tariff that will be filed with and subject to the jurisdiction of FERC. See Ex. 104 at 4-5; (Berry Direct); Ex. 100 at 23-24 (Skelly Direct).

Show Me cites two other cases where companies were found not to be public utilities because they never offered electricity to anyone except one customer. Palmer v. City of Liberal, 64 S.W.2d 265, 268 (Mo. 1933) (seller "does not propose to deal with the public, but only to furnish the city of Liberal with electric current"); State ex rel. Buchanan County Power Transmission Co. v. Baker, 9 S.W.2d 589, 590-92 (Mo. en banc 1928) (company that sells electric energy "to only one customer" "is not a public utility"). See MLA Brief at 9-10. These cases bear no resemblance to the facts of this case and provide no legal basis to deny Grain Belt Express a line CCN.

In passing Show Me argues that the Company's opposition in 2017 to MLA's vaguely worded condition regarding this Commission's jurisdiction over the sale or disposition of Company assets indicates that Grain Belt Express has admitted it is not an electrical corporation or a public utility. See MLA Brief at 11-12. Although that mischaracterizes the Company's position, the argument is rendered moot by the Notice of Intended Case Filing, No. EM-2019-0150 (filed Nov. 20, 2018), where Grain Belt Express and Invenergy Transmission stated their intent to file a joint application with the Commission that seeks approval of the Company's acquisition by Invenergy Transmission.

2. Illinois Cases

Show Me's discussion of decisions from Illinois is not only irrelevant but grossly misleading. The cases are irrelevant because the Application of Grain Belt Express to this Commission is based on Missouri statutes enacted over the years as the Public Service

Commission Law, as well as the body of PSC and Missouri appellate decisions that control whether the Company should be granted a CCN.

Show Me's argument is misleading because it cites an intermediate appellate decision without properly identifying the court whose conclusion regarding non-discriminatory service has essentially been vacated by the Illinois Supreme Court. See MLA Brief at 10-11. The Third District Appellate Court in Illinois Landowners Alliance v. Illinois Commerce Comm'n, 60 N.E.3rd 150, 159 (Ill. App. 3d 2016) held that a Clean Line project similar to the Grain Belt Express Project was (a) not a public utility under Illinois law because it owned no assets in Illinois, and (b) did not plan to devote assets for public use without discrimination.

Show Me discusses this case without informing the Commission that the Illinois Supreme Court explicitly declined to address the non-discriminatory public use point, declaring: "[T]here is no need to reach the additional question of whether [the project] also fails the 'public use' requirement, as the appellate court concluded." Illinois Landowners Alliance v. Illinois Commerce Comm'n, 90 N.E.3d 448, 463 (Ill. 2017). It went on to state that if the company acquired the necessary assets under Illinois law and moved forward with its certificate application, "the question of public use can be revisited under the facts and circumstances then present. Any ruling on the question now would be purely advisory. Id. (emphasis added). Nonetheless, Show Me proceeds to cite the Appellate Court's decision as gospel. It also relies on a 1953 Illinois case which concluded that under Illinois law a business selling natural gas to 23 private customers was not a public utility. See MLA Brief at 11, citing Mississippi River Fuel Co. v. Illinois Commerce Comm'n, 116 N.E.2d 394, 399 (Ill. 1953). Show Me failed to discuss the fact that the Illinois Supreme Court noted that decisions of this nature vary from state to state, citing an Indiana Supreme Court case that reached the opposite conclusion. The Indiana Court found that a similar

natural gas business was subject to Indiana's public utility laws, a decision that the Supreme Court of the United States affirmed. Id. at 399, citing Panhandle Eastern Pipe Line Co. v. Public Service Comm'n of Ind., 332 U.S. 507, 521-24 (1947).

3. Commission Cases Granting CCNs to Interstate Transmission Projects

Finally, Show Me argues that because Grain Belt Express is proposing a Project that is interstate in nature, "it is not subject to the Commission's jurisdiction for any purpose." See MLA Brief at 12. However, years of PSC decisions demonstrate that Show Me's position has no legal basis.

