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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EA-2016-_____

DIRECT TESTIMONY OF

SUEDEEN G. KELLY

ON BEHALF OF

GRAIN BELT EXPRESS CLEAN LINE LLC

June 30, 2016

TABLE OF CONTENTS

I.	INTRODUCTION AND PURPOSE OF TESTIMONY	1
II.	GRAIN BELT EXPRESS' MARKET-DRIVEN, PARTICIPANT-FUNDED MODEL PROVIDES THE BENEFITS OF EXPANDED TRANSMISSION WITHOUT RAISING REGIONAL TRANSMISSION RATES.....	3
III.	PARTICIPANT-FUNDED TRANSMISSION CAN PROVIDE THE EXTRAORDINARY BENEFITS OF INTERREGIONAL TRANSMISSION WITHOUT RELYING ON REGIONAL COST ALLOCATION TO PAY FOR IT	14
IV.	THE GRAIN BELT EXPRESS PROJECT MEETS THE TARTAN CRITERIA FOR ISSUING A CERTIFICATE OF CONVENIENCE AND NECESSITY.....	21

1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

2 **Q. Please state your name, present position and business address.**

3 A. My name is Suedeem G. Kelly. I am an attorney in private practice with the firm of Akin
4 Gump Strauss Hauer & Feld LLP, where I serve as Chair of its Energy Regulation, Markets
5 and Enforcement practice. My business address is 1333 New Hampshire Avenue, N.W.,
6 Washington, DC.

7 **Q. Please describe your educational and professional background.**

8 A. I graduated from the University of Rochester with a B.A. in Chemistry in 1973. I attended
9 Cornell Law School, from which I graduated cum laude in 1976.

10 I served on the New Mexico Public Service Commission, which regulates electric
11 utilities, intrastate gas pipelines and local distribution companies, among other utilities,
12 first as a Commissioner (1983-1984) and then as Chairwoman (1984-1986). I was
13 nominated by President Bush and President Obama to three terms as a Commissioner on
14 the Federal Energy Regulatory Commission (“FERC”) and served as a Commissioner from
15 2003 through 2009. During that time, we resolved approximately 7,000 disputes with
16 published Commission decisions, and I personally authored 100 separate statements.

17 In addition to my experience as a regulator, I have served as regulatory counsel for
18 the California Independent System Operator Corporation, have engaged in the private
19 practice of energy law, and have taught courses on federal and state energy law, utility
20 regulation, administrative law, and legislative process at the University of New Mexico
21 School of Law, where I was a Professor of Law from 1986 until 2003. I continue to present,
22 speak, and publish multiple times a year on topics involving energy law, most commonly
23 enforcement and regulation.

1 Attached hereto as **Schedule SGK-1** is a true and correct copy of my current
2 Curriculum Vitae.

3 **Q. Have you previously testified before any federal or state regulatory commission?**

4 **A.** I previously testified on behalf of Exelon before the Maryland Public Service Commission
5 *In the Matter of the Merger of Exelon Corp. and Pepco Holdings, Inc.*, No. 9361 (Md. Pub.
6 Serv. Comm'n). As described in my CV, I have also served as an expert witness in a state
7 court proceeding.

8 **Q. What is the purpose of your direct testimony?**

9 **A.** In my testimony, I explain how the use of a participant-funded model for the Grain Belt
10 Express Clean Line transmission project (“Grain Belt Express Project” or “Project”) provides the benefits of expanded transmission without increasing transmission rates for
11 Missouri retail customers. I describe the ongoing need for interregional projects, such as
12 the Grain Belt Express Project, to support renewable development and improve the
13 reliability and resiliency of the grid. Finally, I provide my opinion as a former state and
14 federal energy regulator that the Project is needed and is economically feasible, and that its
15 construction will advance the public interest.
16

17 In addressing these topics, I have based my testimony on my experience as a FERC
18 Commissioner and New Mexico Commissioner, and my professional expertise with state
19 and federal energy regulation. In the course of preparing this testimony, I have undertaken
20 a review of relevant documents, including Grain Belt Express Clean Line LLC (“Grain
21 Belt Express” or “Company”) business documents, FERC orders relating to the Grain Belt
22 Express Project, orders of the Missouri Public Service Commission (“Commission”) and
23 other state commissions relating to the Project, the Grain Belt Express Application, and the

1 direct testimony of other witnesses in this proceeding. I am an attorney, but I am providing
2 this testimony as an expert witness, and not as counsel for Grain Belt Express.

