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**

STAFF'S INITIAL BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Initial Brief,* states herein as follows:

Introduction:

This case began on August 30, 2016, when Grain Belt Express Clean Line, LLC, filed its application for a certificate of convenience and necessity ("CCN") to construct and operate an interstate, high-voltage transmission facility crossing eight northern Missouri counties.[1] The project's purpose is to convey 3,500 MW of wind-generated electricity from western Kansas to the PJM Interconnection in Indiana.[2] The project includes plans for a converter station in Ralls County, Missouri, allowing the facility to deliver power into Missouri.[3]

From the first, the project has been controversial. It is supported by a number of commercial and industrial intervenors, as well as by a municipal power pool; and

[1] ***In the Matter of Grain Belt Express Clean Line, LLC,*** Case No. EA-2016-0358 (***First Report & Order,*** iss'd Aug. 16, 2017), p. 4.

[2] *Id.,* p. 7. PJM is the Pennsylvania-New Jersey-Maryland Interconnection, serving those states as well as all or part of Delaware, Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia, and the District of Columbia. PJM is an Independent System Operator ("ISO") and a Regional Transmission Organization ("RTO").

[3] *Id.*

opposed by landowners, farmers, and the Missouri Farm Bureau. Staff filed testimony raising several concerns with the Project; however, Staff and Grain Belt were able to reach agreement on several conditions to address Staff concerns.[4] Hearings were held in March 2017, and the Commission issued its *First Report & Order* on August 16, 2017.[5]

The issues considered by the Commission in 2017, identical to the issues considered on remand, were as follows:

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

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.?

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

4. If the Commission grants the CCN, should the Commission exempt Grain Belt from complying with the reporting requirements of Commission

[4] Exhibit No. 206.

[5] ***In the Matter of Grain Belt Express Clean Line, LLC,*** Case No. EA-2016-0358 (***First Report & Order,*** iss'd Aug. 16, 2017).

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)?

In its *First Report & Order,* the Commission determined that it lacked authority to grant the requested CCN because Grain Belt could not show that it had received all necessary local consents as required by § 393.270.2, RSMo.[6] Because it found this issue to be dispositive, the Commission did not consider the other three. However, four Commissioners issued a *Concurring Opinion,* stating that "had it not been for the ***Matter of Ameren Transmission Co.*** opinion,[7] we would have granted the [Grain Belt] application, as the evidence showed that the [Grain Belt] project is "necessary or convenient for the public service."[8] The concurring Commissioners went on to say:

> When making a determination of whether an applicant or project is convenient or necessary, the Commission has traditionally applied five criteria, commonly known as the Tartan factors, which follow:
>
> a) There must be a need for the service;
> b) The applicant must be qualified to provide the proposed service;
> c) The applicant must have the financial ability to provide the service;
> d) The applicant's proposal must be economically feasible; and
> e) The service must promote the public interest.
>
> The parties have not disputed that [Grain Belt] is qualified or has the financial ability to provide the service, and in our view the evidence in the record shows that [Grain Belt] also meets the remaining three factors that were in dispute– need, economic feasibility, and public interest.[9]

[6] Section 393.270.2, RSMo.: ". . . . Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, **together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities** (emphasis added)."

[7] ***Matter of Ameren Transmission Co. of Illinois,*** 523 S.W.3d 21 (Mo. App., W.D. 2017) (**"*ATXI*"**).

[8] ***In the Matter of Grain Belt Express Clean Line, LLC,*** Case No. EA-2016-0358 (***Concurring Opinion of Hall, Chm., Kenney, Rupp, & Coleman, CC.,*** iss'd Aug. 16, 2017), p. 2 ("***Concurring Opinion***").

[9] *Id.* The "***Tartan***" factors were first announced in ***In re Tartan Energy,*** 3 Mo.P.S.C.3d 173 (1994).

The concurring Commissioners determined that the need for the project was demonstrated by the commitment of the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") to purchase at least 100 MW of the 500 MW available to Missouri at a cheaper price than otherwise available. Noting that "during open solicitations in 2015 and 2016, transmission service requests for the line far exceeded the total available capacity of the project,"[10] the concurring Commissioners concluded, "[c]learly, there is a demonstrable need for the service the GBE project offered both in Missouri and in the regions that affect Missouri energy markets."[11]

As to economic feasibility, the concurring Commissioners determined that "[t]he . . . project is economically feasible because it links customers in Missouri who desire to purchase low-cost wind power from western Kansas with wind generation companies like Infinity Wind who propose to supply that energy, all under a business model under which [Grain Belt] assumed the financial risk of building and operating the transmission line."[12]

The concurring Commissioners also concluded that the project was in the public interest, stating:

> The evidence in the case demonstrated that the GBE project would have created both short-term and long-term benefits to ratepayers and all the citizens of the state. In our view, the broad economic, environmental, and other benefits of the project to the entire state of Missouri outweigh the interests of the individual landowners.[13]

[10] *Id.,* pp. 3-4.

[11] *Id.,* p. 4.

[12] *Id.*

[13] *Id.,* p. 5.

The benefits of the project include significantly reduced energy production costs; improved service reliability; positive environmental impacts, including reduced carbon dioxide emissions; the creation of over 1,500 jobs in Missouri, with resulting increased personal income and tax revenue; and significant project-related spending in Missouri, including increased property tax revenue in the affected counties and substantial easement payments to the landowners.[14] As for the opponents of the project, the concurring Commissioners stated:

> [W]e are sympathetic to the sincere concerns expressed by the landowners who appeared before the Commission during local public hearings in this case. However, many of those concerns could have been addressed through carefully considered conditions placed on the CCN. We would have voted to include many conditions on granting the CCN that would have provided necessary protections for Missouri landowners, ratepayers, and citizens. These conditions were proposed by the parties to the case, many of which were agreed to by [Grain Belt]. Some of the proposed conditions included financing, interconnection studies and safety, protection of nearby utility facilities, emergency restoration plans, construction and clearing, maintenance and reporting, landowner interactions and right-of-way acquisition, agricultural mitigation protocols, and establishment of a decommissioning fund, the first such fund for a transmission line in the United States. This Commission's ability to impose such protections for Missouri citizens would be lost if Grain Belt must now bypass Missouri and obtain approval for the project from the U.S. government based on federal law. We would have preferred to grant the application and retain those necessary protections.[15]

The concurring Commissioners would have granted the requested CCN, but believed they could not do so pursuant to the Western District's ***ATXI*** decision.[16] An appeal followed the Commission's ***First Report & Order*** and, on July 17, 2018, the Missouri Supreme Court reversed the Commission and overruled ***ATXI,*** remanding this

[14] *Id.,* pp. 5-6.