The Commission regularly grants CCNs to public utilities that have no Missouri retail customers where their projects provide wholesale transmission service and their rates are regulated by FERC. For example, in 2001 IES Utilities, Inc. ("IES") requested that the Commission issue it a CCN to construct and operate a transmission line in Clark County or waive the requirement in Section 393.170 that it receive such a certificate. IES subsequently changed its name to Interstate Power and Light Co. ("IPL"). Although this transmission line would not be used to serve any customers in Missouri, and rather would provide an alternative transmission source to serve load growth in southeastern Iowa, the Commission found that it had authority to require IPL to obtain a CCN. In re IES Utilities, Inc., Order Granting Certificate of Public Convenience and Necessity, Case No. EA-2002-296 (2002). The Commission determined that it was necessary and convenient for the public service for IPL to construct and operate the proposed transmission line, and granted the CCN because IPL's proposed transmission line was necessary to provide reliable electric service to IPL customers residing exclusively outside Missouri. Id. While the Commission found that the requirements for a CCN were met even where the service was for Iowa customers only, the Grain Belt Express Project provides benefits to customers in Missouri ***and*** elsewhere.

In 2007 the Commission granted a CCN to ITC Midwest LLC ("ITC") as part of its order authorizing IPL to transfer those transmission line assets in Clark County to ITC. In re Interstate Power & Light Co., Order Granting Certificate of Convenience and Necessity, Case No. EO-2007-0485 (2007). The Commission "conclude[d] that ITC's ownership of the proposed transmission line is both necessary and convenient for the public service because by owning that line ITC will continue to serve customers in the Keokuk, Iowa area that IPL currently serves." Id. at 4. The Commission further waived certain reporting requirements imposed on utilities serving retail customers because ITC would have no retail electric customers in Missouri and rates for the transmission line would be set by FERC. Id. at 5-6.

The Commission also granted a line CCN to Transource Missouri, LLC, a company established to build wholesale regional transmission projects within the Southwest Power Pool ("SPP"), as well as other regional transmission organizations. In re Transource Missouri LLC, No. EA-2013-0098, Report and Order at 11, 2013 WL 4478909 (2013). The two Missouri projects for which the Commission granted Transource Missouri a CCN are regional, high-voltage, wholesale transmission projects. Id. Like the ITC Midwest case, the Commission waived certain reporting requirements as Transource Missouri would have no Missouri retail customers. Id. at 17, 26.

Most recently, the Commission granted on two occasions a line CCN to Ameren Transmission Company of Illinois to construct an interstate transmission line that crosses five counties in Missouri. In re Ameren Transmission Co. of Ill., No. EA-2017-0345, Order Approving Unanimous Stipulation & Agreement (Jan. 10, 2018) ("2018 ATXI Order"); In re Ameren Transmission Co. of Ill., No. EA-2015-0146, Report and Order (Apr. 27, 2016) ("2016 ATXI

Order").[5] In each of these orders the Commission determined that "ATXI is an electric utility and a public utility subject to Commission jurisdiction." Id. at 33, ¶10. See 2018 ATXI Order at 2 ("… ATXI is an electrical corporation and a public utility, and the Commission has jurisdiction over ATXI and the Project.").

There is ample legal authority and precedent for the Commission to grant a line CCN to Grain Belt Express.

B. The Commission May Consider the Resources of Grain Belt Express and Invenergy Transmission, as well as their Owners, in Determining whether to Grant the Company a CCN with Conditions

MLA admits that "throughout this case all of the parties have in essence looked to Clean Line's qualifications to build the project," even though Clean Line is the ultimate parent of Grain Belt Express and not the Applicant, in assessing Grain Belt Express's qualifications to construct the Project. See MLA Brief at 16. Importantly, MLA further does not dispute the contractual obligations that the Company, Grain Belt Express Holdings, and Invenergy Transmission are now subject to under the Membership Interest Purchase Agreement ("MIPA") and the Development Management Agreement ("DMA"). Pursuant to those agreements, Invenergy is now actively managing the Project. See Tr. 1910 (Berry); 2072-73 (Zadlo).

Instead, MLA relies on a misleading view of In re Tartan Energy Co., 1994 WL 762882 (Mo. P.S.C. 1994) ("Tartan"), to attempt to support its argument that the Commission should "continue to look to the qualifications of Grain Belt and Clean Line ... instead to those of Invenergy." See MLA Brief at 16. MLA ignores the fact that the PSC granted a CCN to Tartan even though it didn't know who the actual owner of the applicant was at the time. The Commission

[5] Notably, the landowners in the ATXI cases never argued that the Commission was without authority to grant a CCN to the applicant because of the interstate nature of its service as regulated by FERC. See 2016 Order at 35-37, aff'd Neighbors United Against Ameren's Power Line v. PSC, 523 S.W.3d 21, 24 (Mo. App. W.D. 2017).

granted a CCN on the condition that prior to its tariffs being approved, Tartan must file an affidavit disclosing its precise relationship with the Torch Energy entities that were to supply Tartan its funds. Tartan, 1994 WL 762882 at *16. Here, unlike the situation in Tartan where it was unclear what financial support the Torch Energy companies were providing, it is undisputed that Invenergy has already taken over development of the Grain Belt Express Project under the DMA and is funding it. See Tr. 2055-56, 2072-74 (Zadlo).