3 **II. GRAIN BELT EXPRESS' MARKET-DRIVEN, PARTICIPANT-FUNDED**
4 **MODEL PROVIDES THE BENEFITS OF EXPANDED TRANSMISSION**
5 **WITHOUT RAISING REGIONAL TRANSMISSION RATES**

6 **Q. As an initial matter, can you summarize the benefits that the Grain Belt Express**
7 **Project will bring to Missouri and the Missouri public?**

8 A. Yes. The Project will deliver a new supply of low-cost wind energy to Missouri and will
9 interconnect three regional transmission systems between Kansas and Indiana. As
10 described in detail by other Company witnesses in their Direct Testimony, increasing the
11 supply of low-cost power will reduce wholesale electricity prices and the cost for Missouri
12 utilities to serve their electric load.¹ Because this low-cost power is from a renewable
13 resource, the Project will also allow Missouri and other states in the region to cost-
14 effectively meet their state renewable energy standards and goals.²

15 The Project will also help meet the need for interregional transmission, as it will
16 bridge three Regional Transmission Organizations (“RTOs”). This interregional
17 connection will provide operational and reliability benefits, including increasing reliability
18 during times of peak load and generator outages.³

19 By enabling the development of new sources of renewable power, the Project will
20 facilitate reduction of emissions of carbon dioxide, nitric oxides, and sulfur dioxide.⁴ The

¹ David Berry Direct Testimony at 44; Schedule JNC-2

² David Berry Direct Testimony at 37-44

³ Edward Pfeiffer Direct Testimony at 5

⁴ Neil Copeland Direct Testimony at 4

1 Project will also provide economic development in Missouri by creating property tax
2 revenue,⁵ construction jobs,⁶ and manufacturing jobs.⁷

3 As I explain below, the development of the Grain Belt Express Project through its
4 participant-funded business model means that the Missouri public as a whole will receive
5 these benefits from the Project without suffering an increase in the transmission component
6 of their retail electricity rates.

7 **Q. How does Grain Belt Express' participant-funded business model result in public**
8 **benefits without increasing transmission rates?**

9 A. Grain Belt Express' business model is a market-based solution to the problem of
10 transmission expansion. Participant-funded transmission projects, unlike the transmission
11 lines owned by traditional franchised utilities, do not recover their development costs, or
12 their operation costs, from captive retail customers through increased transmission rates.
13 Instead, these projects recruit investors willing to invest in the project and put their capital
14 at risk without guaranteed recovery from customers, captive or otherwise. The project
15 company recovers its capital costs and the costs of operating the line, and earns a return for
16 its investors, by entering into voluntary contracts with entities that want to become
17 wholesale transmission customers of the project. The customers of a participant-funded
18 transmission project are likely to include generation owners and developers that wish to
19 buy transmission service across the participant-funded transmission line to get their power
20 to market. Other customers are likely to be local utilities that wish to buy transmission
21 service across the participant-funded line to deliver power to their retail customers, as is

⁵ Richard Tregnago Direct Testimony at 3-4

⁶ Thomas Shiflett Direct Testimony at 13; Mark Lawlor Direct Testimony at 15-17

⁷ Wayne Galli Direct Testimony at 37-39; Mark Lawlor Direct Testimony at 15-17

1 the case for the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”),
2 which has entered into a Transmission Service Agreement (“TSA”) with Grain Belt
3 Express.⁸

4 Because the costs of the Grain Belt Express Project will be recovered from its
5 wholesale transmission customers, its construction will not be paid for by Missouri captive
6 customers and will not result in an increase in the transmission component of their retail
7 rates. Instead, Missouri retail customers will only incur costs related to the Project to the
8 extent that their local utility *voluntarily* chooses to purchase transmission capacity on the
9 Project, or purchase power transmitted on the Project by a third-party. Meanwhile, even
10 though the costs of the Project will not be recovered from the Missouri public, the Missouri
11 public will benefit from its construction, receiving the economic, operational and reliability
12 benefits I summarized above, which are discussed more fully in the Direct Testimony of
13 the other witnesses.

14 **Q. How does the participant-funded business model of Grain Belt Express compare to**
15 **the regulatory cost-of-service business model generally used by traditional vertically**
16 **integrated utilities to build and operate transmission lines?**

17 A. The participant-funded business model of Grain Belt Express is markedly different from
18 the regulatory cost-of-service business model traditionally used by vertically integrated
19 utilities to build and operate transmission lines. Under the regulatory cost-of-service
20 business model, the costs of transmission projects are spread across all the captive
21 customers of the transmission utility through the transmission component of its regulated
22 rates.

⁸ Mark Lawlor Direct Testimony at 2-3

1 By contrast, participant-funded transmission companies do not have captive
2 customers and do not recover the costs of their projects, such as the Grain Belt Express
3 Project, from captive customers.

4 **Q. Specifically, how do traditional vertically integrated utilities recover the costs of**
5 **constructing transmission lines?**

6 A. Under the regulatory cost-of-service model, all prudent costs of constructing a transmission
7 line are included in the vertically integrated utility's rate base, and the utility recovers this
8 capital, as well as the cost of this capital, from its wholesale and retail customers.
9 Additionally, the reasonable expenses associated with the operation of the transmission
10 line are recovered by the utility from its customers.