[15] *Id.,* p. 7.

[16] *Supra,* 523 S.W.3d 21.

case to the Commission for further proceedings.[17] The Court noted that § 393.170, RSMo., establishes two types of CCNs, a *line* certificate under subsection 1 and an *area* certificate under subsection 2.[18] The Commission, following ***ATXI,*** had erroneously analyzed the application under § 393.170.2, RSMo., as an *area* certificate, rather than as a *line* certificate under § 393.170.1, RSMo.[19] While an *area* certificate requires evidence of possession of all required local consents, a *line* certificate does not.[20] The Court concluded, "[t]he Commission erred in holding that prior county consent was necessary before it could approve Grain Belt's application for a *line* CCN by erroneously analyzing this case under the *area* CCN subsection."[21] The Court remanded the case to the Commission "to determine whether Grain Belt's proposed utility project is necessary or convenient for the public service."[22]

Argument:

On remand, as noted previously, the issues for consideration by the Commission are the same as they were the first time around. So, while the formal issues for consideration remain the same, the overriding issue is what has changed?

1. <u>May the Commission lawfully issue the requested CCN</u>?

[17] ***Grain Belt Express Clean Line, LLC v. Missouri Public Service Commission,*** 555 S.W.3d 469 (Mo. banc 2018).

[18] 555 S.W.3d at 471.

[19] *Id.*

[20] *Id.,* 471-472.

[21] *Id.,* p. 472.

[22] *Id.,* p. 474.

Staff's position on this issue in the original proceeding was that the Commission could not lawfully grant the requested CCN.[23] However, pursuant to the decision of the Missouri Supreme Court discussed above, Staff now states that the answer to this question is "yes," the Commission may lawfully grant the requested *line* CCN to Grain Belt if it determines that the project is necessary or convenient for the public service within the intendments of § 393.170.1, RSMo. Extended discussion of this question is unnecessary.

Staff understands that the opponents of the project now contemplate a new legal objection, namely, that § 393.170.1, RSMo., allows the Commission to grant a *line* certificate only to "electrical corporations" as defined at § 386.020(15), RSMo.[24] Section 393.170.1, RSMo., provides:

> No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system, other than an energy generation unit that has a capacity of one megawatt or less, without first having obtained the permission and approval of the commission.

What is an "electrical corporation"? Pursuant to § 386.020(15), RSMo., it is any entity that owns, operates, controls, or manages electric plant.[25] "Electric plant," in turn:

> 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

[23] ***In the Matter of Grain Belt Express Clean Line, LLC,*** Case No. EA-2016-0358 (***Staff's Position on Issues,*** filed Mar. 13, 2017), pp. 1-2 (***Staff's 1st Position Statement***").

[24] Section 386.020(15), RSMo. ""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[.]"

[25] *See* note 20, *supra.*

> 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[.][26]

Certainly, Grain Belt has acquired certain real estate (i.e., easements), and intends to acquire substantially more, and erect thereupon "fixtures and personal property . . . to be used for or in connection with or to facilitate the . . . transmission . . . of electricity for light, heat or power; and . . . 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[.]"[27] The statute unmistakably contemplates that the electric plant in question may be *future* or *intended* electric plant ("to be used for or in connection with"). Therefore, under § 386.020, RSMo., (14) and (15), Grain Belt is an electrical corporation and thus a public utility[28] subject to the jurisdiction of the Commission[29] and is eligible for a *line* certificate under § 393.170.1, RSMo.[30]

That the statute applies equally to *intended* electrical corporations is necessarily part of the legislative intent. Utilities must request authorization to build a plant before construction actually begins.[31] The purposes of such pre-approval are obvious. The Commission is charged with considering and protecting the interests of the general

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[26] Section 386.020(14), RSMo.

[27] Tr. vol. 24, p. 2143 "So we currently have 39 active easements in the state of Missouri. And the total parcel count along the transmission line route in the state of Missouri is 739. So we have 39 out of 739, which is a little more than 5 percent."

[28] Section 386.020(43), RSMo.: ""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[.]"

[29] Section 386.250, RSMo.

[30] As the Commission found in its ***First Report & Order,*** pp. 10-11.

[31] ***State ex rel. Cass County v. P.S.C.,*** 259 S.W.3d 544, 550 (Mo. App., W.D., 2008).

public as well as the customers and investors of the regulated utility.[32] It must balance those interests on a statewide basis, not merely considering a particular utility's operating area in isolation.[33] This function requires a balancing of the needs and interests of ratepayers and investors.[34] Although the Commission has the power to disallow capital improvements in a utility's rate base, that authority is ineffective where a major disallowance would jeopardize the interests of either ratepayers or investors. Section 393.170.1, RSMo, allows the Commission to consider and weigh all of these factors, as well as location and zoning, prior to construction.[35] The legislative scheme for the protection of the public interest would be dangerously incomplete if intended public utilities – those without an existing relationship to utility plant – were not within the scope of the law. And, in any event, as noted above, Grain Belt has an existing relationship to real estate intended for use in the transmission of electricity.[36]

2. <u>Is the proposed project "necessary or convenient" for the public service</u>?[37]

Section 393.170.3, RSMo., provides:

> The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

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[32] ***Concurring Opinion,*** pp. 5-7.

[33] *Id.*

[34] *Id.*

[35] *Id.,* at 549-550.

[36] Tr. vol. 24, p. 2143.

[37] Staff incorporates by reference the findings set out in the ***Concurring Opinion*** on the *Tartan* factors.