Tartan supports this Application and is consistent with PSC decisions over the past 25 years that analyzed the qualifications of the applicant, its parent corporations, and entities with whom it has contractual relations in considering whether a CCN is "necessary or convenient for the public service" under Section 393.170.3. See In re Ameren Transmission Co. of Illinois, Report & Order at 22-23, No. EA-2015-0146 (Apr. 27, 2016) (citing financial support of Ameren Corp.); In re Transource Missouri, LLC, Report & Order at 12, No. EA-2013-0098 (Aug. 7, 2013) (citing financial support of Great Plains Energy Inc. and American Electric Power Co.). See also State ex rel. Intercon Gas, Inc. v. PSC, 848 S.W.2d 593, 597-98 (Mo. App. W.D. 1993) (PSC has the discretion "to determine when the evidence indicates the public interest would be served in the award" of a CCN where it relied on a contract between applicant's parent corporation and a customer demonstrating "financial strength" and parent corporation's commitment "to fund the project").

Staff agrees with Grain Belt Express that the resources and qualifications of Invenergy are properly considered by the Commission in determining whether to grant the Company a line CCN. In reviewing how the evidence should be assessed, Staff declares that "a new Tartan factor analysis must focus on Invenergy rather than Clean Line." See Staff Brief at 11. Staff evaluated both the resources of Grain Belt Express and Invenergy during the remand proceedings. See Ex. 210, Staff

Revised Supp. Report at 5-10 ("2018 Report"). Staff advised it "has no reason to dispute that Grain Belt, and subsequently Invenergy, are qualified to own, operate, control and manage the Project …." Id. at 6. Staff's conclusion that Grain Belt Express "under Invenergy ownership, still has the financial ability to be granted a CCN" was contingent not only upon the conditions in Section I of Exhibit 206, but also of Invenergy's agreement to provide Staff with access to its financial records. Id. at 9-10. Indeed, these conditions are remarkably similar to those that were imposed upon today's Southern Missouri Gas Company. Tartan, 1994 WL 762882 at *16 (prior to constructing any natural gas facilities, Tartan must file "a resolution of the board of directors of Torch Energy Advisors, Inc. or Torch Energy Marketing, Inc. – whichever company is an actual owner of Tartan – committing itself to issue a minimum of $15 million of equity to Tartan, or more if needed to supply sufficient equity" for Tartan to achieve a specified equity ratio).

Farm Bureau apparently agrees that Invenergy's resources must be considered. See Farm Bureau Brief at 4-5. However, it argues, contrary to Missouri law, that the conditions precedent in the agreements governing Invenergy Transmission's acquisition of the Company require that its commitments be discounted. Contrary to the record, Farm Bureau claims that "funding from Invenergy … may never materialize" (id. at 4) despite the fact that Invenergy is funding the Project today. Tr. 2072-74 (Zadlo: "that spend is occurring "right now"). Farm Bureau also claims that there is "no guarantee" that the Project will be completed as proposed. See Farm Bureau Brief at 4. But, that is not the proper test. The Missouri Supreme Court has stated that the PSC is within its authority to approve projects and transactions even if "the precise timing is uncertain and risks are involved." Love 1979 Partners v. PSC, 715 S.W.2d 482, 489 (Mo. en banc 1986). Moreover, the evidence is clear today that Invenergy is funding the Project and actively managing its affairs. Tr. 2072-74, 2056-60 (in camera) (Zadlo).

Given decades of PSC precedent, as well as the approach taken by Staff, MLA has failed to establish that an applicant seeking a CCN somehow stands in isolation from its owners, investors, and contractual counter-parties. On the contrary and as a matter of law, the Commission is entrusted by Section 393.170.3 to determine if the project "is necessary or convenient for the public service" and to issue a CCN under such "conditions as it may deem reasonable and necessary." With the conditions that Grain Belt Express has agreed to and that have now been agreed to by Invenergy, there is no legal or factual impediment to the Commission reaching the same conclusions as expressed in its Concurring Opinion of August 16, 2017, and granting the Company a line CCN under Section 393.170.1.

