BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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| 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 | ) ) ) ) ) ) ) | **File No. EA-2016-0358** |

# JOINT REPLY BRIEF ON REMAND OF NRDC AND SIERRA CLUB

This brief addresses only Missouri Landowners Alliance's argument that the Commission lacks authority to grant a CCN because Grain Belt Express plans to sell only at negotiated wholesale rates rather than at fixed retail rates (MLA brief at 3–14). It would be extraordinary if the Commission had no jurisdiction over infrastructure of this magnitude, and as a matter of law it does.

The Commission has already found that an interstate transmission company was an electrical corporation, a public utility and entitled to a CCN although it would not provide retail service. *In the Matter of the Application of Ameren Transmission Co. of Illinois,* Order approving Stipulation and Agreement, EA-2018-0327 (Nov. 28, 2018); and this case, EA-2016-0358, Report and Order, Aug. 16, 2017, pp. 10–11 ("While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility").

MLA is incorrect in saying that GBE does not fulfill the statutory definitions of electric plant, electrical corporation or public utility. An HVDC transmission line is electric plant; the

owner and operator of electric plant is an electrical corporation; and an electrical corporation is a public utility.[1] GBE or its successor Invenergy would not be an electrical corporation only if it met the exception "where electricity is generated or distributed by the producer… for its own use or the use of its tenants and not for sale to others;" § 386.020(15), RSMo. There is no mention in the statutory definitions of retail service or retail rates.

MLA can only reach the result it wants from *State ex rel. M. O. Danciger & Co. v. PSC,* 275 Mo. 483, 205 S.W. 36 (1918), where the court said, "it is apparent that the words 'for public use' are to be understood and to be read therein…The electric plant must, in short, be devoted to a public use before it is subject to public regulation." 205 S.W. at 40. The case does not say that the only public use is the retail sale of electricity.

On the facts of the case, the court decided that Danciger was engaged in the private sale of electricity, not a public offering. MLA relies on later cases that cited *Danciger* to the same effect. The 2017 Report and Order in this case (p. 11, footnote 30) relied on one of these cases to refute the argument MLA is making now. In *State ex rel. Buchanan County Power Transmission Co. v. Baker,* 320 Mo. 1146, 9 S.W.2d 589, 592 (Mo. banc 1928), the court said of a transmission line that served a single customer that if it were "'an important link' in such sale

[1] Section 386.020(14) "Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

(15) "Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;

(43) "Public utility" includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter.

and distribution [of electricity to the people of St. Joseph], we would have a different question for solution." As the Commission found, "the court clearly implied that if the electricity had been transmitted to a public utility for public use the transmission company would also be considered to be a public utility." The Commission said the same in its Report and Order in the earlier GBE case, EA-2014-0207 (p. 11): "an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to consumers is a 'necessary and important link' in the distribution of electricity and qualifies as a public utility."

The Grain Belt line is analogous to a pipe line that is a common carrier of oil or gas, which is a "public use" within the meaning of eminent domain law. *State ex rel. State Highway Commission v. Eakin,* 357 S.W.2d 129, 133 (Mo. 1962). The Ralls County converter station deprives the GBE project of the purely interstate character that MLA claims it has (MLA initial brief on remand, 12–14).

GBE is an electrical corporation subject to regulation under § 393.170, RSMo, for the grant of a CCN though not for rate regulation. *Danciger* concerns private versus public sales, not retail versus wholesale. The Commission was correct in its two previous decisions in this case that it has authority over the CCN.

## CONCLUSION

WHEREFORE Sierra Club and NRDC ask the Commission to approve the application for a certificate of convenience and necessity with such reasonable conditions as are necessary.

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was filed on EFIS and sent by email on this 16th day of January, 2019, to all counsel of record.

/s/ Henry B. Robertson
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