The courts have explained the meaning of the phrase "necessary or convenient for the public service." "The term 'necessity' does not mean 'essential' or 'absolutely indispensable,' but that an additional service would be an improvement justifying its cost. ***State ex rel. Beaufort Transfer Co. v. Clark,*** 504 S.W.2d 216, 219 (Mo. App., K.C.D. 1973). Additionally, what is necessary and convenient encompasses regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service. ***State ex rel. Public Water Supply Dist. No. 8 v. Public Serv. Comm'n,*** 600 S.W.2d 147, 154 (Mo. App. 1980). The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. ***State ex rel. Ozark Elec. Coop. v. Public Serv. Comm'n,*** 527 S.W.2d 390, 394 (Mo.App.1975). Furthermore, 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. *Id.* at 392.

When considering an application for a CCN, the Commission considers the five *Tartan* factors:[38] (1) there must be a need for the service; (2) the applicant must be qualified to provide the service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. In addressing these factors on remand, Staff will brief only the evidence submitted on remand.

Before discussing the evidence on the five *Tartan* factors, it should be noted that Clean Line is selling Grain Belt to Invenergy Transmission LLC, described as "a leading

[38] ***In the Matter of Tartan Energy Company,*** 3 Mo.P.S.C.3d 173, 177 (1994).

U.S.-based developer of wind, solar, and natural gas-fueled power generation projects."[39] The transaction has not yet closed.[40] Clean Line has sold, is selling, or has abandoned all of its projects.[41] Invenergy and Clean Line will file a separate application with this Commission for approval of the change of ownership.[42] Therefore, a new *Tartan* factor analysis must focus on Invenergy rather than Clean Line. In summary, Staff states that, while it still cannot state definitively that each of the five *Tartan* factors is satisfied, Staff would be comfortable if the requested CCN were granted in this case subject to the conditions discussed below.

A. Need:

Matt Riley testified on behalf of ENGIE North America, new owner of the Iron Star Wind Project, that 136 MW of wind-produced energy will be delivered over the Grain Belt project to MJMEUC pursuant to a purchased-power agreement ("PPA").[43]

John Grotzinger testified on behalf of MJMEUC that the PPA with Iron Star has been amended such that the entire 200 MW transmission service agreement ("TSA") price is priced at $1,167/Mw-month, which is a 30% decrease in the price of the second 100 MW tranche (previously $1,667/Mw-month), and a 17.6% decrease in the overall cost of the full 200 MW transmission service agreement.[44] Mr. Grotzinger testified that the savings from the Grain Belt TSA versus a traditional SPP to MISO Point-to-Point

[39] Ex. 141, Skelly Supplemental Direct, p. 2.

[40] Tr. 22, p. 1819, 1821.

[41] Ex. 141, pp.10-11; Tr. 22, p. 1836, 1841-1845.

[42] Ex. 145, Zadlo Supplemental Direct, p. 4; *cf.* EM-2019-0150

[43] Ex. 878, Riley Supplemental Direct, pp. 2-3.

[44] Ex. 480, Grotzinger Supplemental Direct, pp. 1-2.

service agreement are approximately $2,800,000 annually.[45] Those savings are derived from (1) the additional decrease in costs of the Grain Belt TSA as reflected in Schedule JG-9, and (2) the costs of SPP to MISO Point-to-Point transmission service having risen from $2,880/Mw-month as presented in Schedule JG-3, to the current rate of $3,800/Mw-month, as presented in Schedule JG-10, which is more than three times as much as the Grain Belt TSA.[46] The SPP to MISO Point-to-Point transmission service charges are based upon charges that MJMEUC has historically and currently pays.[47] Mr. Grotzinger testified that he has no expectation that the transmission rate from SPP into MISO will be reduced, or ever approach the Grain Belt TSA rate of $1,167/Mw-month.[48] Additionally, Schedule JG-5 was updated to reflect the material savings in the delivered cost of energy and capacity in Schedule JG-11, regardless of the amount of transmission used, at a price of $19.70/MWh.[49]

Mr. Grotzinger testified that the additional savings compared to alternatives are material, and are reflected in Schedule JG-12.[50] In particular, when comparing the Grain Belt TSA/Iron Star project to SPP wind options, an additional $1,000,000 in annual savings occurs if 135 MW of the transmission service agreement is utilized.[51] Mr. Grotzinger further testified that the impact on the MoPEP committee will be additional material savings.[52] Schedule JG-13 updates Schedule JG-7 to reflect the

[45] *Id.,* p. 2.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.,* pp. 2-3.

[51] *Id.*

[52] *Id.,* p. 3.

additional value added by this amendment.[53] Those additional savings are expected to be $179,760 annually, in addition to previous annual savings of approximately $11 million versus the existing contract for Illinois coal resources.[54]

Michael Skelly testified for Grain Belt that Grain Belt also has a transmission service agreement with Realgy Energy Services, an Illinois load-serving entity, that was agreed to as of November 30, 2016.[55] Realgy has agreed to buy 25 MW of transmission service for delivery into Missouri and 25 MW of transmission service for delivery into PJM.[56] Mr. Skelly testified that the project will offer 500 MW of bi-directional service from the Missouri converter station to PJM, of which MJMEUC has agreed to purchase up to 50 MW.[57] This service will allow Missouri utilities an additional means to earn revenue from off-system sales of excess power.[58] Previously, Grain Belt Express had only offered transmission service to Missouri from the Project's Kansas converter station.[59]

Kris Zadlo testified for Grain Belt that MJMEUC has estimated that the purchase of transmission capacity from Kansas to Missouri from the Grain Belt Project will save members $9-11 million annually compared to an existing contract for fossil fuel generation.[60] The TSA was recently reaffirmed by MJMEUC through an amendment

[53] *Id.*

[54] *Id.*

[55] Ex. 141, p. 3.