III. The Missouri Facilities are Necessary or Convenient for the Public Service

A. There is a Need for the Service

MLA fails to discuss any of the facts cited by the Company or any of its supporters regarding the need that is plainly indicated by the MJMEUC Transmission Service Agreement ("TSA") with Grain Belt Express, or MJMEUC's agreement to purchase wind energy from the Iron Star Project. See MLA Brief at 14-15. It also fails to discuss the unrebutted evidence that the residential customers of Missouri's municipal electric utilities, as well as commercial and industrial users, are demanding renewable wind generation. Tr. 2132-33 (Grotzinger); 1962-63 (Berry).

Instead, MLA complains that the Company has failed to secure any additional contracts since earlier in the case. See MLA Brief at 15. This is hardly surprising given the state of limbo that followed the now-abrogated Court of Appeals March 2017 decision in the ATXI case and the ensuing appellate litigation in this case. See Grain Belt Express Clean Line LLC v. PSC, 555 S.W.3d 469, 470 (Mo. en banc 2018); Tr. 1877 (Skelly).

MLA also attacks the Clean Line business model for not producing successful projects, but fails to note that the Oklahoma portion of the Plains & Eastern Project was sold to NextEra Energy Resources, one of the largest energy companies in the country. See Ex. 141 at 10 (Skelly). NextEra purchased this asset from Clean Line to provide transmission service to wind generators in Oklahoma and SPP. Id. Clean Line also sold its Western Spirit transmission and Mesa Canyons Wind Farm projects to Pattern Energy Group, receiving a payment upon signing and retaining an interest for future payments once they come on-line. Id. at 10; Tr. 1844-45 (Skelly) (projects are "going great guns"). When they are built, Mr. Skelly stated "our investors will be … fine." Tr. 1884.

Apart from these other projects, the incontestable point is that the MJMEUC TSA and MJMEUC's PPA with the Iron Star Wind Project demonstrate beyond any doubt the need for the Grain Belt Express Project. See Ex. 480 at 3 & Sched. JG-10 (Grotzinger Supp. Direct); Ex. 481 (TSA Amend. No. 2); Ex. 878 (Riley Supp. Direct.) This is consistent with national trends that show that the average cost of wind farms has dropped from $1.64 million/MW to $1.55 million/MW (Ex. 142 at 5 [Berry]), with the resulting "tremendous demand from commercial and industrial users for renewable energy." Tr. 1962-63 (Berry). Mr. Berry stated that "[i]n 2018 alone, those commercial and industrial customers bought about … 5,000 MW of wind power," a trend that is also present in Missouri. Tr. 1963.

The need for the Grain Belt Express Project is clearly supported by the evidence.

B. The Project is Economically Feasible

MLA complains that the economic feasibility of the Project is uncertain because of the amendments to the MJMEUC TSA with Grain Belt Express. See MLA Brief at 20-21. However, the Project is economically feasible because other capacity beyond the MJMEUC agreement can

be sold in Missouri, and a greater portion of capacity can be sold into the PJM markets where prices are higher. Tr. 944 (Berry). As discussed at length earlier in this proceeding, a lower price for Missouri customers is consistent with the overall economics of the entire Project. Mr. Berry explained that the Missouri Facilities provide an opportunity for additional capacity to be sold, leading to economies of scale. Id. The "good deal for Missouri" exists because of "a huge market in PJM that can pay higher prices." Id.

Since 2017, the demand for renewable energy has continued unabated, accompanied by a decline in the cost to build wind generation. As Mr. Berry testified in December at the post-remand hearing, it is still true that bringing wind energy from western Kansas to Missouri and points farther east via the Project is the lowest cost resource option. Tr. 1956-57. He stated that "all the trends" have continued to indicate that delivering "wind energy from western Kansas would be even cheaper than it was previously" in 2016-2017, "[s]o I didn't see the need to rerun the analysis. If anything, the difference would be greater today …." Tr. 1957.

He attributed these developments to the fact that "wind turbine prices continue to come down" at a "remarkable … rate of decrease." Id. He noted that wind "technology continues to get even better. So the factors I talked about previously in this case, bigger blades, taller towers, more efficient generators, all of that has continued to progress with wind turbine technology." Id. As a result, the capacity factor of western Kansas wind farms is "likely somewhere in the mid-fifties depending on the technology used," which is an increase from the 2016 data he cited earlier in the case. Tr. 1958.

Beyond these changes in technology, demand has continued unabated. "We have seen a tremendous demand from commercial and industrial users for … renewable energy. In 2018 alone,

those commercial and industrial customers bought about 5 gigawatts so 5,000 megawatts of wind power. And that's … just one year …." Tr. 1962-63 (Berry).

