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

POST-HEARING REPLY BRIEF OF THE MISSOURI LANDOWNWERS ALLIANCE, CHARLES AND ROBYN HENKE, R. KENNETH HUTCHINSON, RANDALL AND ROSEANNE MEYER, and MATTHEW AND CHRISTINA REICHERT

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1. Introduction.

The MLA is contesting the CCN on three grounds: that Grain Belt has not demonstrated a need for the line; that granting the CCN would not be in the Public Interest; and that Grain Belt does not have the necessary consent of the Caldwell County Commission under Section 229.100 RSMo.

Because the MLA is contesting the CCN only on these grounds, there is no need to respond here to much of what Grain Belt said in its Initial Brief. This does not imply that the MLA agrees with Grain Belt's arguments not addressed here; it simply recognizes that some sections of Grain Belt's Initial Brief have no bearing on the principal claims raised here by the MLA.

Also, Grain Belt seemingly raised every argument for the line in its Initial Brief which it viewed as plausible. Understandably, therefore, most of what was said in the briefs from Grain Belt's supporters tends in substance to duplicate the arguments raised by Grain Belt. The MLA sees no need to discuss the points made by these other parties which the MLA is already addressing here in response to Grain Belt's Initial Brief. This

[1] This brief is being filed on behalf of the parties listed on the cover page. For convenience, all such parties will be referred to collectively in this brief simply as the MLA.

does not mean that the MLA has ignored most of what was said by Grain Belt's supporters. It simply recognizes there is no reason to address any particular issue more than one time here, regardless of how many parties raise the same general argument.

Finally, other than a few abbreviated summaries, the MLA will not reargue points already made in the first round of briefing. It will rely instead on references to where those arguments were made by the MLA in its Initial Brief.

2. <u>Issues Related to the Need for the Line.</u>

(1) <u>The TSA with MJMEUC</u>. Grain Belt claims that its TSA with MJMEUC is the most significant milestone it has achieved since the 2014 case.[2] So as would be expected, Grain Belt relies on that contract as its principal argument for why the line is needed.[3] MJMEUC likewise points to the TSA with Grain Belt as its primary support on the issue of need.[4] Both parties are clearly counting on their TSA to establish the fundamental need for the line in Missouri. If that argument falls, then Grain Belt's case basically falls with it.

The MLA covered this issue in detail at pages 5-15 of its own Initial Brief. As explained there, unless Grain Belt and MJMEUC amend their existing TSA, the Commission will have no reasonable assurance when it decides this case that any energy from the proposed line will ever be used by any of MJMEUC's member utilities. And without the sale of capacity to MJMEUC, Grain Belt is back to where it was in the 2014 case.

Only one significant argument was made by Grain Belt or MJMEUC on this issue which was not already addressed by the MLA: MJMEUC's claim that as customers of

[2] Grain Belt's Application, p. 3.
[3] Grain Belt Initial Brief (IB) p. 27 – 31.
[4] MJMEUC IB pp. 6-8.

the proposed service, they are in the best position to judge whether or not the line is needed.[5] While that may normally be true, in this instance MJMEUC only "needs" the service because of the drastically discounted, discriminatory, below-cost rate offered by Grain Belt. MJMEUC certainly cannot be faulted for accepting this gift from Grain Belt. However, under the circumstances the MLA would submit that the Commission is in a much better position than MJMEUC to determine whether this supposed need is really what is contemplated by the *Tartan* criteria.[6]

(2) The needs of entities other than citizens of Missouri. A number of supporters of the line argue that the CCN should be granted because it will benefit "corporate America", the Kansas Wind farms, and utilities and their customers in other states.[7]

Those outside entities may indeed benefit from the line. However, for the reasons noted by the MLA and by MJMEUC in their Initial Briefs, the decision here should be based solely on whether or not the proposed line is in the best interests of the citizens of Missouri.[8]

If the balancing of the interests of Missouri citizens would lead to rejection of the CCN, but consideration of these other entities would tip the scale in the other direction, then by definition the citizens of Missouri would be made to sacrifice for the good of these other outside interests. Such an outcome would certainly run contrary to the Commission's finding on this point in the 2014 case.[9]

[5] MJMEUC IB p. 7.
[6] *In re Tartan Energy*, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127 (1994).
[7] See, e.g., Department of Economic Development (DED) IB, p. 1; Grain Belt IB p. 31-32; Energy For Generations IB pp. 2, 4.
[8] MLA IB, p. 5; MJMEUC IB p. 7.
[9] See MLA IB p. 5.

(3) Need as shown by results of two open solicitations. As evidence of need, Grain Belt points to the fact that in their first two open solicitations for bids on capacity, they received transmission service requests for the Kansas to Missouri service for six times the available capacity.[10] However, those bids add nothing of any meaning to the issue of need, beyond what was already discussed with respect to the TSA with MJMEUC.

Of the fifteen bids for the Kansas to Missouri service, all but the lone bid from MJMEUC (in the second round of bidding) came from wind developers.[11] Therefore, at best the responses may show a need for the line by Kansas wind farms, but they also demonstrate the lack of any interest from any entity in Missouri other than MJMEUC.