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] Ex. 145, p. 13.

resulting in even lower prices and greater savings.[61] Grain Belt also stated a need for the new service that will be provided by the Project was also demonstrated by the open solicitation process that Grain Belt Express held from January to March 2015, through which customers could subscribe for capacity on the Project.[62] Fifteen shippers made 3,524 MW of requests for capacity to the Project's MISO delivery point in Missouri, which is more than six times the available capacity.[63]

The open access transmission service to be offered will allow users to meet the requirements of Missouri's Renewable Energy Standard ("RES"), as well as the renewable portfolio standard ("RPS") requirements of other states served by the MISO and PJM energy markets.[64] The Project will deliver low-cost renewable wind generation that will save consumers in Missouri and other states hundreds of millions of dollars compared to other more expensive sources of generation.[65] Based on a levelized cost of energy analysis, the Project's delivered cost is cheaper than building wind farms locally in Missouri; it is also cheaper than solar power and a new combined cycle natural gas power plant.[66] Because the Project is the lowest-cost way to meet renewable energy and other electric demand, it is needed to serve the public.[67] Additionally, the Missouri converter station will offer bi-directional service, allowing Missouri utilities the opportunity to sell up to 500 MW of excess power to PJM.[68]

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[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.,* pp. 13-14.

[67] *Id.,* p. 14.

[68] *Id.*

Staff's *Revised Remand Rebuttal Report* offers nothing new on the issue of need.[69]

B. Operational Qualifications:

Mr. Skelly testified for Grain Belt that Invenergy possesses substantial experience and expertise to support the construction and operation of the project.[70] Invenergy is well-qualified to complete the development phase of the project, to construct the transmission line and converter stations, and to oversee its operation.[71]

Mr. Zadlo testified for Grain Belt that Invenergy is a U.S.-based company founded in 2001 and is North America's largest privately held company that develops, owns, and operates large-scale renewable and other clean energy generation, energy storage facilities, and electric transmission facilities across North America, Latin America, Japan and Europe.[72] Invenergy's expertise includes a complete range of fully integrated in-house capabilities, including: Project Development, Permitting, Transmission, Interconnection, Energy Marketing, Finance, Engineering, Project Construction, Operations and Maintenance.[73] To date, the Company has developed more than 20,046 MW of large-scale wind, solar, natural gas, and energy storage facilities.[74] This includes more than 10,896 MW of projects in operation, with more than 9,150 MW contracted or in construction.[75]

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[69] Ex. 210, *Staff's Revised Rebuttal Report-C*, p. 4.

[70] Ex. 141, p. 9.

[71] *Id.,* pp. 9-10.

[72] Ex. 145, p. 6.

[73] *Id.*

[74] *Id.*

[75] *Id.*

Invenergy's senior executives—each with more than 25 years in the energy generation industry—have worked together for more than two decades.[76] Invenergy's founder, president and CEO, Michael Polsky, is a recognized and respected industry leader and is the majority owner of Invenergy and its affiliated companies.[77] Profiles of Invenergy's Senior Management and Project Management teams are attached as Schedule KZ-5.[78]

Kris Zadlo testified for Grain Belt that Invenergy routinely develops projects with a view toward long-term ownership, performance, profitability and operations.[79] Invenergy has built its core competencies around power plant operations and maintenance ("O&M"), operating its power plant fleet through the wholly-owned subsidiary Invenergy Services, which is staffed with experienced industry personnel and currently operates 10,896 MW of natural gas and renewable generating capacity in North America.[80] Combining asset management, operations, maintenance, and commercial execution functions allows Invenergy Services to provide a single, comprehensive solution to overall management of the asset.[81]

Mr. Zadlo further testified that Invenergy's expertise extends to transmission projects and that, because the core of Invenergy's business model is project development and long-term ownership and operations, the Company takes great care to ensure the longevity, reliability and cost-effectiveness of its assets, especially

[76] *Id.,* p. 7.

[77] *Id.*

[78] *Id.*

[79] Ex. 145, p. 8.

[80] *Id.*

[81] *Id.*

transmission and interconnection infrastructure for its projects.[82] Since 2001, Invenergy has built all required transmission and distribution lines, generator step-up transformers ("GSUs"), and substations for its facilities in numerous regions, including within the regions managed by Southwest Power Pool, Inc. ("SPP"), Midcontinent Independent System Operator, Inc. ("MISO") and PJM Interconnection, LLC ("PJM").[83] Invenergy developed, permitted and constructed this infrastructure across various terrains, state and local jurisdictions, and in vastly differing environmental and regulatory conditions.[84] This experience amounts to over 392 miles of high-voltage transmission lines, over 1,748 miles of distribution lines, 59 substations, and 73 GSUs, of which several have been built for utilities.[85]

Invenergy has contracted for construction work on its renewable energy projects in a variety of manners ranging from executing full EPC contracts to executing individual specialty contracts with engineering, construction, and supply firms.[86] Each project is assessed on a basis of risk and economics with the chosen means of execution based upon the most favorable overall result for the project.[87] For renewable projects, Invenergy typically executes separate major component procurement contracts, electrical engineering contracts, balance of plant type construction contracts, and high-voltage substation and transmission line contracts.[88] These contracts are executed

[82] *Id.,* p. 9.

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *Id.,* p. 10.

[87] *Id.*

[88] *Id.,* p. 11.

and managed by Invenergy project management teams based in Chicago and Invenergy site management teams based in the field.[89]

Upon acquisition of the Grain Belt Project, Invenergy plans to evaluate any existing contracts Grain Belt has in place and determine how they may align with Invenergy's plan to advance the Grain Belt Project.[90] Invenergy will likely retain an Owner's Engineer ("OE") experienced with HVDC technology to work with Invenergy in approaching major HVDC manufacturers and equipment suppliers such as General Electric, Siemens, ABB, and NR Electric.[91] Invenergy and the OE will work with manufacturers to select contractors based on request for proposal ("RFP") responses received from the pool of experienced contractors that Invenergy and/or the manufacturers have utilized in the past.[92] Any construction contractors chosen for this work are first evaluated for relevant experience, current safety records, and current financial strength prior to award of any contract.[93] Invenergy routinely works with top tier companies with successful track records and will choose an experienced EPC to construct the Project.[94] EPC Contractors with experience in HVDC technology that may be approached for the GBE Project include, but are not limited to, Quanta Services, Kiewit, Mortenson, and MYR Group.[95] Mr Zadlo testified that he has reviewed the Direct Testimony submitted in this case by Thomas F. Shiflett of Quanta Services and that the EPC chosen by Invenergy will have the qualifications and experience

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] *Id.,* pp. 11-12.