Mr. Berry's opinion that this trend is present in Missouri (Tr. 1963) was confirmed by Mr. Grotzinger who testified that MJMEUC's consumers have demanded renewable energy "for their commercial sustainability programs" and that the MoPEP power pool is "fully subscribed and so we're looking for additional supplies to meet that need." Tr. 2132 (Grotzinger). He confirmed that the demand for renewable energy in Missouri has "continued to increase" since the March 2017 hearing in this case. Tr. 2136. Such demand clearly supports the economic feasibility of the Grain Belt Express Project.

Given these undisputed facts, MLA points to regulatory issues in Kansas and Illinois to cast doubt on the Project. However, the Kansas Corporation Commission has extended the sunset term of the Company's siting permit to December 2, 2019[6] while it considers the agreement of Invenergy Transmission to purchase the Company. See Ex. 148 (Order Canceling Procedural Schedule and Granting Limited Extension of Sunset Provisions); Tr. 1966-68 (Detweiler).

In Illinois, as previously discussed in the Company's Initial Brief, an appellate court found that Grain Belt Express "may seek recognition" as a public utility when it re-submits its certificate application showing that it owns, manages or controls "utility-related property or equipment." See Initial Post-Hearing Brief of Applicant at 8-9 (Jan 9, 2019). MLA's rampant speculation on what could happen in Illinois has no bearing on the facts that are before this Commission. This is particularly true because if circumstances in Illinois or otherwise cause a material change in the design or engineering of the Project, Grain Belt Express must return to the Commission pursuant to the condition that it has agreed to with Staff. See Ex. 145 at 6 (Zadlo Supp. Surrebuttal).

[6] Not November 2, 2019, as stated by MLA at page 23 of its Brief.

Finally, as this Commission recognized in the Tartan case, when an investor like Clean Line or Invenergy sponsors a project, it "bears most of the risk if it has underestimated the economic feasibility of the project," and where "the public benefit outweighs the potential for underestimating these costs," a CCN is appropriate. Tartan, 1994 WL 762882 at *14. Given the conditions agreed to in this proceeding, a line CCN should be granted to the Company so that it can take advantage of the "window of opportunity" to bring low-cost, renewable wind energy to Missouri.[7]

C. Grain Belt Express Has the Proper Financial Resources to Provide the Service

No party disputes that Grain Belt Express has sufficient financial resources to provide the services proposed by the Project as a result of the funding provided by Clean Line and by Invenergy. See Ex. 141 at 2 (Skelly Supp. Direct); Ex. 145 at 7 (Zadlo Supp. Direct); Ex. 146 at 2-6 (Hoffman Supp. Direct); Ex. 147 at 2-6 (Zadlo Supp. Surrebuttal). Staff concluded that the Company "is financially capable to construct the Project." See Ex. 211 at 6-10 (Staff Rev. Supp. Report). There is no legal or factual support for MLA's suggestion that the Commission artificially limit its analysis to only the Company's present finances.

Invenergy has affirmed its concurrence with the condition agreed to by Staff and the Company that Grain Belt Express demonstrate that it has obtained commitments for funds to build the entire Project before starting construction. See Ex. 147 at 4 (Zadlo Supp. Surrebuttal). In this regard Invenergy has agreed that the Company will not begin to install transmission facilities on easement property until it has demonstrated through a Commission filing that it has obtained commitments for funds that are equal to or greater than the total Project cost, and that the

[7] In Tartan the Commission agreed with the applicant "that there presently exists a 'window of opportunity' to bring natural gas to south central Missouri." 1994 WL 762882 at *14. Finding that opportunity worth the risk to the applicant, it granted Tartan Energy Co. a CCN subject to conditions similar to those in this case. Id. at *16-17.

contracted transmission service revenue is sufficient to service the debt financing of the Project, taking into account any planned refinancing of debt. Id. See Ex. 206, § I(d); Ex. 210 at 7-8 (2018 Staff Report).

MLA fails to discuss any of the financial resources of Invenergy, recognizing that they clearly have the ability to develop the Grain Belt Express project. Instead, MLA focuses on Clean Line and its investors, mischaracterizing its investment in its projects as either a loss or a deficit. See MLA Brief at 19-20. As is typical in the development of any project, money must be spent by the sponsor of the project during the initial phases before financing of the entire project is in place and before a return on investment occurs. See Tr. 2066-68 (Zadlo); Tr. 1913-14, 1918-22 (Berry); Tr. 1835, 1844-45 (Skelly).

Mr. Zadlo testified that Invenergy is spending money "right now" (Tr. 2072) and expects to spend up to $2 million over the next nine months on regulatory and permitting matters (Tr. 2073-74). In response to questions from Commissioner Kenney, he advised that Invenergy projects that it will be "out of pocket" in the range of $50 to $100 million "before we can approach the institutional investors to invest in the project itself." Tr. 2067.