Moreover, the so-called bids from the wind developers were not binding, they cost nothing to submit, they were risk-free, and they did not constitute any sort of commitment from the bidder to do anything further, much less buy capacity on the line.[12] As Mr. Skelly said, the purpose of the process was simply to measure interest, and identify parties that might want to use the line.[13] Thus it does not follow that the tabulations from the bidding process demonstrated any real need for the line, even from the Kansas wind farms.

(4) Meeting RES requirements of Missouri investor-owned utilities. Grain Belt and others suggest that the proposed line could help Missouri IOU's meet their RES requirements.[14]

[10] IB p. 33. See also IB of MJMEUC, p. 9.
[11] Direct testimony of David Berry, Exh. 104, p. 24 line 20 – p. 25 line 8; Grain Belt IB p. 12.
[12] See Tr. 990 lines 1-12; Tr. 1041, lines 10-16; Tr. 848 lines 6-16.
[13] Tr. 197 lines 17-21.
[14] Grain Belt Application par. 27 and IB at p. 32; Wind on the Wires IB pp. 7-8.

No one disputes the fact that the three IOU's on the western side of the state already have adequate supplies of renewable energy to meet their RES requirements.[15] And of course the only other entity in the state subject to the RES is Ameren Missouri.

Relying on testimony of Mr. Dauphinais for the Missouri Industrial Energy Consumers, Grain Belt implies that Ameren might be interested in the Grain Belt line.[16] However, Mr. Dauphinais provided no evidence at all that Ameren was even considering the Grain Belt line as a potential source of power. His testimony on this issue amounted to no more than a hunch, although that apparently was enough for Grain Belt to rely on in pointing to the potential use by Ameren.[17]

Mr. Berry also stated he believes that Ameren is looking to add additional renewables, but he conceded he is not aware of any plans by Ameren to make those purchases from Grain Belt.[18]

Nevertheless, in its Initial Brief Grain Belt cites Mr. Berry's testimony during the hearings for the proposition that in order to avoid hitting the rate cap, "Ameren will need to buy low-cost power from the Project…."[19] This statement is simply not credible. Mr. Berry admitted that Grain Belt had done no analysis of the maximum amount which Ameren could pay on a per unit basis for renewables, and not be constrained by the rate cap.[20] Without such an analysis, it is simply impossible to conclude that Ameren could avoid hitting the rate cape if it bought capacity on the proposed line.

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[15] Staff's Exh. 201 pp. 16-17.
[16] IB p. 32.
[17] Mr. Dauphinais said he would expect Ameren to carefully analyze the Project, and give it "serious consideration. " Exh. 800, p. 5 lines 9-12. However, he conducted no study or analysis himself regarding Grain Belt's claim that the line could help utilities to meet their RES. Tr. 457 lines 3-7.
[18] Tr. 880 line 5 – 881 line 18.
[19] Grain Belt IB p. 32.
[20] Tr. 882 line 5 – 883 line 4.

In the last case, with regard to Ameren's possible use of the proposed line the Commission found as follows: "Ameren Missouri plans to meet its need for additional wind energy through wind resources located within MISO, including areas in Missouri. Ameren Missouri has the ability to meet its 2021 RES requirements without purchasing renewable energy transported over the Project."[21] There is no competent evidence in this case that Ameren has changed its position since then.

(5) The supposed impact on reliability. Grain Belt said nothing in the four lines of its Initial Brief addressing Mr. Pfeiffer's reliability analysis which the MLA did not already cover in its Initial Brief.[22] The MLA will therefore stand on its prior arguments with respect to this issue.

(6) DED's Economic Impact Study. The study sponsored by Mr. Spell of the Department of Economic Development (DED) was addressed by the MLA at pp. 66-68 of its Initial Brief. Nothing was said by the other parties regarding this issue which was not already covered by the MLA, except for one comment from the DED.[23]

During the hearings, it was apparent that DED's witness Mr. Spell had failed to reflect any negative impacts from the line on numerous sectors of Missouri's economy, including agricultural production and coal generation. In response, in its Initial Brief the DED stated as follows:

> At the time of filing this post-hearing brief, no party has approached DED or Mr. Spell with additional data related to agricultural or coal-based economic interests that will be displaced by the Grain Belt project.[24]

[21] Report and Order, Exh. 321, p. 12.
[22] See Grain Belt IB p. 40-41; MLA IB pp. 60-64.
[23] See e.g. Grain Belt's two paragraph discussion of the study at pp. 53-54 of its Initial Brief.
[24] DED Initial Brief, p. 6

Perhaps this statement is a misplaced attempt at humor or sarcasm, but in any event the MLA finds it totally inappropriate here for three separate reasons. First, the statement is based entirely on supposed facts which are not part of the record and which cannot readily be verified by other parties.[25]

Second, as DED is well aware, even if any such information had been provided to Mr. Spell after the close of the hearings, at that point he could not have revised and resubmitted his economic analysis even if he had wanted to.

And finally, the statement implies that other parties were somehow responsible for supplying Mr. Spell with all of the information which would have made his study meaningful. As the author of the study, that was his responsibility and his alone.