Mr. Shiflett discusses, and will follow the emergency response and restoration best practices that he generally describes.[96] Invenergy will choose contractors as the development process continues to best support cost-effectiveness and a completion date approximately 4 years after the start of construction.[97] At this time, Invenergy estimates that construction would begin in 2020.[98]

Staff's *Revised Remand Rebuttal Report* states, "Staff has 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."[99] Staff recommends that the Commission find that Grain Belt is operationally qualified to build and operate the project.

C. Financial Qualifications:

David A. Berry testified for Grain Belt that on November 9, 2018, Grain Belt Express Holding LLC entered into a Membership Interest Purchase Agreement ("MIPA") with Invenergy Transmission LLC ("Invenergy Transmission"), which is a subsidiary of Invenergy, LLC ("Invenergy") for the sale of Grain Belt Express Clean Line LLC.[100] Once it has purchased the project, Invenergy Transmission will be responsible for securing the financing required to construct and operate the Grain Belt Express Project.[101] Additionally, on November 9, 2018, Grain Belt Express Holding LLC and Invenergy Transmission also entered into a Development Management Agreement to

[96] *Id.,* p. 12.

[97] *Id.*

[98] *Id.*

[99] Ex. 210, *Staff's Revised Rebuttal Report-C*, p. 6.

[100] Ex. 142, Berry Supplemental Direct, p. 3. The MIPA is attached as a schedule to the Supplemental Direct Testimony of Kris Zadlo.

[101] *Id.*

provide development funding through the projected closing date of the MIPA.[102] Mr. Berry testified that Invenergy will fund the development costs of the project until the closing date of the MIPA through the Development Management Agreement.[103] Following the closing of the transaction, Invenergy will fund the development costs of the project as its owner.[104] At the end of the development phase of the project, Mr. Berry expects that Invenergy will use project financing to construct the project.[105] Invenergy has extensive experience in developing, building, and financing electric utility infrastructure.[106] Invenergy's track record of raising over $30 billion to support energy projects presents a financial foundation as strong or stronger as presented by Clean Line earlier in this proceeding.[107]

Mr. Berry testified that Invenergy is presently funding the development of the project.[108] Once the transaction closes, Invenergy will fund the further development and construction as the project's owner.[109] If the transaction doesn't close, Clean Line also has funds that could be used to develop the project.[110]

Andrea Hoffman testified for Grain Belt that Invenergy is a U.S.-based company founded in 2001 and is North America's largest privately held company that develops, owns, and operates large-scale renewable and other clean energy generation,

[102] *Id.,* pp. 3-4. The Development Management Agreement is attached as a schedule to Kris Zadlo's Supplemental Direct Testimony.

[103] *Id.,* p. 4.

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.,* p. 5.

[108] Tr. 22, p. 1910.

[109] *Id.,* p. 1912.

[110] *Id.,* p. 1914, 1918.

energy storage facilities, and electric transmission facilities across North America, Latin America, Japan and Europe.[111] Invenergy and its affiliates have in excess of $9 billion in total assets and $3 billion in total equity on a consolidated basis (as of December 31, 2017).[112] In addition, as discussed below, Invenergy has raised more than $30 billion to support more than 20,046 MW of generation project development since 2001.[113] Invenergy maintains strong relationships with a variety of investment partners and has been awarded Project Finance Borrower of the Year by Power Finance & Risk on multiple occasions.[114] Ms. Hoffman testified that Invenergy is highly experienced in raising corporate and project level financing in support of developing, constructing and operating its energy projects.[115] Over the last 17 years, Invenergy has raised more than $30 billion of financing in connection with the successful development of more than 20,046 MW in projects in the United States, Canada, Europe, Central America, and Japan.[116] Invenergy maintains strong relationships with more than 60 financial institutions worldwide, including international and domestic banks, multilateral development banks, export credit agencies and pension funds.[117] In the U.S. alone, Invenergy has financed and executed on projects in 23 states, including over 392 miles of high-voltage transmission lines, over 1,748 miles of distribution lines, 59 substations and 73 generator step-up transformers.[118]

[111] Ex. 146, Hoffman Supplemental Direct, p. 2.

[112] *Id.,* p. 3.

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.*

Invenergy's financing relationships include such institutions as Wells Fargo, MUFG, GE Capital, JP Morgan, Santander, Morgan Stanley, Natixis, Bank of America, and Rabobank.[119] Invenergy was able to raise over $6 billion in debt and equity financings in 2016 and 2017, spanning across technologies and geographies.[120]

Ms. Hoffman described Invenergy's practices in financing large scale energy projects, stating that Invenergy continually maintains an active dialogue with key providers of debt and tax equity in order to keep them informed regarding our projects and to generate interest.[121] During the late stages of project development, Invenergy typically approaches target lenders to seek proposals for construction financing.[122] The construction loan combined with Invenergy's equity, and potentially equity from additional investors, will provide sufficient capital for the entire construction costs of the project.[123] Construction financing for a project is typically structured so that the security and collateral package held by the financing parties consists of a pledge of the equity in the project company, a pledge of all project assets, and collateral assignments of certain material project agreements.[124] On or shortly after the commercial operation date, the construction financing is replaced by more permanent financing, such as a senior secured term loan.[125] The security and collateral package during the term loan period depends on the type of permanent financing that is put in place.[126]

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[119] *Id.*

[120] *Id.,* p. 4.

[121] *Id.*

[122] *Id.*

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *Id.,* pp. 4-5.

Ms. Hoffman testified that Invenergy Transmission LLC plans to purchase Grain Belt using cash on hand from its parent, Invenergy Investment LLC.[127] Consistent with its prior experience, Invenergy plans to use a combination of debt and equity to finance the project.[128] Specifically, Invenergy expects to engage a lender or group of lenders approximately six to nine months prior to commercial operations to provide a construction loan for the project.[129] The construction loan and equity capital provided by Invenergy, and potentially other investors, is expected to be sufficient for the entire construction cost of the project.[130] Financing for the project is typically structured with credit support such as letters of credit or cash reserve accounts that can be used to mitigate certain risks of the project.[131]

In addition to obtaining regulatory commission approvals and other permits, key project agreements, and construction contracts, it is necessary for Invenergy to enter into long-term transmission service or capacity contracts with its transmission customers prior to securing financial commitments for the project, such as its agreement with MJMEUC.[132] The required percentage of contracted capacity will depend on the price, counterparty creditworthiness, contract term, and other commercial terms within the transmission contracts.[133] As stated previously, Invenergy will provide equity capital and plans to obtain a construction loan, and potentially equity from additional investors, to finance the development and construction activities and to reach commercial

[127] *Id.,* p. 5.

