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

REMAND STATEMENT OF POSITION OF THE MISSOURI LANDOWNERS ALLIANCE[1]

Comes now the Missouri Landowners Alliance ("MLA") and for its Statement of Position regarding the agreed upon list of issues states as follows:

1. **Does the evidence establish that the Commission may lawfully issue to Grain Belt Express Clean Line LLC ("Grain Belt") the certificate of convenience and necessity ("CCN") it is seeking for the high-voltage direct current transmission line and converter station with an associated AC switching station and other interconnecting facilities?**

No it does not, for the reasons set forth in the first issue of the Statement of Position from Show Me.

2. Does the evidence establish that the high-voltage direct current transmission line and converter station for which Grain Belt is seeking a CCN are "necessary or convenient for the public service" within the meaning of that phrase in section 393.170, RSMo?

No it does not, for a number of reasons. In the last phase of this case ("the 2016 proceedings") the MLA focused primarily in its Position Statement and in its brief on the first of the Tartan criteria: the need for the line.

The MLA will summarize its position on that issue later in this document, inasmuch as it is an issue which most likely will be addressed in the Commission's final

[1] This Statement of Position is being submitted not only by the MLA, but also by interveners Matthew and Christina Reichert, Randall and Roseanne Meyer, Charles and Robyn Henke, and R. Kenneth Hutchinson. For convenience only, all will be referred to here collectively as the MLA.

Order. Therefore, the MLA feels it must at least summarize the reasons why the line is not needed in Missouri. That issue will be addressed in more detail in the MLA's briefs.

However, the MLA will focus here on what are perhaps the most dominant issues at this point in the proceedings: the impact of the changes which have occurred over the past two years or so, as they relate to the five Tartan criteria.[2] Based on those changes, the MLA respectfully suggests that the Grain Belt project now fails to meet all five of the Tartan criteria. Not counting the first criterion of "need", the others are as follows: No. 2, Applicant's Qualifications; No. 3, Applicant's Financial Ability; No. 4, Economic Feasibility of the Project; and as something of a composite of the other criteria, No. 5, Promotion of the Public Interest.

2. <u>Applicant's Qualifications</u>. The first aspect to note about this criterion (as well as the next) is how it has been framed over the past 24 years by the Commission. In analyzing item number 2, the Commission's criterion clearly specifies that it is the <u>Applicant's</u> qualifications which are at issue.[3] The criterion is not based on the qualifications of a third party which may or may not eventually purchase the project, after the project may or may not satisfy all of the conditions which must be met before the sale may close.

So that means this second issue should be decided on the basis of the qualifications of Grain Belt Express, and presumably its ultimate owner Clean Line.

By its nature, this criterion raises the question of whether the personnel at Clean Line are now capable of ushering the proposed project through perhaps two more years of the development phase, and then completing the four years or so of the construction

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[2] From *In re Tartan Energy,* Report and Order, 3 Mo.P.S.C. 3d. 173, Case No. GA-94-127 (Sept. 16, 1994), pp. 10-23. (Hereafter the "Tartan case")
[3] Tartan Case, slip op. p. 12.

phase. The answer, the MLA submits, is absolutely not, because neither Clean Line nor Grain Belt has any employees at all.

In addition to having no employees, Clean Line has no officers. Even the former CEO Mr. Michael Skelly has taken a position elsewhere, although he is still the Chairman of what now remains of Clean Line. But gone is each and every one of the 14 members of Clean Line's top Management Team, as described by Mr. Skelly in the 2016 proceeding. No longer employed there are Clean Line's Chief Operating Officer Jayshree Desai, its CFO David Berry, its chief officer in charge of transmission, Dr. Wayne Galli, its General Counsel Mr. Cary Kottler, and everyone else on the list of Clean Line's top management team which was described in such glowing terms by Mr. Skelly just two years ago. None of them are now employed by Clean Line. And Clean Line is not even seeking to hire replacements for any of its former employees.