11 **Q. Do RTOs fund transmission projects in a manner similar to traditional vertically**
12 **integrated utilities?**

13 A. Yes. RTOs, such as Midcontinent Independent System Operator, Inc. ("MISO"),
14 Southwest Power Pool, Inc. ("SPP"), and PJM Interconnection, LLC ("PJM"), also spread
15 the costs of transmission development to captive customers, although they do so on a
16 regional basis through allocations of the cost of transmission development to the utilities
17 that, in turn, serve the retail customers. These utilities are commonly referred to as load-
18 serving entities ("LSE"). The details vary from RTO to RTO; however, the basic model
19 works as follows. Each RTO determines through its transmission planning process which
20 transmission projects should be built within the boundaries of the RTO. The costs of these
21 transmission projects are then allocated among the RTO's transmission customers through
22 the RTO's Open Access Transmission Tariff ("OATT"), which has been approved by

1 FERC. The RTO’s transmission customers are primarily the LSEs, who, in turn, pass these
2 transmission charges on to their captive retail customers.

3 **Q. Can you provide an example of how RTO cost-allocated transmission is accounted**
4 **for in the transmission component of retail rates?**

5 A. Yes. I will use Ameren Missouri, a part of Ameren Corp. that serves Missouri customers,
6 as an example of how the costs of developing and constructing cost-allocated transmission
7 lines are passed on to retail customers. Ameren Missouri is a participant in the MISO
8 transmission planning region and incurs MISO transmission charges for the delivery of
9 power to its load.⁹ Schedules 26 and 26-A of MISO’s OATT allocate the costs of MISO’s
10 cost-allocated baseline reliability projects¹⁰ and Multi Value Projects (“MVPs”) to MISO’s
11 transmission customers, including Ameren.¹¹ MISO estimates that, in the Project’s first
12 full year of operation in 2022, Ameren Missouri will be allocated total charges of \$15.4
13 million under Schedule 26 and \$85.6 million under Schedule 26-A.¹²

14 Ameren Missouri uses the FERC Uniform System of Accounts (“USoA”) to keep
15 its utility financial records. Ameren records MISO transmission charges, including

⁹ *In the Matter of Union Elec. Co., d/b/a Ameren Missouri’s Tariff to Increase Its Revenues for Elec. Serv.*, File No. ER-2014-0258, Report and Order, at 112-13 (Mo. P.S.C. Apr. 29, 2015).

¹⁰ Baseline reliability projects are transmission projects required to meet North American Electric Reliability Corporation (“NERC”) standards. Baseline reliability projects that were included in the MISO transmission plan prior to 2013 are cost-allocated through MISO’s tariff. OATT. MISO, *MTEP Project Types and Appendix Overview*, <http://www.misomtep.org/mtep-project-types-and-appendix-overview/> (last visited June 16, 2016).

¹¹ Non-Unanimous Stipulation and Agreement, Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, Net Base Energy Costs, and Fuel Adjustment Clause Tariff Sheets, File No. ER-2014-0258 (filed Mar. 5, 2015); *In the Matter of Union Elec. Co., d/b/a Ameren Missouri’s Tariff to Increase Its Revenues for Elec. Serv.*, File No. ER-2014-0258, Order Approving Stipulation and Agreement (Mo. P.S.C. Mar. 19, 2015); *In the Matter of Union Elec. Co., d/b/a Ameren Missouri’s Tariff to Increase Its Revenues for Elec. Serv.*, File No. ER-2014-0258, Report and Order, at 114-16 (Mo. P.S.C. Apr. 29, 2015).

¹² Schedule 26 and 26-A Indicative Charges; available at <https://www.misoenergy.org/layouts/miso/ecm/redirect.aspx?id=196552> (Schedule 26) and <https://www.misoenergy.org/layouts/miso/ecm/redirect.aspx?id=124310> (Schedule 26-A)

1 Schedule 26 and 26-A charges, in USoA Account 565: “Transmission of Electricity by
2 Others.”¹³ In accordance with a 2015 Stipulation and Agreement that was approved by this
3 Commission,¹⁴ Ameren Missouri includes 96.5% of charges under Account 565 in its retail
4 electric base rates.¹⁵ These charges correspond to the roughly 96.5% of MISO transmission
5 charges to Ameren that arise from the transmission of power from Ameren Missouri’s
6 generation to its native load.¹⁶ The remaining 3.5% of Account 565 charges are included
7 in Ameren Missouri’s Fuel Adjustment Clause (“FAC”), as they relate to the transportation
8 of power purchased from third-parties and off-system sales.¹⁷ Both Ameren’s FAC and its
9 base rates are ultimately recovered from Ameren’s retail customers.

