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-2014-0207

RESPONSE OF UNITED FOR MISSOURI, INC. TO
APPLICATION FOR REHEARING OF GRAIN BELT EXPRESS CLEAN LINE LLC

Comes Now United for Missouri, Inc. ("UFM"), pursuant to Rule 4 CSR 240-2.080(13), and respectfully submits the following response to the "Application for Rehearing of Grain Belt Express Clean Line LLC" (hereafter "Application"):

I. Introduction.

1. On July 29, 2015, Grain Belt Express Clean Line LLC ("Grain Belt") filed its Application in this case. In its Application, Grain Belt identifies three issues on which it seeks rehearing and separately argues that the Commission's *Report and Order* violates the interstate commerce clause of the United States Constitution in two respects, that its application of the Tartan test overtly discriminates against interstate commerce or, in the alternative, it improperly burdens interstate commerce. While Grain Belt's discussion of the law is well done, its application of the law in this case is inapt. Once again, Grain Belt is trying to fit a square peg in a round hole.

II. Issues on Which Rehearing is Sought.

2. One of the legal principles that Grain Belt left out in its discussion of "Legal Principles that Govern Applications for Rehearing," is that Grain Belt carries the burden of proof in this case. Grain Belt quibbles with some of the finer points of the record. These points can be

addressed rather quickly. Nothing in the Application changes the conclusions described in the *Report and Order*. The overwhelming weight of the evidence indicates that there is no need for the project, the economic feasibility of the project is questionable at best, and the project is not in the public interest as is required by the Tartan test. Grain Belt has still failed to carry its burden of proof.

A. RTO Planning Process.

3. Grain Belt challenges the *Report and Order*, where, at paragraph 30, it makes a finding of fact that Grain Belt did not submit the project to the MISO regional planning process. As a result, the project "has not been evaluated for need and effectiveness in the MISO footprint."[1] Grain Belt rightly observes that there is no requirement to submit merchant transmission projects to the MISO regional planning process, but is concerned that some sort of finding of "fault" on Grain Belt's part makes the *Report and Order* unreasonable. "There is no competent and substantial evidence on the record that supports the finding and conclusion that the Company is somehow at fault for failing to 'participate' in an intraregional evaluation that is inapplicable to the Project."[2]

4. The finding of fact is correct. MISO has not evaluated the need for the project. The finding is also relevant. One of the Tartan factors is need. There is competent and substantial evidence on the record that there is no need for the project. The record clearly shows that no load serving entity in the state has requested this service. No customer of any type has requested this service. The finding of fact criticized by Grain Belt is just one more element of the Commission's ultimate finding that there is no need for the project. The concept of "fault" is a red herring which does not factor into the analysis. Grain Belt has the burden of proof in this

[1] Application, p. 3, quoting *Report and Order*.
[2] Application, p. 6.

case to show a need for the project. It has failed to prove the need for the project. Paragraph 30 is simply one more recognition that Grain Belt has failed to carry its burden.

B. Cost Effectiveness and Alternatives.

5. Grain Belt challenges the *Report and Order* in that it reached the following fact conclusion in its "Findings of Fact," at paragraph 32:

> Illinois and the parts of MISO to the west of that state have some of the best wind energy resources in the United States. North Dakota, South Dakota, Minnesota, Missouri, and Iowa, combined, have enough wind resources (2.838 million MWs) to meet the current electricity needs of the United States at least two times over.

The Commission recited this fact under its discussion of the "Need for the Project." It's a small piece of evidence but of some import.

6. A recurring theme of Grain Belt has been its assertion that the project is needed for Missouri investor-owned utilities to meet the renewable energy standard of Sections 393.1020 and 393.1030, RSMo. In its "Conclusions of Law" on the "Need for the Project," the Commission rightly concluded that none of the Missouri investor-owned utilities needed the project or had requested service from the project. And yet, Grain Belt clings to some residual need for the project, asserting, as it does in its Application, that western wind is somehow superior to MISO or Missouri wind.

7. However, the Wind on the Wire's own witness refutes that claim. In its *Report and Order*, the Commission cited to the Transcript, Vol. 14, p. 962-963 as its source for this finding, a portion of Wind on the Wires' witness Goggin's testimony. Michael Stephen Goggin is the Research Director for the American Wind Energy Association.[3] The evidence is clearly competent and substantial in that it comes from a witness that supports Grain Belt's application

[3] Transcript, Vol. 14, p. 935.

for a certificate of convenience and necessity ("CCN") and who is an expert in the field. It supports the other evidence that there is no need for the project.

C. Production Cost Modeling

8. Grain Belt quibbles with the Commission's decision to endorse the production cost modeling conclusions of Staff and its endorsement of Dr. Proctor's conclusions. These findings of fact of the Commission can be found at paragraphs 37 through 39 and 42 through 49 of the *Report and Order*, respectively, under the heading "Economic Feasibility of the Project." Here again, the evidence is of some import, but it supports the remainder of the evidence, which overwhelmingly indicates the economic feasibility of the project is questionable at best.

9. In its "Conclusions of Law" on the "Economic Feasibility of the Project" of the Tartan test, the *Report and Order* concluded that Grain Belt had simply not presented adequate evidence to show that the project is economically feasible.