(7) Other evidence of economic impacts. Grain Belt also points to the positive economic impacts which could result from its tentative arrangements with Missouri companies such as Quanta Services and Hubble Power to supply services and materials for construction of the project.[26] The MLA suggests that there is no substantive difference between these economic impacts and those quantified in Mr. Spell's study. Both tout the value of the line in terms of the jobs and associated benefits they would help to produce. Accordingly, the MLA suggests that this evidence should be given no weight by the commission for the same two reasons discussed with respect to the DED's economic impact study; i.e., that as a matter of policy such evidence should not be

[25] A brief "may not contain facts outside the record…." *Moseley v. Grundy County District R-V School*, 319 S.W. 3d 510, 512 (Mo App 2010). Accordingly, as a matter of principle the MLA asks that the quoted statement from DED's Initial Brief be stricken.

[26] See e.g. direct testimony of Michael Skelly, Exh. 100, p. 6.

considered in CCN cases, and that it fails to account for the offsetting negative economic impacts from the line.[27]

(8) TSA with Realgy. As further evidence of the need for the line, Grain Belt points out that in addition to its contract with MJMEUC, it has also sold 25 MW of the capacity into Missouri to a firm called Realgy.[28] While the point is relatively minor, it actually hurts the Grain Belt argument that its proposed line will be used to provide service in Missouri.

As Mr. Berry pointed out, Realgy will only be able to directly serve retail customers in Illinois, not in Missouri.[29] Because Realgy will use its 25 MW from the Ralls County converter station to serve customers in Illinois, that obviously leaves 25 fewer MW which will be available for use by Missouri utilities in providing service to customers in Missouri. So by reason of the Realgy contract, the capacity available from the Ralls County converter station to serve Missouri retail customers has been reduced from 500 MW to 475 MW.

(9) Impact on wholesale prices. Grain Belt relies on the PROMOD model presented by Mr. J. Neil Copeland on both the issue of need and the issue of public interest.[30] They essentially make the same argument regarding both issues, and so Mr. Copeland's study will be addressed in this Reply Brief only under the heading of "need."

A similar PROMOD production modeling study submitted by Grain Belt was rejected by the Commission on the basis of Staff criticisms in the 2014 case.[31]

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[27] See MLA IB p. 64-68.
[28] IB p. 31. Grain Belt says it also sold Realgy 25 MW for delivery to PJM, but that point is obviously not relevant to any issue here.
[29] Tr. 850 lines 1-17; see also Grain Belt IB at p. 31.
[30] With regard to need, see IB p. 31; with regard to Public Interest see IB p. 55-56.
[31] Report and Order p. 14, par. 37-38.

Presumably in response, in this case Mr. Copeland sought additional input from Staff, including updated information on the status of certain Ameren plants, among other items.[32]

But having offered this additional assistance to Mr. Copeland, Staff was obviously not impressed with his results. As discussed by Staff witness Ms. Kliethermes, Grain Belt made several arguments why the project is supposedly in the Public Interest, one of which was based on Mr. Copeland's study: i.e., the impact on regional generation and the cost for Missouri utilities to serve load.[33] And her conclusion with respect to both arguments by Grain Belt was succinct: "Staff recommends the commission not rely on these assertions for the reasons discussed below."[34]

For the reasons then discussed in detail by Ms. Kliethermes, the MLA makes the same recommendation. Actually, the MLA would submit that Staff was being overly generous to Grain Belt in this regard when they concluded that "there is not a clear need for the Project."[35]

(10) Issues discussed by Grain Belt and MJMEUC under the category of Economic Feasibility. There is clearly some overlap in the subject matter related to the *Tartan* criteria of Need, Economic Feasibility and Public Interest. For example, Grain Belt addresses the subject of MJMEUC's supposed savings from the TSA under the heading of both "Need" and "Economic Feasibility".[36] And as indicated earlier, Grain Belt discusses Mr. Copeland's PROMOD modeling under the heading of both need and public interest.

[32] Grain Belt IB p. 55.
[33] Exh. 201 p. 38.
[34] Id.
[35] Exh. 201 p. 6. Par. 3.
[36] See Grain Belt's IB at pp. 28-29 and 40-42 respectively.

Grain Belt raises a number of other issues under the heading of Economic Feasibility which the MLA believes are also relevant to the criteria of Need and Public Interest. The MLA's primary point in this regard is that just as in the 2014 case, the real need and economic justification in this case for the Grain Belt Project comes not from its potential benefit to Missouri, but for the entry it provides into the more lucrative markets in PJM.

Grain Belt was unable to sell any of its capacity to any Missouri utility until it reduced its price to MJMEUC for the first 100 MW to only 20% of its own actual cost.[37] On the other hand, as Grain Belt concedes in its Brief, "it was the 3500 MW portion of the Project to be sold in the PMJ that 'demonstrates the financial viability of the project' overall".[38]

The MLA submits that the criterion of Financial Feasibility should be viewed similarly to the criterion for Need: if the project cannot be justified on the basis of its service to the citizens of Missouri, then Grain Belt should not be rescued by the profits it will reap from service elsewhere.

Also, Grain Belt supports its position on this issue by reference to Mr. Berry's Levelized Cost of Energy (LCOE) analysis.[39] This issue was addressed by the MLA in its Initial Brief at pages 18-24. The comments here will be restricted solely to Grain Belt's arguments concerning the testimony of the MLA's witness Mr. Joseph Jaskulski.