This Commission and the appellate courts have recognized that such contingencies in the development of projects is not unusual. In Love 1979 Partners v. PSC, 715 S.W.2d 482, 489 (Mo. en banc 1986), the Missouri Supreme Court affirmed the PSC's order approving the sale of a regulated steam system even though the contract for the project was subject to conditions being fulfilled. Observing that the "basic plan looks many years into the future," the Supreme Court held that it was "not rendered invalid simply because the precise timing is uncertain and risks are involved. . . . It is safe to say that few public involvements would be completed if all contracts had to be in effect before the first spade was turned." Id. Finding there was "no reason for rejecting

the proposal at its inception," the Supreme Court upheld this Commission's order in full. Id. at 488.

With the existing financial backing of the Project, and the agreement by Invenergy Transmission and its affiliates to support the Project, Grain Belt Express clearly has the financial ability to provide the proposed transmission service.

D. Grain Belt Express is Qualified to Provide the Service

With the resources of Invenergy and continuing support by Clean Line, Grain Belt Express is qualified to provide the service it is offering. Staff concurred, stating that it "recommends that the Commission find that Grain Belt is operationally qualified to build and operate the project." See Staff Brief at 19. Staff advised that there is "no reason to dispute that Grain Belt, and subsequently Invenergy, are qualified to own, operate, control and manage the Project subject to the agreed upon conditions in Staff Exhibits 205 and 206." See Ex. 210 at 6 (2018 Report).

No party has disputed the testimony of the Company's witnesses that the Invenergy management team and the outside firms supporting the Project have extensive experience developing, constructing and operating a variety of transmission and other energy infrastructure projects. See Ex. 145 at 8-12 (Zadlo Supp. Direct). The Company is qualified to provide the service it is offering.

E. The Project is in the Public Interest

MLA's only remarks regarding public interest are to question whether Invenergy would cancel the arrangements now in place with suppliers that the Company agreed to. See MLA Brief at 29-30. However, as Mr. Skelly pointed out, any party to a contract must abide by its terms, including the consequences of a modification or a cancellation. Therefore, Invenergy will simply succeed to the terms of those agreements that bind Clean Line today. Tr. 1853-58 (Skelly). There

was no evidence that Grain Belt Express or Invenergy has terminated any of the arrangements with ABB, Hubbell Power Systems, or General Cable Industries.

Mr. Zadlo testified that while Invenergy would review the Company's contracts, he stated that it intended to work with engineering, procurement and construction ("EPC") contractors experienced in HVDC technology to develop the Project, which would include Quanta Services with whom the Company has an existing arrangement. See Ex. 145 at 11-12 (Zadlo Supp. Direct). Importantly, he stated that the EPC that Invenergy chooses "will have the qualifications and experience Mr. Shiflett [of Quanta Services] describes, and will follow the emergency response and restoration best practices that he generally describes." Id. at 12.

MLA also suggests that the landowners will not know "with whom they may be dealing even a few short years from now." See MLA Brief at 30. Such a concern is unfounded, given the condition that the Company and Invenergy will return to the Commission if a material change in the design or engineering of the Project occurs. See Ex. 147 at 6 (Zadlo Supp. Surrebuttal); Tr. 2025-26 (Zadlo). They have also stated their intent to seek PSC approval of the sale of the Company to Invenergy Transmission, pursuant to the Notice of Intended Case Filing in No. EM-2019-0150.

In sum, MLA has failed to cite any evidence that the Grain Belt Express Project is not in the public interest.

IV. Conditions Related to the Project

A. MLA Proposed Conditions

1. Decommissioning Fund

MLA opposes the proposal of Grain Belt Express to establish a decommissioning fund no earlier than the 20th anniversary of the completion of the Project. MLA wants the fund in place "from the beginning of construction" in a "detailed proposal" to be submitted to the Commission

"at least six months before construction." See Condition 1, MLA Brief at 31-34. Farm Bureau vaguely recommends that the fund be set up "from the inception of the project." See Farm Bureau Brief at 6.