> Staff made credible criticisms of the GBE studies and pointed out the large amount of important information that is not known about the impact of the Project on Missouri. Interconnection studies with SPP, MISO and PJM have not been completed or are inconsistent with the Project's current design, plans for operations, maintenance or emergency restoration have not yet been developed by GBE, and GBE production modeling studies do not support GBE's claims that retail electric rates would decrease. In addition, there is a good chance that Project costs would increase beyond what was estimated by GBE due to transmission upgrades, congestion, wind integration and the need for additional ramping capacity.[4]

These conclusions were made while giving Grain Belt every benefit of the doubt. They were made after the Commission took the unprecedented step of allowing Grain Belt to file additional information supporting the project after the evidentiary hearing and filing of briefs. Even after Grain Belt was given an additional opportunity to bolster its case, it claims that it "has consistently stated that certain studies, customer agreements and other

[4] *Report and Order*, p. 23.

matters will not be available until the Project advances to a more mature stage."[5] UFM continues to believe that this failing is due to the very nature of the Grain Belt business model as a private and not a utility enterprise. Be that as it may, the Commission's Conclusion of Law is correct on this matter. All of the studies, including Grain Belt's, are suspect because of the status of the project. This does not undermine the Commission's Conclusion of Law in this case; it confirms it.

III. The Commission's Decision Does Not Violate the Commerce Clause.

10. Grain Belt spends a great deal of paper and time summarizing the case law on the dormant commerce clause. However, its arguments are inapt for a number of reasons. First, in the field of electric utility regulation, the Federal Power Act ("FPA") makes the interstate commerce clause anything but dormant. The FPA expressly respects the authority of states in public utility regulation. While Grain Belt's discussion of the dormant commerce clause is interesting, the Application does not cite any authority in the field of electric utility regulation that would justify the conclusion Grain Belt is proposing.

11. Congress and the Federal Energy Regulatory Commission ("FERC") have been very careful to limit FERC's authority on matters of electric utility regulation. FERC, consistent with Congressional direction, has taken a hands off approach to transmission siting. Without attempting to duplicate the level of research found in Grain Belt's Application, it should suffice to quote a number of passages from FERC Order No. 1000:

> We acknowledge that there is longstanding state authority over certain matters that are relevant to transmission planning and expansion, such as matters relevant to siting, permitting, and construction. However, nothing in this Final Rule involves an exercise of siting, permitting, and construction authority. The transmission planning and cost allocation requirements of this Final Rule, like those of Order No. 890, are associated with the processes used to identify and

[5] See *Recommendation of Grain Belt Express Clean Line LLC*, June 10, 2015, p. 1.

> evaluate transmission system needs and potential solutions to those needs. In establishing these reforms, the Commission is simply requiring that certain processes be instituted. This in no way involves an exercise of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning, or authority over such transmission facilities. For this reason, we see no reason why this Final Rule should create conflicts between state and federal requirements.[6]
>
> As discussed above, this Final Rule in no way involves an exercise of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning, or authority over siting, permitting, or construction of transmission solutions.[7]
>
> However, we note that nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities. Public utility transmission providers must establish this framework in consultation with stakeholders and we encourage stakeholders to fully participate.[8]

Without citation, FERC simply recognizes that there are certain responsibilities "traditionally reserved to the states," and those include the "authority over siting, permitting, or construction of transmission solutions." The Commission is well within its authority to deny Grain Belt's application for a CCN. The interstate commerce clause does not prohibit the exercise of that authority.

12. Second, the Commission's Report and Order in no way burdened interstate commerce. Grain Belt's Application loses sight of the context of what Grain Belt is asking in its application for a CCN. Nothing in the *Report and Order* prohibits Grain Belt from conducting business and building its line in the state of Missouri. Grain Belt is free to enter into the state, purchase land, acquire easements and build its line as it deems best, all without a CCN. Grain

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[6] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Utilities,* Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11,2011), FERC Stats. & Regs. -U 31,323 (2011), at P. 107.
[7] *Id*. at P. 156.
[8] *Id*. at P. 227.

Belt's application sought, under the guise of becoming regulated by the Commission,[9] the special benefit of the status of a public utility and the right to condemn land. Denying an entity the status of a public utility and the right to condemn land is not a burden on interstate commerce. It is the denial of a state sanctioned privilege only granted under certain circumstances. It is also a protection the citizens' right to own property without the threat of a taking thereof for a private purpose.

13. Third, the denial of the CCN in the *Report and Order* was not a discrimination against interstate commerce, either in its application to the subject project or in its application to the applicants. The Commission has approved many CCN requests for projects intended to facilitate the flow of electricity between states. See, for one, *In Re Ameren Transmission Company of Illinois*, File No. EA-2015-0145. The Commission has approved a CCN request made by Transource Missouri, a Delaware corporation with corporate offices in Columbus, Ohio. See *In Re Transource Missouri*, LLC, File No. EA-2013-0098. The *Report and Order* was founded on a recognition that the private business model of Grain Belt, being in contradistinction to a utility model, was not in the public interest for the state of Missouri. The project was not integrated into the transmission network and the project created destructive competition with the established transmission network and potentially threatened the reliability and efficiency of that network.

[9] Grain Belt's submission to the regulatory authority of this Commission is in most respects illusory. Grain Belt in its application for a CCN sought to be excluded from the rate regulation of the Commission. It relied heavily on the regulation of FERC as an overriding consideration in how it conducts its business to the exclusion of this Commission, so much so that it denied the Commission's authority to approve or deny Grain Belt permission to transfer functional control to an RTO. The primary consideration in Grain Belt's application for a CCN was obtaining the state's right of eminent domain.

14. It is indeed ironic that Grain Belt is criticizing the Commission's use of the Tartan test at this point in the proceeding inasmuch as it has been a strong advocate of the use of the test up until now.

WHEREFORE, for the reasons stated above, UFM requests the Commission deny Grain Belt's Application.

Respectfully submitted,

By /s/ David C. Linton

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served this day the foregoing pleading by email to all parties by their attorneys of record as provided by the Secretary of the Commission.

/s/ David C. Linton
David C. Linton