If for some reason any of the ex-employees are needed later to help on the project, Clean Line does apparently have an agreement with five of them to lend assistance if Clean Line should request it. But given that all of those individuals now have positions elsewhere, exactly how much assistance Clean Line would actually receive is certainly speculative.

Like Clean Line, Grain Belt Express has no employees. And it also has no officers.

In short, looking at the qualifications of the Applicant, Grain Belt and Clean Line have basically lost the entire talent pool which earlier may have met the second Tartan criterion. Without employees, they certainly cannot have employees who are "qualified" to see this project through to completion.

Even if the Commission were to overlook the language of its own Tartan criteria, and make its decision on this issue by looking to Invenergy, that path would be quite problematic. Inasmuch as Grain Belt is not an electrical corporation, as discussed under issue number 1 in Show Me's Position Statement, the Commission will have no jurisdiction under Section 393.190 to approve the sale of Grain Belt to Invenergy. That being the case, it would be dangerous for the Commission to depend upon the financial and managerial capabilities of Invenergy when deciding whether to issue the CCN to Grain Belt. For purposes of criteria 2 and 3, Grain Belt and Clean Line must stand on their own.

3. Applicant's Financial Ability. Here again, what once looked like a formidable entity is now, based on several criteria, just a shell of its former self.

Some of the facts affecting this issue are deemed confidential by Grain Belt, and thus cannot be addressed here. However, Clean Line's track record with respect to projects similar to the Grain Belt line certainly point to mounting financial difficulties.

In the 2016 proceedings, in an apparent attempt to bolster Clean Line's position as a key player in the long-distance transmission line business, they testified that they were at that point involved in developing three other long distance DC lines, and one long distance AC line.

One was the Plains and Eastern Line, which was being developed in partnership with the U.S. Department of Energy under Section 1222 of the Energy Policy Act of 2005. The plan was to move wind energy from Oklahoma to a converter station near Memphis where it could sell power to the Tennessee Valley Authority, with an intermediate converter station in Arkansas.

The problem with this project, as is generally the case for the Grain Belt line, is that Plains and Eastern could find no customers. At one point the TVA had an MOU to purchase a good portion of the capacity from the line at the terminal point near the TVA service area. However, after a later analysis by TVA it cancelled the MOU with the Plains and Eastern Line. The Department of Energy then dropped out of the project as well, leaving it virtually useless. And Clean Line later sold all of the assets of the project in Oklahoma. Thus for a number of reasons, it is apparent that Clean line will never sell a single MW on the Plains and Eastern line.

A second sister line to Grain Belt was the Rock Island Line, which was to connect wind farms in Iowa with a converter station in northern Illinois. Here, Grain Belt never got to the point where it could realistically even attempt to attract potential customers. Legislation was passed in Iowa which in effect precluded "merchant" transmission lines from using the power of eminent domain. That problem would effectively kill any long distance transmission line, particularly where it was facing strong opposition from landowners.

The Illinois portion of the line was effectively killed or at least significantly hampered by a Supreme Court decision in that state. The court reversed an order of the Illinois Commerce Commission granting the Rock Island line permission to build in that state, on the ground that the line did not qualify as a public utility under Illinois law.

Clean Line sold its interest in the other two lines it described to this Commission in the 2016 proceeding. It has also sold off all of what are described as its "non-transmission" assets. Thus it is quite evident that Clean Line will never sell a single MW of capacity on the lines it described to the Commission in the 2016 proceeding. The

financial toll in pursuing these failed or disposed of projects has been quite detrimental to Clean Line.

As an apparent last resort to salvage something from its portfolio, Clean Line has agreed to sell the Grain Belt project as well. At this point, it is the only project on which Clean Line is devoting any effort. And even here, those efforts have been scaled back. For example, in order to gain approval from MISO to connect its Missouri converter station to the Ameren system, Grain Belt will first need approval from MISO. Among other things, this process involves adding a proposed project to the MISO queue, where it sits while awaiting MISO approval. The Grain Belt project was first submitted to the MISO queue in September of 2012. And after five years of remaining in that queue, in September of last year Grain Belt suddenly withdrew its proposed project from the queue.