10 By contrast, the construction of the Grain Belt Express Project will have no impact
11 on MISO’s transmission charges and, consequently, no impact on Ameren Missouri’s base
12 rates or FAC. If Ameren Missouri decides to become a customer of Grain Belt Express in
13 the future by voluntarily entering into a transmission service agreement with Grain Belt
14 Express, as MJMEUC already has, then, of course, the costs of that transmission service
15 agreement could be passed on to Ameren’s captive retail customers through rates approved
16 by the Commission. Importantly, Ameren would only be in a situation to pass such costs

¹³ *Id.* at 112-14; Non-Unanimous Stipulation and Agreement, Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, Net Base Energy Costs, and Fuel Adjustment Clause Tariff Sheets, File No. ER-2014-0258, at 4 (filed Mar. 5, 2015).

¹⁴ *In the Matter of Union Elec. Co., d/b/a Ameren Missouri’s Tariff to Increase Its Revenues for Elec. Serv.*, Order Approving Stipulation and Agreement, File No. ER-2014-0258 (Mo. P.S.C. Mar. 19, 2015).

¹⁵ *In the Matter of Union Elec. Co., d/b/a Ameren Missouri’s Tariff to Increase Its Revenues for Elec. Serv.*, Report and Order, File No. ER-2014-0258, at 114 (Mo. P.S.C. Apr. 29, 2015).

¹⁶ *Id.* at 114-116.

¹⁷ *Id.*

1 through to its customers if Ameren determined the benefits of Grain Belt Express’ service
2 outweighed the cost of buying it.

3 **Q. Has the Federal Energy Regulatory Commission supported the development of**
4 **participant-funded transmission lines?**

5 A. Yes. FERC believes that participant-funded transmission projects play a “useful role in
6 expanding competitive generation alternatives for customers,”¹⁸ and has supported the
7 development of participant-funded transmission lines by authorizing such projects to
8 bilaterally negotiate rates for their transmission service with their transmission
9 customers.¹⁹ In January 2013, to simplify the process of authorizing participant-funded
10 project companies to charge negotiated rates, FERC issued a policy statement (the
11 “Merchant Transmission Policy Statement”) that provides guidance to developers of
12 participant-funded projects that seek negotiated rate authority.

13 FERC issued the Merchant Transmission Policy Statement to facilitate the
14 construction of participant-funded transmission by increasing the flexibility of the open
15 solicitation process used by the developers of participant-funded transmission to allocate
16 capacity among potential customers and negotiate rates for that capacity with the potential
17 customers. FERC now allows developers of participant-funded transmission projects “to
18 select a subset of customers . . . and negotiate directly with those customers to reach
19 agreement on the key rates, terms, and conditions for procuring up to the full amount of

¹⁸ *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038, at P 2 (2013).

¹⁹ *See, e.g., Southline Transmission, L.L.C.*, 152 FERC ¶ 61,211 (2015); *Lucky Corridor, LLC*, 151 FERC ¶ 61,072 (2015); *Plains & E. Clean Line LLC*, 148 FERC ¶ 61,122 (2014); *Champlain VT, LLC*, 146 FERC ¶ 61,167 (2014); *ITC Lake Erie Connector LLC*, 148 FERC ¶ 61,236 (2014).

1 transmission capacity.”²⁰ Previously, FERC had required that at least a portion of the
2 transmission line’s capacity be allocated through a more rigidly structured open season
3 process. In deciding to make the change, FERC found that because participant-funded
4 transmission lines are paid for entirely by their customers, “developers need to be able to
5 negotiate more freely with potential customers,” since “once a transmission developer has
6 secured customers, its business success depends on its customers’ success.”²¹ Grain Belt
7 Express was granted negotiated rate authority pursuant to the guidelines in the Merchant
8 Transmission Policy Statement in 2014.²²

9 **Q. Are there participant-funded transmission lines currently in operation?**

10 A. Yes, there are currently four participant-funded transmission lines in operation. The Cross-
11 Sound Cable, an underwater high-voltage direct current (“HVDC”) project connecting
12 Connecticut and New York across Long Island Sound, went into commercial operation in
13 2005.²³ The Neptune Project, an underwater HVDC transmission line connecting New
14 Jersey and Long Island, went into operation in 2007.²⁴ The Linden VFT Project, a
15 transmission project in New Jersey linking the transmission systems of PJM and the New
16 York Independent System Operator, entered commercial operation in 2009.²⁵ And the
17 Hudson Project, connecting New Jersey and New York City, went into operation in 2011.²⁶

²⁰ Merchant Transmission Policy Statement at P 16.

²¹ *Id.* at P 20.

²² *Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098 (2014).

²³ *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230 (2000).

²⁴ *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104 (2011).

²⁵ *Linden VFT, LLC*, 119 FERC ¶ 61,066, *order on clarification*, 120 FERC ¶ 61,242 (2007).