The Company's plan is to set up such a fund no earlier than the 20th anniversary of the Project's completion, based upon the advice and guidance of an independent engineering firm that could then accurately estimate the cost of such a fund. See Ex. 113 as 12-13 (Lanz Direct); Ex. 141 at 5 (Skelly); Tr. 942-43 (Berry responding to Bench questions). It would be the first decommissioning fund of a transmission line in the United States. See Ex. 113 as 12-13 (Lanz Direct). This is a logical approach, given, as Staff has stated, this Commission has never required a decommissioning fund in connection with granting a CCN to a transmission line. Tr. 1354 (D. Beck). To Staff's knowledge, such funds have only been established for nuclear generating plants and no transmission line has ever been decommissioned in its first 20 years of operation. Tr. 1354-55 (Beck). Staff has recognized these facts and proposed no further conditions regarding such a fund. See Staff Brief at 32-33.

Given the Company's unprecedented offer to establish a decommissioning fund, Grain Belt Express believes that its proposal to have a study conducted by a qualified engineering firm to estimate the cost of such a fund no earlier than the 20th anniversary of the completion of the Project is reasonable. See Ex. 113 at 12-13 (Lanz Direct); Tr. 942-43 (Berry to Commissioner Rupp). The conditions proposed by MLA and Farm Bureau should not be adopted by the Commission.

2. Easement Negotiations and Agreement Terms

MLA requested that the Landowner Protocol, the Agricultural Impact Mitigation Protocol, and the Code of Conduct be incorporated into the Company's Easement Agreement and made a condition of the CCN. See Condition 2, MLA Brief at 34-35. Those agreements and commitments have already been made. See Tr. 411-13 (Lanz); Ex. 114 at 5 (Lanz Surrebuttal); Tr. 158 (Skelly).

In the post-remand proceedings, they were reaffirmed by Mr. Detweiler. See Ex. 144 at 4; Tr. 1979-81.

MLA has requested that Grain Belt Express agree that there will be no reduction to its highest and best offer in the event of an arbitration or a court proceeding. See Condition 3, MLA Brief at 35. During the first evidentiary hearing, the Company's Vice President of Land Deann Lanz agreed that the methodology for determining payments to landowners would not be changed during an arbitration proceeding or a court case. Tr. 417-18. If that methodology resulted in the same amount previously offered to a landowner, "then we would not reduce it." Tr. 418. Therefore, Grain Belt Express agrees to a condition that the Company will not change its structure for determining compensation in an arbitration proceeding or in a Circuit Court case.

In MLA's Condition 4, it proposed two modifications to the Easement Agreement. See MLA Brief at 36-38. The first relates to language which is already contained in the Landowner Protocol and which Grain Belt Express has agreed to incorporate into the Easement Agreement. Tr. 158 (Skelly; Tr. 411-13 (Lanz). This provision concerns the Company's agreement to pay landowners for agricultural-related impacts resulting from the Project, regardless of when they occur and without any cap on the amount of damages. See Sched. DKL-1, Missouri Landowner Protocol, §3.3, Ex. 113 (Lanz Direct).

MLA's second request in Condition 4 (MLA Brief at 37) is to remove the words "gross negligence" from Section 11(c) of the Easement Agreement. See Sched. DKL-4, §11 (c), Ex. 113 (Lanz Direct). Grain Belt Express does not agree to this modification which would otherwise allow landowners to commit grossly negligent acts that damage the Company's facilities within the easement right-of-way without bearing any responsibility for their conduct. Under Missouri law, such conduct would involve "aggravating circumstances" where "complete indifference to or

conscious disregard for the safety of others" occurs. Lopez v. Three Rivers Elec. Co-op., Inc., 26 S.W.3d 151, 160-61 (Mo. en banc 2000).

3. Illinois Approval

Finally, MLA's Condition 5 proposes two restrictions relating to regulatory and judicial proceedings in Illinois. The first forbids any construction on the Project until the Company obtains "a final non-appealable order from the Illinois Commerce Commission allowing it to build the Illinois section of the line." The second requires the Company to return to this Commission for further proceedings if such a "non-appealable" order is not obtained within four years from the final order in this case. See MLA Brief at 38 (also discussed at 27-28).

These conditions are not necessary and should not be imposed on Grain Belt Express. Both the Company and Invenergy have committed that if there are any material changes in the design and engineering of the Project from what is contained in the Application, Grain Belt Express will file an updated application subject to further review and determination by the Commission. See Reply Brief of Applicant at 46 (Apr. 24, 2017); Ex. 147 at 5-6 (Zadlo Supp. Surrebuttal); Tr. 2025-26 (Zadlo).

Moreover, there is no need for a deadline to obtain an order from the Illinois Commerce Commission to protect landowners from a "state of limbo." See MLA Brief at 28. This is especially true because the Company and Staff have agreed to an additional condition that if the financial commitments required by Section I of Exhibit 206 are not obtained within five years of the date that involuntary easements are recorded, Grain Belt Express will return possession of the easement to the title holder and cause the dissolution of the easement to be recorded. Under such circumstances, no reimbursement of any payments made by the Company to the title holder shall be due. See Staff Brief at 34; Initial Post-Hearing Brief on Remand of Applicant at 30.