The reason: the benefits of remaining there were deemed less valuable than the costs that Grain Belt was incurring by remaining in the queue. So if Grain Belt still plans to interconnect with the Ameren system in Missouri, it will need to once again join the MISO queue. That process is estimated to take another year and a half to complete. This revision in the Grain Belt plans certainly raises a red flag about its financial ability to continue in the orderly development of its proposed line.

As with the preceding criterion, No. 3 is framed in terms of the Applicant's financial ability.[4] But the Tartan case is even more instructive with regard to the facts of that case, and their impact on this particular criterion.

Tartan Energy applied for the CCN to build certain gas line facilities.[5] Tartan was already a wholly owned subsidiary of Torch Energy Advisors, which was funding the

[4] Tartan case, slip op. p. 14.
[5] Id. p. 2.

project.[6] The matter of financial responsibility was resolved by the Commission with the addition of conditions to the CCN, but in doing so the Commission noted that Tartan had no independent means to go forward with the project. As the Commission further stated, "Any certificate issued will be issued to Tartan, not Torch Energy Advisors, Inc., therefore the Commission wishes to assure itself that Tartan will have the capacity to build the proposed project."

Grain Belt will no doubt argue that the Commission will have such assurances here, by reason of the backing from Invenergy. However, as discussed with respect to criterion No. 2, Invenergy's involvement in the Grain Belt project is conditioned on events which may or may not come to pass, potentially leaving the financial burden of this project on Grain Belt and Clean Line. In contrast, Tartan Energy was already owned by the company providing funds for the project in question. So as the Applicant here, it is the financial condition of Grain Belt which should be evaluated by the Commission in deciding this third issue.

Clean Line's known track record certainly does not reflect a strong financial capability. And this conclusion will be reinforced when the parties are able to discuss its confidential financial information during the hearings.

4. <u>Economic feasibility of the project.</u> As the Commission is aware, when the final Report and Order from the 2016 proceedings was issued on August 16, 2017, four commissioners joined in a separate concurring opinion. The MLA recognizes that this document does not bind any of the commissioners to any positions advocated there. However, their opinion does shed some light on the Tartan criterion of Economic Feasibility.

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[6] Id. p. 14.

The MLA had argued in those proceedings that due to the steeply discounted rates gifted to MJMEUC, the proposed line would necessarily be a losing proposition for Grain Belt in Missouri. The concurring opinion seemingly did not disagree with that contention. However, it suggested that the 3500 MW portion of the line to be sold in the higher-priced PMJ markets demonstrated the financial viability of the project overall.[7]

The problem at this point, as with other of the Clean Line projects, is that Grain Belt still has no customers in that market. Despite all the hype by Grain Belt about the benefits of selling into the PJM market, it has no contracts with any entity there to actually purchase any of its capacity. In fact, after four years or so, despite the supposed interest in the project, Grain Belt has not managed to even sign any kind of non-binding MOU to sell capacity to any entity in the PJM footprint. And despite the initial non-binding show of interest from wind farms in western Kansas, Grain belt still has not managed to sign any contracts or even MOUs with any of the wind farm developers.

In short, the ability of Grain Belt to attract any new customers in the PJM markets is as speculative as it was during the 2016 proceedings. Or worse than that, given its lack of success over the past two years in finding any customers for its line there.

5. <u>Promotion of the Public Interest.</u> This last criterion "is in essence a conclusory finding."[8] "Generally speaking, positive findings with respect to the other four standards will in most instances support a finding than an application for a certificate of convenience and necessity will promote the public interest."[9]

Conversely, negative findings with respect to the other four standards should in most instances reject a finding that the CCN will promote the public interest. That being

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[7] Concurring Opinion, August 16, 2017, p. 4.
[8] Tartan Case, slip op. p. 23.
[9] Tartan case, slip op. pp. 23-24.

the case, and given the Applicant's failing scores on most if not all of the other four criteria, Grain Belt has also failed to meet their burden of proving that the project is in the public interest.