First, Grain Belt refers to the surrebuttal testimony of Mr. Jaskulski wherein he determined that in the only relevant comparison, MJMEUC would only save $3 million

[37] See discussion at MLA's Initial Brief p. 54.
[38] IB p. 36.
[39] IB pp. 38-40.

by reason of the Grain Belt line.[40] Grain Belt then points to an error which Mr. Jaskulski admittedly made earlier in his rebuttal testimony, implying that Mr. Jaskulski's earlier error somehow affected his subsequent calculation of the expected MJMEUC savings.[41] However, the two matters are totally unrelated. The error related to Mr. Jaskulski's analysis of a spread sheet provided by Mr. Grotzinger in response to an MLA data request.[42] This error clearly had no connection at all to Mr. Jaskulski's calculation of the $3 million savings at Schedule JJC-6 of his surrebuttal.[43] Grain Belt is unfairly attempting to discredit the analysis at Schedule JJC-6 by implying that the two are somehow related.

In short, Mr. Jaskulski's conclusion, derived from his Schedule JJC-6, is still entirely valid: in an appropriate comparison, the actual savings to MJMEUC attributable to the Grain Belt line will amount to no more than $3 million.

Grain Belt then says that "Mr. Jaskulsky [sic] did not conduct either an LCOE analysis, a levelized avoided cost of energy analysis, or a loss of load expectation ('LOLE') analysis."[44] Of course he didn't. None of those subjects was the intended focus of his testimony. Quantitatively, Mr. Jaskulski's analysis may indeed stand "in stark contrast" to the volumes of testimony from the 16 Grain Belt witnesses.[45] However, the reason for this disparity has nothing to do with the reliability of the evidence actually offered by Mr. Jaskulski. Moreover, Mr. Jaskulski was not the only witness who did not conduct any of the studies referred to by Grain Belt. The same is true for nearly all of

[40] Grain Belt IB p. 40; Mr. Jaskulski's surrebuttal testimony at Exh. 307(HC) p. 3-5.
[41] Grain Belt IB p. 40.
[42] Exh. 302(HC) p. 10.
[43] Exh. 307(HC) p. 4.
[44] Grain Belt IB p. 40.
[45] Id.

their own witnesses, as well as the witnesses for MJMEUC and all of Grain Belt's many supporters.

Finally, based on data developed by counsel during reredirect examination of Mr. Grotzinger, MJMEUC claims that even if they were paying Grain Belt's normal rate for service from Kansas to Missouri, they still would save money compared to "the service offered by SPP and MISO."[46] Notably, nowhere in its own Initial Brief does Grain Belt make that same claim. In any event, the MLA disputes what MJMEUC says in this regard on a number of grounds.

First, although the redirect testimony relied on by MJMEUC is difficult to follow, it appears that the analysis is based on revising Mr. Grotzinger's Schedule JG-3 for 200 MW of service to reflect a supposed increase in the cost of the wind from SPP to MISO, and then comparing that cost ($13,701,600) to what they would pay under the normal rate from Grain Belt ($13,608,000).[47]

However, Schedule JG-3 only compares the Grain Belt cost to the cost of wind from SPP to MISO. It does not purport to analyze or compare the cost of wind energy generated in MISO. Therefore, it is inaccurate to state, as MJMEUC seems to do, that the redirect examination cited in their brief has anything to do with the cost of wind generated in MISO. And the cost of service to MJMEUC under Grain Belt's normal rate would not come close to matching the cost of wind generated in Missouri, for example.[48]

So what MJMEUC is left with is a comparison of the cost of 200 MW at Grain Belt's normal rate versus the cost of wind energy imported from SPP, based on a slightly

[46] MJMEUC IB p. 10-11.
[47] See Tr. 1106 line 12 – Tr. 1108 line 21. Nowhere in the exchange between counsel and Mr. Grotzinger is the normal Grain Belt rate of $5670 per kw per month even mentioned, but based on the total cost of $13,608,000 developed by counsel, that apparently is the rate which he was using. (See Tr. 1107 line 25).
[48] See MLA IB p. 16.

modified version of Mr. Grotzinger's Schedule JG-3. However, as explained in the MLA's initial brief, Schedule JG-3 grossly overstates the cost of importing SPP wind energy by totally ignoring the ability to reduce the congestion charges used in that Schedule.[49]

Thus any analysis based on Schedule JG-3 is simply not meaningful, including the comparison relied on by MJMEUC to supposedly show that it could save money even under Grain Belt's normal rate for service to Missouri. All of which could logically explain why MJMEUC showed no interest in buying capacity from Grain Belt at its normal rate.

3. <u>Balancing the Public Interest.</u>

Grain Belt agrees with the MLA on this much: that in addressing the Public Interest factor of the *Tartan* case, the objective should be to balance the benefits of the line versus the detriments of the line, taking into consideration the interests of the public as a whole.[50]

The MLA recognizes that the landowners are just one part of that public. And the MLA also acknowledges that if the benefits to the rest of Missouri are somehow found to outweigh the detriments to the affected landowners, then this particular issue should rightfully be decided in Grain Belt's favor.