Because MLA's additional conditions do not provide any benefit to Missouri consumers, but instead would create unnecessary legal and regulatory barriers for the Project, they are not needed.

B. Farm Bureau Condition

Farm Bureau has proposed that if the Commission grants a line CCN to Grain Belt Express, it prohibit the Company "from exercising eminent domain" because it "cannot be trusted" with such power. See Farm Bureau Brief at 1, 5-6. It cites no law and no facts to support this condition.

Because issues regarding eminent domain are not pertinent to the Commission's duties under Section 393.170, and are beyond its authority as a matter of law, the proposal must be rejected. As discussed at length in its Reply Brief earlier in this proceeding, Missouri has authorized and regulated the power of eminent domain for well over a century, including amendments enacted most recently in 2006 which offer additional protections for landowners. See § 523.010, et seq. These arguments need not be repeated. See Reply Brief of Applicant at 40-42 (Apr. 24, 2017). Any review of the law under which the state has delegated the power of eminent domain to railroads, pipelines, gas and electrical corporations, and other private entities is a matter for the General Assembly, not the Public Service Commission which has no power to alter state statutes.

As a factual matter, Farm Bureau's allegation that the Company "cannot be trusted" has no basis in the record. The detailed provisions of the Staff-Grain Belt Express Conditions (Exhibit 206) clearly show that the Company intends to proceed carefully and responsibly. Section V regarding Construction and Clearing contains 14 detailed requirements governing landowner notifications and interactions, construction clean-up, and the clearing and treatment of stumps. There are protocols on re-seeding, erosion management, as well as gates and guy wires. See Exhibit 206 at 4-5. Section VI sets forth requirements on Maintenance and Repair, including the

use of herbicides, entry on right-of-way property, and a requirement to carry $1 million of liability insurance to pay claims for damages. Id. at 5. A final section covers Landowner Interactions and Right-of-Way Acquisition activities, establishing similar requirements and protocols. Id. at 5-6.

These Exhibit 206 conditions, as well as the provisions in the Grain Belt Express Easement Agreement, the Missouri Landowner Protocol, and the Missouri Agricultural Impact Mitigation Protocol provide a multitude of landowner protections, far more extensive than typically offered by Missouri utilities. These protections, including the creation of the "Agricultural Inspector" provision, were discussed at length in the Company's initial brief earlier in this proceeding. See Initial Post-Hearing Brief of Applicant at 59-64 (Apr. 10, 2017).

Moreover, as discussed above, the Company and Staff have agreed to an additional condition that if the financial commitments required by Section I of Exhibit 206 are not obtained within five years of the date that involuntary easements are recorded, Grain Belt Express will return possession of the easement to the title holder and record the dissolution of the easement.

Finally, it must be recognized that the Company has made clear that it "views the use of eminent domain as a last resort that is appropriate only after exhausting all reasonable attempts at voluntary easement and title curative work." See Ex. 113 at 16 (Lanz Direct). The Farm Bureau condition must be rejected.

V. The Commission Should Waive the Reporting Requirements of Rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175, and 3.190(1), (2) and (3)(A)-(D)

Only Farm Bureau opposed the Company's request for the wavier of these reporting requirements. See Farm Bureau Brief at 6. It cites no legal basis for its opposition, and overlooks the Commission's authority to provide waivers from its rules for good cause under 4 CSR 240-2.060(4).

Staff agrees with the Company, stating that "the Commission should grant the requested exemptions, except for the annual report filing requirement of rule 4 CSR 240-3.165." See Staff Brief at 34-35. Grain Belt Express has agreed to file with the Commission the annual report that it files with FERC. See Application, ¶ 76. Staff has stated this agreement eliminates the need for a waiver. See Staff Brief at 35.

VI. Conclusion

Because the Company meets each of the five Tartan criteria, the Grain Belt Express Project is necessary or convenient for the public service. Accordingly, the Commission should issue an order granting Grain Belt Express a line certificate of convenience and necessity under Section 393.170.1 to construct, own, operate, control, manage, and maintain the Missouri Facilities of the Project.

Respectfully submitted,

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ATTORNEYS FOR GRAIN BELT EXPRESS CLEAN LINE LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all parties of record by email or U.S. mail, postage prepaid, this 16th day of January 2019.

/s/ Karl Zobrist
Attorney for Grain Belt Express Clean Line LLC