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] *Id.*

[132] *Id*, pp. 5-6..

[133] *Id.,* p. 6.

operation of the project.[134] Following achievement of commercial operations, the more permanent financing, such as term debt and equity financing, will rely on the contracted cash flow from the project for repayment, and the debt will also be secured by the project's assets and contracts.[135]

In the original proceeding, Staff stated, "Grain Belt has demonstrated . . . that it has the financial ability to undertake the Project."[136] However, the circumstances have changed with the substitution of Invenergy for Clean Line. The issue now is whether Invenergy has the financial resources to successfully undertake the project.

Staff's *Revised Remand Rebuttal Report* examines this issue in some detail and concludes:

> It is clear from Staff's review of Invenergy's publicly-available information that it has established a vast network of access to private debt and equity investors. This is evident from the many rounds of funding they have performed at the Invenergy level and some of the smaller rounds of funding they have performed at their subsidiaries. This information supports Invenergy's position that it has the ability to raise capital for large energy projects.[137]

Based on the evidence adduced, Staff recommends that the Commission find that Grain Belt is financially qualified to build and operate the project, subject to the conditions set out in Staff's *Revised Remand Rebuttal Report* and as modified during the hearing.[138]

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[134] *Id.*

[135] *Id.*

[136] ***Staff's 1st Position Statement,*** p. 2.

[137] Ex. 210, *Staff's Revised Rebuttal Report-C*, p. 9.

[138] *Id.*

D. Economic Feasibility:

Jonathan Abebe testified for Grain Belt that on October 12, 2018 the Federal Energy Commission ("FERC") approved MISO's proposed set of connection procedures and a connection agreement for Merchant High Voltage Direct Current ("MHVDC") transmission projects.[139] MISO's proposal to revise its Generator Interconnection Procedures in Attachment X of its to include an injection rights construct for the use of MHVDC connection customers was also approved.[140] Under this new tariff MISO is now able to grant injection rights to generation facilities connecting to the Project's Kansas converter station.[141] This development provides additional commercial certainty for the Grain Belt Express converter station in Ralls County.[142] Mr. Abebe testified that it will cost about $21 million for Grain Line to interconnect with Ameren at the Ralls County Converter Station.[143]

David Berry testified for Grain Belt that the cost of wind power generation continues to fall.[144] At the prior proceeding in this matter, Mr. Berry testified that the latest government data showed that wind farms in the interior region of the United States, which includes Kansas, cost an average of $1.64 million per MW (Schedule DAB-5).[145] Now, the most recent government data from the same source and

[139] Ex. 143, Abebe Supplemental Direct, p. 5.

[140] *Id.,* pp. 5-6. *See* Order Accepting Tariff Provisions, Midcontinent Indep. System Operator, Inc., No. ER18-1410, 165 FERC ¶ 61,016 (Oct. 12, 2018).

[141] *Id.,* p. 6.

[142] *Id.*

[143] Tr. 22, pp. 1896-7.

[144] Ex. 142, Berry Supplemental Direct, p. 5; Tr. 22, p. 1957-58.

[145] Ex. 142, p. 5.

the same region show an average cost of $1.55 million per MW.[146] Mr. Berry testified that there continues to be strong demand for renewable energy in MISO and PJM.[147] If anything, the demand has increased, particularly from corporate, commercial and industrial customers.[148] Already in 2018, the industry has set a new record in terms of renewable power purchased by corporate customers – almost 5.0 GW.[149] It is Mr. Berry's opinion that bringing wind energy in from western Kansas to Missouri and eastward using the Grain Belt Express project is the lowest cost resource option compared to Missouri wind combined cycle gas and Missouri utility scale solar generation.[150] Thus, Mr. Berry's opinion is that the project would result in lowered energy production costs and, therefore, lower rates for all Missouri ratepayers in the MISO footprint.[151]

Michael Skelly testified that the cost of renewable energy continues to drop compared to alternatives such as coal, natural gas, and nuclear energy, as does the cost of operating a transmission line such as the project.[152] The cost of wind energy has dropped by 20 percent or so, largely due to the growing size of turbines, allowing more energy to be produced for the same investment.[153] Renewable projects are thus becoming more profitable.[154] The HVDC technology utilized by Grain Belt continues to

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[146] *Id.*

[147] *Id.,* p. 6; Tr. 22, pp. 1962-63.

[148] *Id.*

[149] *Id.*

[150] Tr. 22, pp. 1956-57.

[151] Tr. 22, p. 1959.

[152] Tr. 22, pp. 1813-14, 1815.

[153] *Id.,* p. 1816.

[154] *Id.,* pp. 1816-17.

be the most cost-effective and efficient way to move large amounts of renewable energy over a long distance.[155] New tariffs adopted by the Midcontinent Independent System Operator ("MISO") now specifically accommodate merchant HVDC projects like the Grain Belt Express Project.[156] Western Kansas provides high capacity factor wind energy that is the cheapest form of renewable energy in the Midwest.[157]

Kris Zadlo testified for Grain Belt that Invenergy will offer transmission service on the line to generators, load-serving entities, utilities or large commercial and industrial customers to deliver low-cost renewable resources from western Kansas to those potential off-takers in Missouri, Illinois and Indiana, utilizing a “shipper pays” or participant-funded model.[158] Initially, Invenergy anticipates it will enter into long-term transmission service or capacity contracts with its off-takers that require the transmission customer to pay a negotiated reservation charge.[159] Any future sale of capacity will be governed by an Open Access Transmission Tariff (“OATT”), just as is the case for traditional, cost of service transmission providers.[160]

The Grain Belt Express Project is a participant-funded project such that GBE assumes all financial risk of building and operating the transmission line.[161] The Project costs will not be recovered from Missouri ratepayers through either SPP or MISO regional cost allocation tariffs.[162] The HVDC technology employed by the Project

[155] Ex. 141, p. 9.