However, Grain Belt essentially pays lip service to this balancing test. Nowhere in its Initial Brief does Grain Belt even acknowledge the numerous personal and monetary damages which will be caused by its proposed 200 mile transmission project –

[49] MLA IB p. 27-31.
[50] Grain Belt IB p. 26, 52-53.

other than to sing its own praises for how it supposedly is mitigating the problems which it would be creating in the first place.[51]

But without acknowledging the harm which its line will inevitably produce, Grain Belt cannot and did not provide any reasonable analysis of the balancing of the competing interests here. Once again, Grain Belt has demonstrated its lack of concern for those who would live in the path of its line.

In contrast, the MLA acknowledged the positive aspects of renewable energy, and the potential benefits that could result for the customers of MJMEUC as a result of the TSA with Grain Belt. It then went on to discuss how those benefits from the line were outweighed by the numerous detriments.[52]

The landowners obviously are not the only group whose interests should be taken into account here. However, the harm they will suffer does not deserve to be ignored, as Grain Belt essentially has done.

As discussed in its Initial Brief, the MLA submits that a fair analysis of both sides of the ledger will show that the known and certain detriments from the line will far outweigh the potential benefits. We can only ask that the Commission decision on this issue include a full analysis of all the damages which the line will cause to a very significant segment of the general public.

4. **Lack of Consent from Caldwell County.**

A number of parties including Grain Belt attempt to distinguish the recent *Neighbors United* case[53] on the ground that it supposedly did not address the situation where the utility was applying for a "line certificate" under subsection 1 of Section

[51] Grain Belt IB p. 59-63.
[52] MLA's IB pp. 35-48.
[53] *Neighbors United Against Ameren's Power Line v. PSC*, No. WD79883 (March 28, 2017)

393.170 RSMo.[54] In fact, Grain Belt alone devoted 11 pages in its Initial Brief to a discussion of why that statute supposedly does not require that it obtain county consents as a prerequisite to the grant of a CCN.[55] However, as the MLA pointed out in its Initial Brief, that argument was already raised by ATXI with the Court of Appeals.[56] Therefore, the Western District obviously considered and implicitly rejected the distinction now being raised by Grain Belt and these other parties.

Moreover, ATXI also made that same argument to this Commission. Writing with reference to Section 393.170, in their Initial Brief to the Commission ATXI began by stating as follows: "This case is a subsection 1 line certificate case, because ATXI simply seeks authority to construct the line."[57] ATXI then went on for several pages to raise the same arguments now being raised in this case by Grain Belt and its supporters.

The Commission explicitly addressed the merits of this issue, stating that it "understands ATXI's argument that county assent is required for an 'area certificate' to serve retail customers, but is not required for a transmission 'line certificate' which it seeks."[58] The Commission nevertheless ruled that consent from the county commissions pursuant to Section 229.100 was indeed an indispensible requirement for the exercise of the CCN.[59]

Grain Belt and its supporters have raised no arguments in this case not already rejected by the Court of Appeals and this Commission in the ATXI cases. They should therefore be rejected once again.

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[54] See Grain Belt's IB p. 13-23; MJMEUC's IB at pp. 2-5; MO DED IB p. 3; IBEW IB p. 1; Sierra Club et al. IB pp. 1-4.
[55] Grain Belt IB pp. 13-23.
[56] MLA IB, p. 71.
[57] Initial Brief of ATXI, Case No. EA-2015-0146, page 61, EFIS 266.
[58] Report and Order, p. 38.
[59] Id. at p. 39, 40 (condition 2).

If the *Neighbors United* case is ultimately reversed, then this issue will need to be revisited. If it is not reversed, then the MLA suggests that Grain Belt be given six months from the time the mandate is issued from the appellate court in which to obtain the consent of the Caldwell County Commission. If it fails to do so, then this case should be dismissed. Given that the Grain Belt proposal has been disrupting the lives of hundreds of Missouri landowners for some 5 years now, Grain Belt should not be given an indefinite period of time in which to secure all of the needed county consents.

5. <u>Recommended Conditions.</u>

In its Initial Brief, the MLA addressed a list of eight "Conditions" which it recommended be added if a CCN is granted in this case.[60]

All eight of those Conditions were suggested earlier by the MLA in its Statement of Position, which was filed with the Commission before the outset of the hearings.[61] Nevertheless, while Grain Belt's Initial Brief discussed the Conditions recommended by Staff and Rockies Express, they chose to ignore the Conditions suggested by the MLA.

By doing so, Grain Belt will now have the opportunity to address the MLA's suggestions in its Reply Brief, while the MLA will have no opportunity to respond to Grain Belt's arguments. The MLA can only ask that the Commission take this tactic into account when it evaluates the merits of the MLA's suggested Conditions.

As to the Commission inquiry dealing with the converter station, the question actually asked was how, if the Commission chose to do so, could they condition the CCN on the actual construction of the proposed converter station <u>and</u> the actual delivery of 500

[60] Initial Brief, pp. 72 et seq.
[61] Statement of Position of the Missouri Landowners Alliance, pp. 11-14, filed March 13, 2017; EFIS 317.

MW of wind to the converter station.[62] The MLA responded to this question at pages 73-74 of its Initial Brief, proposing specific language which would accomplish that objective.