²⁶ *Neptune Reg'l Transmission Sys., LLC*, 96 FERC ¶ 61,147, *order on reh'g*, 96 FERC ¶ 61,326 (2001), *order on clarif.*, 98 FERC ¶ 61,140 (2002), *order on modification & clarif.*, 103 FERC ¶ 61,213 (2003).

1 **Q. Are there examples of participant-funded infrastructure projects in operation other**
2 **than electric transmission projects?**

3 A. Yes. Participant-funding is common among other kinds of transportation infrastructure.
4 For example, participant-funding is the predominant model used for the construction of oil
5 and natural gas pipelines. Pipeline developers raise private capital to construct pipelines
6 for which they believe there is a market need. During the development process, they hold
7 “open seasons” for capacity on the new pipeline. These open seasons are essentially
8 auctions in which potential shippers (customers) bid for the amount of capacity they want
9 to reserve on the pipeline, the length of time for which they would like to reserve it, and
10 the price and terms they are willing to pay for it. Shippers with winning bids in the open
11 season then sign “precedent agreements” with the pipeline that obligate them to enter into
12 agreements with the pipeline developer for transmission service on the pipeline once it is
13 constructed. The open season process used for pipeline development is similar to the open
14 solicitation process used by many participant-funded transmission projects, including the
15 Grain Belt Express Project, to negotiate terms and conditions with potential transmission
16 customers.

17 When reviewing interstate natural gas pipeline projects to determine whether to
18 issue a Certificate of Public Convenience and Necessity (“CPCN”) for the project, FERC
19 considers the existence of precedent agreements to be important evidence of market
20 demand for the project, and thus, the “need” for the project. I will discuss FERC’s
21 certificate policy for natural gas pipelines, and the relationship between market demand
22 and need, in Section IV of my testimony.

1 **Q. How do participant-funded transmission lines affect the transmission component of**
2 **rates paid by end-users of electricity served by traditional regulated electric utilities?**

3 A. The construction of participant-funded transmission lines does not result in an increase in
4 the transmission component of retail rates charged to captive customers, because the cost of
5 these transmission facilities is not factored into regional RTO transmission rates or included
6 in a traditional utility's rate base. In fact, the development of participant-funded lines can
7 slow the growth of the transmission component of retail rates, because they provide an
8 alternative to cost-allocated or rate-based transmission lines that are otherwise included in
9 wholesale or retail rates.

10 A participant-funded transmission line will only affect the rates paid by retail
11 customers if the retail customer's local utility (i.e., the LSE): (1) contracts with the
12 transmission line owner to use the line to deliver power it has purchased, and (2) passes its
13 delivery costs on to its customers.²⁷ Therefore, retail customers will only be charged to the
14 extent that they, through their LSE, have received service from the participant-funded line.

15 **Q. How will the Grain Belt Express Project affect the need for new, cost-allocated**
16 **transmission lines?**

17 A. The Grain Belt Express Project is likely to reduce the need for future cost-allocated
18 transmission lines (such as lines approved in the MISO and SPP transmission planning
19 processes) that would otherwise be built to achieve transmission benefits provided by the
20 Project. Because the Grain Belt Express Project increases access to low-cost, high capacity
21 factor wind energy, less cost-allocated transmission capacity will be needed within the

²⁷ Alternatively, the participant-funded line may affect the rates paid by retail customers if the local utility:
(1) contracts with a third-party to purchase power that was delivered on the line, and (2) the third-party includes
delivery costs in its wholesale power rates

1 MISO or SPP regions to achieve the same objective. Similarly, because Grain Belt Express
2 will connect MISO, SPP and PJM, a cost-allocated transmission line will not have to be
3 built to improve transfer capability between these three RTOs.

4 **Q. If the Grain Belt Express Project reduces the need for other, cost-allocated**
5 **transmission lines, how will this affect the transmission component of rates paid by**
6 **end-users of electricity?**

7 A. Participant-funded transmission lines are paid for by their wholesale transmission
8 customers, and not cost-allocated through RTO transmission tariffs to LSEs and, in turn,
9 to captive retail customers. Therefore, participant-funded transmission lines result in a
10 lower transmission rate component in retail rates than if the same amount of transmission
11 capacity were to be constructed under the RTO cost-allocation model.

12 At a minimum, this means that the Grain Belt Express Project will not result in an
13 increase in the rates charged to Ameren's retail customers. The Grain Belt Express Project
14 will only result in transmission charges to Ameren's retail customers to the extent that
15 Ameren voluntarily purchases transmission service on the line.²⁸ Ameren has not yet
16 contracted for such service, and would only do so if it perceived that it was in its economic
17 interest to so. Ameren would also require Commission approval to recover the costs of
18 entering into such a contract.