[156] *Id.*

[157] *Id.*

[158] Ex. 145, p. 8.

[159] *Id.*

[160] *Id.*

[161] *Id.,* p. 14.

[162] *Id.*

is the most cost-effective and efficient way to move large amounts of renewable energy over a long distance.[163] High capacity factor wind energy sourced from western Kansas is the cheapest form of renewable energy in the Midwest.[164] Consequently, the Project's delivered energy cost to Missouri and neighboring states, including the costs of transmission, will be cheaper than alternatives to meet the demand for both renewable and non-renewable energy resources.[165]

In the original proceeding, Staff's position was that the project is not economically feasible "due to the lack of various RTO studies and the uncertainties surrounding the ATXI Mark Twain transmission line and its effects on the Missouri converter station and corresponding congestion."[166] Staff's *Revised Remand Rebuttal Report,* after surveying certain changed circumstances, stated:

> Overall, Staff's position has not changed: since Grain Belt has not completed the RTO studies, the costs to integrate Grain Belt's converter station are unknown, therefore there continues to be insufficient information to conclude that the Project is economically feasible. However, Grain Belt has committed to providing Staff with completed RTO Interconnection Agreements and any associated studies and to provide its plan to address any new issues that arise from them.[167]

Staff acknowledges that the conditions agreed to by Staff and Grain Belt would allow the Commission to make such a finding on remand.

E. The Public Interest:

David A. Berry testified for Grain Belt that, via the converter station in Ralls County, the Grain Belt project will allow Missouri electric purchasers the

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[163] *Id.*

[164] *Id.*

[165] *Id.*

[166] ***Staff's 1st Position Statement,*** p. 2.

[167] Ex. 210, *Staff's Revised Rebuttal Report-C*, pp. 10-11, esp. 11.

opportunity to access the lowest-cost renewable energy in the country without an increase in the rates paid by retail electric consumers.[168] Mr. Berry testified that the project provides Missouri with a new source of affordable, clean energy that can reduce costs for Missouri end-users of electricity, including the customers of MJMEUC, which has agreed to purchase up to 200 MW of transmission service for Grain Belt Express to deliver power to Missouri, with an option to purchase an additional 50 MW to deliver power to PJM.[169] This contract remains in place.[170]

Kris Zadlo testified for Grain Belt that the Project is in the public interest for numerous reasons.[171] The low-cost wind energy delivered by the Project will benefit the ratepayers and electric utilities of the State of Missouri by offering low-cost Kansas wind energy that is not available to them today because of the lack of transmission infrastructure.[172] That Kansas wind energy is cheaper than alternative sources of power, resulting in wholesale electric market savings without increasing the transmission component of rates paid by end-use customers.[173] Because the Project will deliver renewable energy, it will provide Missouri load-serving entities with a cost-effective way to meet their energy needs.[174] The Missouri Department of Economic Development continued to support its estimate that the Project will create more than 1,500 jobs during the three years of construction.[175] Additionally, the Project will

[168] Ex. 142, Berry Supplemental Direct, pp. 1-2.

[169] *Id.,* pp. 2-3.

[170] *Id.,* p. 3.

[171] Ex. 145, p. 15.

[172] *Id.*

[173] *Id.*

[174] *Id.*

[175] *Id.*

provide a continuing source of property tax revenues to the political subdivisions where the facilities are located.[176] The Project is a participant-funded, "shipper pays" transmission line, which means that the benefits of the Project's service will be made available to the public without socializing transmission costs to load-serving entities or their customers.[177] Grain Belt Express will recover its capital costs by entering into voluntary, market-driven contracts with entities that want to become transmission customers of the Project.[178] The Project's interconnection to Ameren's Maywood-Montgomery 345 kV transmission line will enhance the reliability of the electric transmission network in Missouri by connecting geographically diverse parts of the electric grid and by providing a new source of electricity for Missouri.[179] Regional and interregional transmission projects are often more efficient and cost-effective than local transmission projects and provide a wide range of benefits, including relieving transmission congestion, increasing installed revenue margins, exporting excess generation, importing low-cost power, and, in the case of interregional transmission projects, such as the Project, relieving seams issues.[180]

Staff's *Revised Remand Rebuttal Report* offers little that is new on the issue, saying "Staff continues to recommend not using that information [i.e., economic benefits of anticipated increased employment and tax revenue] as a basis to approve or reject Grain Belt's application, but notes that the cited employment and tax revenue could be

[176] *Id.*

[177] *Id.,* pp. 15-16.

[178] *Id.,* p. 16.

[179] *Id.*

[180] *Id.*

affected by Invenergy's evaluation."[181] However, Staff acknowledges that the conditions agreed to by Staff and Grain Belt would allow the Commission to make such a finding on remand.

F. Safety:

In the original proceeding, Staff's position was that uncertainty as to the project's safety and the details of Grain Belt's Emergency Response Plans prevented a determination as to whether the project is in the public interest.[182] Staff's *Revised Remand Rebuttal Report* offers nothing new on this issue.[183] Staff acknowledges that the conditions agreed to by Staff and Grain Belt would allow the Commission to make such a finding on remand.

G. Conclusion:

In summary, Staff states that, while it still cannot state definitively that each of the five *Tartan* factors is satisfied, Staff would be comfortable if the requested CCN were granted in this case subject to the conditions discussed elsewhere.

3. <u>What conditions should the Commission impose on this CCN</u>?

Staff's proposed conditions vary little from those discussed in the original proceeding. Staff recommends that any order approving a CCN be conditioned on the various agreements in Exhibits 205 and 206.[184] Additionally, Staff recommends as an additional condition that Grain Belt provide Staff with reasonable access to the confidential financial information of Invenergy, by which Staff means the condition

[181] Ex. 210, *Staff's Revised Rebuttal Report-C*, pp. 12-13.

[182] ***Staff's 1st Position Statement,*** p. 2.