Notably, Grain Belt responded to only half of the question, stating that the Commission could condition the CCN on the construction of the converter station, "to be capable of the actual delivery of 500 MW of wind power to the converter station."[63]

However, simply because the converter station might be "capable" of delivering 500 MW of power to Missouri does not mean that it will actually do so. That is where the second part of the Commission question comes into play, and that part of the question was simply ignored by Grain Belt.

In fact, none of the Grain Belt supporters suggested any such language either. Presumably, none of them wish to even discuss the possibility that Grain Belt might actually be required to deliver the promised 500 MW of power to Missouri.

If the Commission does decide to condition the CCN on 500 MW of power actually being delivered into Missouri, the only suggestions from the parties for doing so is the language submitted by the MLA at page 73 of its Initial Brief, and the language offered by Staff at page 27 of its Initial Brief.

6. **Miscellaneous Claims Made by Grain Belt and Other Supporters of the Line.** In this section, the MLA will address several matters raised by Grain Belt and its supporters which do not readily fit within the earlier sections of this Reply Brief.

(1) The DED claims that the availability of renewable energy would be "a key attractor for new business to the state…."[64] The Sierra Club makes a similar claim.[65]

[62] Order Directing Filing Regarding Initial Briefs, March 28, 2017.
[63] Grain Belt IB p. 70.

The implication, of course, is that companies will build in locations where they are able to buy renewable energy. However, as Wal-Mart's witness Mr. Chriss stated, he is not aware of even one instance where a decision to locate or relocate a Wal-Mart facility anywhere in the country was based on whether or not they could secure a supply of renewable energy for even a part of their needs.[66] And Wal-Mart is near the forefront of businesses which are interested in securing renewable energy.[67] Obviously, corporate decisions about where to locate or relocate are made on the basis of other more compelling factors.

(2) Grain Belt claims that Missouri ratepayers will bear no risks related to construction of the project, and that its cost will not be borne by ratepayers through the cost allocation processes of the RTOs.[68] The first part of that claim is not accurate. As noted by Staff, if upgrades to the MISO grid associated with the converter station are found to address a local reliability concern, then those costs could ultimately be passed on to Missouri ratepayers not making use of the Grain Belt line.[69]

As to the second claim, while the other costs of the project might not be passed on to retail customers through an RTO allocation process, to the extent that the Grain Belt service is used in Missouri then retail customers here will in fact pay their proportionate share of the cost of the Project.[70]

The DED takes this argument well beyond even Grain Belt's claim. It states that the Grain Belt project presents a rare opportunity to meet the renewable goals of

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[64] IB p. 1.
[65] IB p. 6.
[66] Tr. 1417 line 15 – 21.
[67] Id. lines 9-14.
[68] Grain Belt IB p. 3.
[69] Exh. 201, p. 31.
[70] See e.g. direct testimony of Mr. Skelly, Exh. 100, p. 7 lines 7-11; and Tr. 515 line 20 – 516 line 11.

corporate America "on the back of private investment rather than being wholly shouldered by tax or rate payers."[71] Again, whether a transmission line is built by a traditional utility or with a "shipper pays" model, the retail users of the line will ultimately pay the costs of building that line.[72] There is no "rare opportunity" here to escape that inevitable fact.

(3) Grain Belt would like for the Commission to believe it has engaged in open, continuous and transparent communications with community leaders and landowners in the vicinity of its proposed line.[73] The evidence is not as flattering as portrayed by Grain Belt.

For example, in 2012, before affected landowners were even notified of the proposed line, Grain Belt met with the county commissions in all eight affected counties to secure their consents under Section 229.100. However, Grain Belt did not bother to notify the public that they were taking this important first step in the process of building their line across northern Missouri.[74] It was no doubt easier for Grain Belt to obtain those consents back in 2012 by keeping the public in the dark. And as evidenced by subsequent reaction to their line, including the rescissions by some of the county commissions[75], Grain Belt chose wisely in doing so.

In their testimony and in their Initial Brief, Grain Belt stresses how they held more than 24 roundtable meetings with more than 250 community leaders from more than 40 counties in Missouri.[76] However, they held only one such meeting in each of the

[71] DED IB p. 2.
[72] See e.g., testimony of Ms. Suedeen Kelly, Tr. 515 line 16 – 516 line 11.
[73] See, e.g., IB p. 4 - 6.
[74] Tr. 318 line 16 – Tr. 325 line 5.
[75] Rebuttal testimony of Louis Donald Lowenstein, Exh. 300 p. 33 lines 9-14 and Schedule LDL-4.
[76] See Grain Belt IB p. 4-5.

eight counties directly affected by the line, with an average attendance of only 10 people.[77]

Grain Belt also touts its "Open House" meetings for members of the general public[78] However, according to County Commissioner Hibbard from Ralls County, who attended one of those meetings, the communication from Grain Belt was sorely lacking. Few people actually affected by the line were notified of the meeting; the young people there from Grain Belt were uninformed; and the meeting was generally "an assembly line type of process that promised money for towers and promised answers later."[79] Moreover, since Mr. Hibbard's election as County Commissioner in 2014, other than press releases and holiday greetings his Commission has not been contacted even once by anyone from Grain Belt.[80]

Grain Belt's priorities apparently were elsewhere, including the hiring of at least two PR firms, a well-known lobbying group and a high-profile St. Louis law firm to help them gather support for their line.[81] Their tactics are reflected in the material they provided to then Governor Nixon and his staff in securing his support for the line.[82]

Another example of Grain Belt's approach to communicating with the public is Mr. Lawlor's "Summary of Support for the Grain Belt Express Clean Line in Missouri", Exhibit 356.