19 **Q. What will be the effect of the Grain Belt Express transmission service agreement with**
20 **MJMEUC on end-user rates?**

²⁸ If Ameren Missouri were to voluntarily purchase transmission service on the Grain Belt Express Project, or to purchase power from a third-party that had purchased such service, the cost of transmission service would also ultimately be passed on to retail customers.

1 A. MJMEUC has contracted with Grain Belt Express for transmission capacity to import wind
2 power to serve its customers. MJMEUC is a state-wide joint agency with 67 members, all
3 of which are municipally owned utilities. MJMEUC's members collectively serve
4 approximately 347,000 retail customers with a peak load of about 2,600 MW. MJMEUC
5 has entered into a transmission service agreement with Grain Belt Express to deliver 200
6 MW of wind power to Missouri. This contract also gives MJMEUC the right to export 25
7 MW of Missouri power to Illinois to sell in PJM, with the option to export another 25 MW.
8 The details of this contract are discussed in the Direct Testimony of Company witness
9 Mark Lawlor.²⁹ According to MJMEUC's estimates, the agreement with Grain Belt
10 Express and Kansas wind developers to deliver wind power to Missouri will have a positive
11 effect on end-user rates, saving members \$10 million annually compared to an existing
12 contract for fossil fuel generation.³⁰

13 **Q. Will future transmission service agreements or power purchase agreements utilizing**
14 **the Grain Belt Express Project convey similar benefits?**

15 A. Yes, they should. Other Missouri utilities will have similar opportunities to purchase low-
16 cost wind power delivered by the Project. MJMEUC has agreed to purchase 200 MW of
17 the total transmission service to Missouri, so another 300 MW remains available for other
18 utilities to purchase.

19 **III. PARTICIPANT-FUNDED TRANSMISSION CAN PROVIDE THE**
20 **EXTRAORDINARY BENEFITS OF INTERREGIONAL TRANSMISSION**
21 **WITHOUT RELYING ON REGIONAL COST ALLOCATION TO PAY FOR IT**

22 **Q. Can you explain how the transmission grid is organized?**

²⁹ Mark Lawlor Direct Testimony at 2-3

³⁰ Mark Lawlor Direct Testimony at 3; David Berry Direct Testimony at 44

1 A. The American transmission grid is divided into regional transmission systems for
2 operational and rate-making purposes. Generally speaking, each region corresponds to the
3 footprint of a utility or RTO that operates the regional transmission system. Electricity is
4 transmitted at the same flat rate, called a “postage stamp rate,” between all locations within
5 a regional transmission system, regardless of how far the electrons have actually traveled.

6 Within each transmission region, the transmission system operator is responsible
7 for maintaining a balance between power and load by dispatching resources to meet
8 demand. Reliability planning also occurs on a regional basis. For example, contingency
9 planning in the event of transmission or generation outages is conducted on the regional
10 level. Reserve margins are also set regionally to ensure an adequate supply of power within
11 the region.

12 Missouri is located at the juncture of three regional systems: SPP, AECI, and
13 MISO. SPP and MISO are RTOs.³¹ AECI is a generation and transmission cooperative.

14 **Q. What happens at the boundaries between regions?**

15 A. When the boundary of one regional transmission system abuts the boundary of another
16 regional transmission system, this is called a “seam.” Because there are usually a limited
17 number of transmission connections across a seam boundary, regional seams can create
18 congestion, limit the efficient use of electric infrastructure near the seam boundary, and cut
19 off LSEs from cost-effective generation resources, even those located geographically
20 nearby, but on the other side of the seam. Additionally, transmitting energy across seams
21 usually results in additive transmission costs, i.e. rate pancaking, where the transmission

³¹ For the purposes of this testimony, I am including the Southwestern Power Administration (“SWPA”), a federal power marketing agency, as part of SPP, because SPP operates SWPA’s transmission system.

1 customer pays the postage stamp rate for both regions. As the Commission is aware, the
2 presence of multiple transmission seams within Missouri has resulted in increased costs to
3 consumers.³²

4 **Q. Is there a term commonly used for transmission lines that cross regional seams?**

5 A. Transmission lines that extend across the seam(s) between two or more regions are
6 “interregional” transmission lines. The Grain Belt Express Project, which will extend from
7 Kansas to Indiana and link three regions (SPP, MISO and PJM), is an example of an
8 interregional transmission line.

9 **Q. What are the benefits of interregional transmission lines to the public?**

10 A. An interregional transmission line can provide extraordinary benefits to customers served
11 by each of the regional transmission systems that it interconnects. An interregional
12 transmission line allows for the efficient transmission of power from one region to another
13 region, which provides economic and reliability benefits to each of the regions
14 interconnected by the line.