[183] Ex. 210, *Staff's Revised Rebuttal Report-C*, p. 13.

[184] Ex. 205; Ex. 206; Ex. 210, *Staff's Revised Rebuttal Report-C*, p. 14.

agreed to at hearing.[185] Staff also continues to recommend the Commission require Grain Belt to comply with the conditions prior to acquiring involuntary easements or starting construction of the transmission line.[186] Staff further recommends the conditions be subject to a demonstration to the Commission that the outstanding studies do not raise any new issues and, if they do, that the Commission is satisfied with Grain Belt's solution to address those issues.[187] Finally, Staff recommends the Commission condition the CCN such that if the design and engineering of the project materially changes from that presented in its *Application,* Grain Belt be required to file an updated *Application* subject to further review and determination by the Commission.[188]

David A. Berry testified for Grain Belt that Grain Belt Express continues to agree to the conditions set forth in Staff Exhibit 206, as well as to the agreements reflected in Staff Exhibit 205 relating to Rockies Express Pipeline LLC.[189]

Hans Detweiler testified for Grain Belt that Grain Belt Express fully reaffirms the commitments made regarding the Missouri Landowner Protocol, which consists of: (1) a Code of Conduct for Employees, Right-of-Way Agents and Subcontractor Employees; (2) an Easement Agreement; and (3) the Missouri Agricultural Mitigation Impact Protocol.[190] This also includes the establishment of a Decommissioning Fund no earlier than the 20th anniversary of the completion of the Project, as described in the

[185] Tr. 22, p. 1964.

[186] *Id.*

[187] *Id.*

[188] *Id.*

[189] Ex. 142, p. 7.

[190] Ex. 144, Detweiler Supplemental Direct, p. 4.

Missouri Landowner Protocol.[191] The fund will be used in the remote event that the Company must dismantle, demolish, or remove all equipment facilities and structures.[192] This would be the first transmission line decommissioning fund ever established in the United States.[193]

Kris Zadlo testified for Grain Belt that Invenergy excels at building infrastructure by working diligently with landowners to build trustworthy relationships, ensuring that the landowners' interests are protected, and their concerns are taken into account.[194] Invenergy has negotiated leases with over 13,000 landowners constituting over 10 million acres.[195] In this regard, Invenergy Transmission supports the conditions that GBE agreed to with Staff in Exhibit 206 and with Rockies Express Pipeline LLC in Exhibit 205.[196]

Mr. Zadlo testified that Invenergy will comply with the conditions set out in Exhibits 205 and 206, as well as with the access-to-confidential-financial-information condition stipulated by Grain Belt and Staff at the hearing;[197] that the conditions will be subject to a demonstration to the Commission that the outstanding studies do not raise any new issues, and if they do, that the Commission be satisfied with Grain Belt's solution to address those issues; that if the design and engineering of the project

[191] *Id.*

[192] Ex. 141, p. 5.

[193] *Id.*

[194] Ex. 145, p. 9.

[195] *Id.*

[196] *Id.*

[197] Tr. 22, p. 1964: "Grain Belt's owners, Invenergy Investment Company, LLC and Invenergy Transmission, LLC, shall cooperate with Staff in providing reasonable access to its un-redacted consolidated financial records, (including in-camera review of the notes to financial statements) until the completion or official abandonment of the project."

materially changes from that presented in the application, that Grain Belt will be required to file an updated application subject to further review and determination by the Commission;[198] and that Grain Belt will not install transmission facilities on easement property until it has obtained commitment for funds in the amount equal to or greater than the total cost to build the project, estimated at approximately $2.3 billion.[199]

As suggested by Commissioner Hall, Staff and Grain Belt clarified the final condition set out above as follows:

> If Grain Belt Express Clean Line LLC ("Grain Belt Express" or "Company") acquires any involuntary easement in Missouri by means of eminent domain proceedings ("easement") and does not obtain the financial commitments referred to in Section I(1) and Section I(1)(a) of the Conditions Agreed to by Grain Belt Express and Staff (Exhibit 206) within five years of the date that such easement rights are recorded with the appropriate county recorder of deeds, the Company agrees to return possession of the easement to the fee simple title holder ("title holder") within 60 days and to cause the dissolution of the easement to be recorded with the county recorder of deeds. In the event of such a return of the easement to the title holder, no reimbursement of any payment made by Grain Belt Express to the title holder shall be due.

Additionally, Staff understands that Grain Belt commits that it will not break ground or otherwise physically alter any easement prior to having all necessary financing in place.[200]

4. <u>Should the Commission exempt Grain Belt from certain reporting requirements</u>?

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 240-3.175, and 3.190(1), (2) and (3)(A)-(D)? Staff's position

[198] Tr. 22, pp. 2024-26.

[199] Tr. 24, p. 2094, 2095, 2102.

[200] Communication from Mr. Zobrist, January 3, 2019.

is that the Commission should grant the requested exemptions, except for the annual report filing requirement of rule 4 CSR 240-3.165.[201] Grain Belt Express does not need relief from rule 4 CSR 240-3.165 since Grain Belt Express agrees to file with the Commission the annual report that it files with FERC.[202]

Conclusion:

Based on the recent decision of the Missouri Supreme Court and the additional evidence adduced on December 18 and 19, 2018, Staff recommends the Commission grant the requested CCN and exemptions subject to the conditions set out in Exs. 205, 206, 210 as further revised at and subsequent to hearing, and as explained in this Brief. With those conditions in place, despite its uncertainty as to the *Tartan* factors, Staff believes the grant of the CCN will not be detrimental to the public interest.

Respectfully submitted,

/s/ Kevin A. Thompson
Kevin A. Thompson
Missouri Bar No. 36288
Chief Staff Counsel

Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-6514 (Telephone)
(573) 526-6969 (Fax)
Kevin.thompson@psc.mo.gov (e-mail)

Attorney for the Staff of the
Missouri Public Service Commission

[201] ***In the Matter of Grain Belt Express Clean Line, LLC,*** Case No. EA-2016-0358 (***Staff's Position Statement on Remand,*** filed Dec. 13, 2018), p. 3.

[202] *Id.*

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 9th day of January, 2019.

/s/ Kevin A. Thompson