Any reasonable person looking at that document would be led to believe that Grain Belt had secured the official support from the public officials listed under the

[77] Tr. 564 lines 13-22.
[78] Grain Belt IB p. 5.
[79] Rebuttal testimony of Wiley Hibbard, Exh. 304, p. 4 lines 3-11.
[80] Id. p. 1 line 8-9; p. 5 lines 1-4.
[81] Tr. 337 line 1 – Tr. 341 line 7.
[82] Tr. 330 line 15 – Tr. 336 line 4.

heading "City Government Officials", and the support from the organizations listed under the heading "Economic Development and Civic Organizations", and the support from the local businesses listed under the heading "Local Business". But apparently all that it took to be listed there was for any individual from any organization to say that he or she supported the line.[83] Support from the actual entity in question was not deemed essential. Which would explain why the cities of Brunswick and Salisbury, MFA Oil, Edward Jones Financial Services and others complained about being included on the list of supporters without their consent.[84] This type of misrepresentation hardly exemplifies the open and honest communication for which Grain Belt is seeking to take credit.

A final example concerns the property owned by Matthew and Christina Reichert, on which they operate a Bed and Breakfast (B & B) business. This property was given special mention in the Report and Order in the 2014 case as an example of the negative impact which the line would cause for property owners.[85]

In its Initial Brief, Grain Belt takes credit for moving the line further away from the B & B after the decision in the 2014 case, which is accurate as far as it goes.[86] However, that is not the full story.

In early May, 2016, Grain Belt representatives began pushing for a meeting with the Reicherts to discuss the location of the line on their property. They eventually met on June 9, or just three weeks before Grain Belt filed their initial Application in this case. At that meeting, Grain Belt told the Reicherts that because their property had been mentioned in the Commission's Report and Order, Grain Belt was going to show "good

[83] Tr. 350 lines 11-17.
[84] Tr. 351 line 7 – Tr. 357 line 23; direct testimony of Louis Donald Lowenstein, Exh. 300, p. 33 line 21 – p. 34 line 3 and Schedule LDL-5.
[85] Exh. 321 p. 17.
[86] Grain Belt IB p. 59.

faith" by rerouting the line completely off their property. However, Mr. Lawlor told the Reicherts that Grain Belt would expect something in return. Given that the Reicherts' intervention in the 2014 case had caused Grain Belt a problem, it is not difficult to imagine what the "something in return" was. In any event, the Reicherts eventually told Grain Belt they could not agree to the proposed move, since it meant rerouting the line onto a neighbor's property. So the line was rerouted back to the Reichert property once again, leaving them with most of the same problems they were faced with in the first case.[87]

Notably, the rebuttal testimony of Mrs. Reichert on this matter was not even addressed in the hundreds of pages of Grain Belt's surrebuttal. In any event, this apparent attempt to placate the Reicherts at the expense of their neighbors is not the approach to routing or to communications to which Grain Belt is now laying claim.

As these examples demonstrate, there is a reason why so many people at the local public hearings voiced their displeasure with Grain Belt. And they help to explain why people are so apprehensive about being left on their own to deal with Grain Belt if the Commission does grant them the CCN.

(4) Grain Belt points out that in Docket No. 15-0277, the Illinois Commerce Commission (ICC) granted them a certificate of public convenience for the portion of the line in that state.[88] Although Mr. Skelly cited that decision in his own testimony[89], during cross-examination he said he was not willing to agree that the document tendered to him was actually a copy of the ICC Order in question.[90] He thereby avoided answering

[87] Rebuttal testimony of Christina Reichert, Exh. 550, p. 26 line 1 – p. 28 line 28.
[88] Grain Belt IB p. 11.
[89] Exhibit 100, p. 9.
[90] See Tr. 172 lines 13-22 and Tr. 173 line 22 – Tr. 174 line 2.

questions about the content of the Order. Accordingly, the MLA asks this Commission to take administrative notice of the ICC Order cited by Mr. Skelly and referred to in Grain Belt's Initial Brief.[91]

Read in its entirety, the ICC Order actually is at least as favorable to Grain Belt's opponents in this case as it is to Grain Belt. The key in that regard is to recognize the difference in statutory bases for issuing a CCN in Missouri versus Illinois. In Missouri, the governing statute simply provides that the proposed project must be "necessary or convenient for the public service."[92]

In Illinois, the comparable statute allows an applicant to meet either of two criteria for a CCN. The first alternative in Illinois provides that the applicant must demonstrate "that the project is necessary to provide adequate, reliable and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers…."[93] Thus this first alternative is quite similar to what is required for a CCN in Missouri, particularly when the statutory requirement in Missouri is supplemented by the Commission's *Tartan* criteria.

With respect to this alternative, after an extensive analysis the ICC found as follows: "The Commission finds that GBX has not demonstrated that the Project is needed to provide adequate, reliable, and efficient service to customers within the meaning of Section 8-406.1."[94] A comparable finding by this Commission regarding the proposed Grain Belt project would certainly result in the denial of the CCN here.