15 **Q. What are the economic benefits of interregional transmission?**

16 A. An interregional transmission line allows for low cost energy to be imported from a region
17 with an excess of generation resources to a region with higher demand. The Grain Belt
18 Express Project provides this benefit by moving wind power from Kansas (where there is
19 an abundance of wind) into Missouri, MISO, and PJM, which will increase the supply of
20 low-cost power in those markets. An increase in the supply of low-cost power will, in turn,

³² See e.g., *In the Matter of an Investigation Into the Possible Methods Mitigating Identified Harmful Effects of Energy Joining MISO on non-MISO Missouri Utilities and Their Ratepayers and Maximizing the Benefits For Missouri Utilities and Ratepayers Along RTO and Cooperative Seams*, File No. EW-2014-0156, Order Opening a Case to Investigate Methods of Eliminating or Mitigating the Negative Effects of the MISO/SPP Seam (Mo. P.S.C. Nov. 26, 2013).

1 reduce the need to build new generation, and reduce wholesale electricity prices and the
2 cost for Missouri utilities to serve their electric load.³³

3 Interregional transmission can also promote the construction of generation to
4 produce low-cost power in the first place. The development of wind generation in Kansas
5 has been stymied by limited transmission export capacity. Generation development is often
6 dependent on available transmission capacity to deliver power to electric markets. The
7 Department of Energy (“DOE”) has recognized this problem, noting that “[n]ew generation
8 sometimes requires new transmission, especially remotely sited renewables.”³⁴ By
9 providing a transmission path from western Kansas to the east, the Grain Belt Express
10 Project will help to promote the production of low-cost wind power. Grain Belt Express
11 has received Transmission Service Requests (“TSRs”) from fourteen wind generation
12 companies in western Kansas.³⁵ The construction of these companies’ generation projects
13 is contingent on the construction of the Grain Belt Express Project or another interregional
14 line to export their power to higher load areas.

15 Interregional lines can also provide economic benefits by allowing a region to
16 import resources from another region where those resources are temporarily more
17 abundant. For example, the output of intermittent generation, such as wind and solar, is
18 dependent on weather conditions and the time of day. Interregional transmission can

³³ Schedule JNC-2

³⁴ DEP’T OF ENERGY, QUADRENNIAL ENERGY REVIEW: ENERGY TRANSMISSION, STORAGE, AND
DISTRIBUTION INFRASTRUCTURE 3-24 (2015),
http://energy.gov/sites/prod/files/2015/07/f24/QER%20Full%20Report_TS%26D%20April%202015_0.pdf.

³⁵ Michael Skelly Direct Testimony at 13-14; David Berry Direct Testimony at 24-25

1 reduce this “short-term uncertainty of intermittent wind and solar resources.”³⁶ For
2 example, an interregional transmission line can transmit wind power from one region,
3 where the wind is blowing and energy prices are low, to another where the wind is not
4 currently blowing and prices are higher. Interregional transmission can thus offset the
5 intermittent nature of many renewable resources, which can reduce the overall cost to
6 utilities of serving load.

7 Moreover, the interregional transmission line itself produces consumer benefits by
8 providing an alternate pathway for electricity between and within regions. This additional
9 path can reduce transmission congestion, which leads to lower congestion costs for utilities
10 and reduces these utilities’ cost to serve their load.

11 **Q. What are the reliability benefits of interregional transmission?**

12 A. The ability of interregional transmission to import power from outside of a region also
13 provides reliability benefits. In times of generation scarcity within a region,³⁷ excess
14 resources from another region can be imported using the interregional line. The availability
15 of resources from outside a given region can also reduce the reserve margin necessary to
16 ensure reliability for the region. Lowered reserve margins decrease consumer costs in the
17 region, as ratepayers no longer have to support extra resources within the region.

18 The presence of additional transmission capacity can also improve reliability when
19 there is a transmission outage within the region. This is doubly true in the case of the Grain
20 Belt Express Project because it is a direct current line. Direct current lines are particularly

³⁶ BRATTLE GROUP, TOWARD MORE EFFECTIVE TRANSMISSION PLANNING: ADDRESSING THE COSTS AND RISKS OF AN INSUFFICIENTLY FLEXIBLE ELECTRICITY GRID 31 (2015) (“2015 WIRES Report”), http://www.wiresgroup.com/docs/reports/WIRES%20Brattle%20Rpt_TransPlanning_042315.pdf.

³⁷ Generation scarcity can result from high demand or diminished supply within the region.

1 valuable during transmission outages, as converters control the flow of power over the line.
2 Because they are electrically isolated from the rest of the transmission grid, direct current
3 lines are less likely to be affected by a “cascading outage,” where the failure of one
4 transmission line causes other transmission lines to overload and fail.