1. Need for the Service. Given that this criterion will seemingly be a factor in the Commission's final order, the MLA feels it is necessary to at least summarize its primary arguments on this topic from its Statement of Position in the 2016 proceeding.

(1) Despite its best efforts, Grain Belt was unable to attract any customers for its line until it offered MJMEUC a discounted, below-cost rate for the sale of up to 200 MW of capacity. It was simply a means for Grain Belt to gain approval of the project in Missouri. However, even this contract may be cancelled by MJMEUC if it finds a more favorable price over the next five-six years or so.[10] Therefore, the agreement with MJMEUC is nothing more than a contingent contract, which could result in the sale of zero MW of capacity.

(2) Despite its best efforts, Grain Belt still has secured no additional contracts for the purchase of capacity on its line. Nor does it have any existing MOU's for any such sale, despite the supposed strong showing of interest in its open solicitation process. Real interest would be reflected in real contracts, or at least MOU's. None of the investor-owned utilities have shown any interest, and Grain Belt did not even make Consolidated Electric Cooperative's "short list" when it went out for bids. So once again, the inherent economics of the project have attracted virtually no known interest in doing business with Grain Belt.

[10] During the course of the hearings Grain Belt also disclosed that it had a contract with a firm named Realgy, LLC, but that entire contract has been marked as Confidential by Grain Belt. Thus information related to that contract will need to await the in-camera proceedings.

(3) The only “need” for the line in Missouri was the need created by Grain Belt itself, in offering drastically discounted rates to MJMEUC. This was basically a tactic to get their foot in the door in Missouri, thus allowing Grain Belt to reach its real goal here: to get to the supposedly more lucrative markets in PJM, where it can sell the vast bulk of the 4000 MW on its line. Yet despite the supposedly strong demand for its product in PJM, Grain Belt still has secured not a single contract or even an MOU for the capacity of its line anywhere in PJM.

In short, Grain Belt has shown absolutely no need for the line in Missouri or elsewhere, except when it offers its product at highly discounted, below-cost rates. That is hardly a sustainable financial plan.

For all of the foregoing reasons, the MLA respectfully asks that if the Commission finds it has jurisdiction over this case, that it deny Grain Belt’s Application due to its failure to satisfy most if not all of the Tartan criteria.

3. If the Commission grants the CCN, what conditions, if any, should the Commission impose?

The MLA supports the conditions to which Staff and Grain Belt have agreed, as set forth in Exhibit 206. Further, the MLA supports the Staff with respect to its recommended conditions to which Grain Belt has not agreed. (See summary of conditions at Schedule DAB-9 to Mr. Berry’s surrebuttal testimony from 2016, Exhibit 105.)

In addition, the MLA still supports the following numbered conditions which it addressed in some detail at pages 73-86 of its HC Initial Brief filed in the 2016 proceedings on April 10, 2017, EFIS No. 537:

Condition 1: that the CCN be conditioned on construction of the Ralls County converter station. (Brief, p. 73-75)

Condition 2: that the proposed decommissioning fund is strengthened so as to provide meaningful protection for landowners on the right-of-way of the proposed line. (Brief, p. 75-79).

Condition 3: As Grain Belt witness Lanz suggested, certain documents should be incorporated into the Grain Belt easement agreements with landowners. (Brief, p. 79).

Condition 5: that Grain Belt not be allowed to reduce the amount of its offer for an easement if the matter later goes to arbitration or to court. (Brief, p. 81-82).

Condition 8: Modification of Grain Belt's standard form easement agreement to add additional protections for landowners. (Brief, p. 84-86).

4. If the Commission grants the CCN, should the Commission exempt Grain Belt from complying with the reporting requirements of Commission rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 3.175, and 3.190(1), (2) and (3)(A)-(D)?

The MLA takes no position on this issue.

Respectfully submitted,

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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 13th day of December, 2018.

/s/ Paul A. Agathen
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