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[91] A copy of the Order in question is available at item number 1 of "Files" at https://www.icc.illinois.gov/docket/files.aspx?no=15-0277&docId=236482

[92] Section 393.170.3. See also Grain Belt's Initial Brief, p. 23.

[93] ICC Order, p. 5.

[94] ICC Order, p. 125.

The ICC went on to find that Grain Belt had satisfied the second alternative for being granted a certificate of convenience.[95] However, were it not for that second alternative, the ICC would necessarily have denied a CCN to Grain Belt for failing to demonstrate that the line "is needed to provide adequate, reliable, and efficient service to customers…." Thus if the ICC decision is looked to for any precedential value in this case, it definitely supports the opponents of the line.

Moreover, as the ICC also noted, Grain Belt did not seek authorization in that case for the power of eminent domain.[96] Therefore, as the ICC also noted, "eminent domain and the specific concerns raised by the interveners and landowners are not at issue here."[97]

Thus unless Grain Belt is able to acquire the entire right-of-way voluntarily, over strong opposition, it still faces additional statutory hurdles in Illinois. As provided by the statutes in question, before a utility there may exercise eminent domain under Section 8-509 of Illinois law, it must first meet additional requirements imposed by Section 8-503 regarding need and adequacy of service. So before Grain Belt can exercise eminent domain, it must first file another petition with the ICC, and return with additional evidence required to satisfy Sections 8-503 and 8-509 of the Illinois law.

On balance, the actual findings and conclusions in the Illinois decision are more favorable to the opponents of the Grain Belt line in Missouri than they are to Grain Belt.

[95] ICC Order, p. 126.
[96] ICC Order, p. 211.
[97] Id.

(5) Finally, a number of parties rely on testimony given on behalf of Grain Belt by Ms. Suedeen Kelly.[98] She testified, among other things, that the Commission need not concern itself in this case with protecting the interests of "captive customers" of established utilities, because they will bear none of the risks associated with building the Grain Belt project. And any customers of Grain Belt would become customers only if they choose to be, so they need no protection from the Commission either.[99]

The implication is that the Commission may as well approve the Project, because there is no downside to doing so. Customers of both traditional utilities and potential customers of Grain Belt are fully protected, and so the Commission need not even worry about the need for or feasibility of the proposed line.

Sadly, Ms. Kelly and those who embrace that argument total ignore the interests of the landowners in the vicinity of the proposed line. Even if customers and ratepayers can safely rely on the market place for protection, these property owners cannot do so. They must rely on the Commission to protect their interests. The MLA respectfully asks that the Commission not overlook them in considering this issue, as Grain Belt and its supporters seem so willing to do.

In the same vein, a number of parties quote court and Commission decisions for the proposition that in CCN cases, the rights of individuals are subservient to the rights of the public as a whole.[100] However, that does not mean that it is the rights of the property owners which must be made subservient. Depending on how the Commission balances the competing interests here, it could just as easily mean that the rights of MJMEUC and

[98] See Grain Belt IB p. 34; Infinity Wind IB p. 12; Missouri Industrial Energy Consumers et al. p. 4; MJMEUC IB p. 8.
[99] Direct Testimony of Suedeen Kelly, Exh. 111, p. 22 lines 9-18.
[100] See, e.g., Grain Belt IB p. 26.

its customers must be made subservient to the rights of the rest of the public. This legal principle is not applied on the basis of a head-count.

7. <u>Conclusion and Prayer for Relief.</u>

Grain Belt tells the Commission that it has no discretion in deciding this case: that it "must" grant the CCN that Grain Belt has applied for.[101] To the contrary, the MLA submits that there is enough competent and substantial evidence in the record to support a Commission finding that the line is neither needed in Missouri, nor in the public interest of the citizens of this state. As the courts have indicated, "it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate."[102] Accordingly, the MLA respectfully requests that the CCN be denied on the ground that Grain Belt has once again failed to meet its burden of proof with respect to one or more of the *Tartan* criteria.

If the Commission disagrees, then the MLA respectfully requests that the CCN be rejected on the ground that Grain Belt has failed to obtain the necessary consent from the Caldwell County Commission pursuant to Section 229.100.

If the *Neighbors United* appeal has not been finalized by the time the Commission is ready to issue an order here, then the MLA suggests that this case should be held in abeyance until a mandate is issued. Unless the Commission is willing to simply ignore the Western District's decision, any Order dealing with the merits of this case would merely be advisory in nature.

If the decision from the Western District is thereafter affirmed, then the MLA further recommends that the Commission dismiss Grain Belt's Application unless it has

[101] Grain Belt IB p. 10.
[102] *State ex rel. Intercon Gas, Inc. v Public Service Commission,* 848 S.W.2d 593, 598 (Mo App 1993).

obtained the necessary consent from the Caldwell County Commission within 6 months after the mandate is issued in that case. If the *Neighbors United* decision is reversed during the appellate review process, then at that point the Commission could take up where it left off.

Finally, if a CCN is ultimately granted to Grain Belt, the MLA respectfully asks that it include the eight Conditions discussed by the MLA at pages 73-86 of its Initial Brief.

Respectfully submitted,

Missouri Landowners Alliance, et al.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 24th day of April, 2017.

/s/ Paul A. Agathen
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