5 **Q. Are there other benefits for consumers to constructing an interregional transmission**
6 **line like the Grain Belt Express Project?**

7 A. Yes. Transmission customers can import or export power on Project without incurring a
8 “pancaked” transmission rate. Rate pancaking happens when power is transmitted across
9 a regional seam using ordinary transmission. In that case, the customer has to pay the
10 transmission charge in region one (region one’s postage stamp rate), and the transmission
11 charge in region two (region two’s postage stamp rate.)³⁸ With a dedicated interregional
12 line, however, the customer simply pays the transmission rate for that line, rather than each
13 region’s postage stamp rates. Avoiding pancaked rates decreases the costs of importing
14 and exporting power, which enables more, and more economically efficient, import and
15 export of electricity between regions.

16 **Q. Has FERC attempted to promote the construction of interregional transmission**
17 **projects?**

18 A. Yes. In Order No. 1000, among other things, FERC attempted to facilitate the construction
19 of interregional transmission projects by requiring that regional transmission owners
20 develop interregional cost-allocation processes that require that RTO customers pay for

³⁸ Regional through-and-out rates are a variant on a postage stamp rate that applies to the transmission of power that originates in one region to a destination in another region.

1 interregional transmission projects that benefit them.³⁹ FERC was concerned that the “lack
2 of coordinated transmission planning processes across the seams” could be “needlessly
3 increasing costs” for customers, by, among other things, preventing the resolution of seams
4 issues and preventing the efficient transmission of resources to where they were most
5 needed to decrease costs and increase reliability.⁴⁰

6 **Q. What is the benefit to the public of using a participant-funded model for an**
7 **interregional transmission line rather than using the cost allocation processes**
8 **provided by FERC?**

9 A. Participant-funded lines do not do not recover their development costs, or their operation
10 costs, from captive retail customers through increased transmission rates.⁴¹ Instead,
11 participant-funded lines rely on voluntary contracts with transmission customers to recover
12 their costs and earn a profit. Therefore, the public receives the benefits of interregional
13 transmission without suffering a general increase in transmission rates. By contrast, the
14 use of interregional cost allocation processes results in increased transmission costs to
15 ratepayers, in the same way as the construction of cost-allocated lines (such as MVP lines)
16 ultimately raise consumer rates.⁴²

³⁹ See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011) (“Order No. 1000”), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁴⁰ Order No. 1000 at P 350

⁴¹ See *supra* at 4

⁴² See *supra* at 7-9

1 **IV. THE GRAIN BELT EXPRESS PROJECT MEETS THE TARTAN CRITERIA**
2 **FOR ISSUING A CERTIFICATE OF CONVENIENCE AND NECESSITY**

3 **Q. Please summarize the Tartan criteria that the Commission has used in prior cases for**
4 **considering requests for a certificate of convenience and necessity (“CCN”).**

5 A. Under *Tartan*,⁴³ an applicant for a CCN must demonstrate that:

- 6 1. there is a need for the Project;
- 7 2. the applicant is qualified to undertake the Project;
- 8 3. the applicant has the financial ability to undertake the Project;
- 9 4. the Project is economically feasible; and
- 10 5. the Project is in the public interest.

11 Since the Commission found in its prior Report and Order concerning the Project
12 that Grain Belt Express is qualified to undertake the Project and has the financial ability to
13 do so,⁴⁴ I will discuss why the Project meets the remaining three criteria: need, economic
14 feasibility, and public interest.

15 **Q. How does a participant-funded project, such as the Grain Belt Express Project,**
16 **demonstrate that it is “needed”?**

17 A. What makes a participant-funded project, like the Grain Belt Express Project, “needed” is
18 different from what makes a transmission project “needed” when it is developed by a
19 traditional, franchised, regulated utility, and funded through cost-of-service ratemaking.
20 When a regulator is asked to grant a CCN to a transmission project proposed by its local,
21 regulated utility, he or she knows that, if the project is approved, its cost is going to be

⁴³ *In re Tartan Energy Co.*, No. GA-94-127, 1994 WL 762882 (Mo. P.S.C. Sept. 16, 1994) (“*Tartan*”).

⁴⁴ *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity Authorizing It to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and an Associated Converter Station Providing an Interconnection on the Maywood - Montgomery 345 kV Transmission Line*, File No. EA-2014-0207, Report and Order at 21 (Mo. P.S.C. July 1, 2015).

1 included in the rates charged to the captive customers of the utility—the customers that the
2 regulator is charged by law with protecting from unjust and unreasonable rates. So, the
3 regulator will expect to see facts showing that the project will serve important transmission
4 needs of the utility’s captive customers (such as additional transmission capacity necessary
5 to provide reliable service or less expensive power) and that the cost of the project will be
6 in proportion to the value of the needs being met. This is the only way that a regulator can
7 justify imposing the cost of the transmission project on the utility’s captive customers and
8 protect them from unjust and unreasonable rates.

9 However, when a regulator is asked to approve a CCN for a participant-funded
10 transmission company, there is no concern about protecting captive customers. Unlike
11 captive customers of a traditional utility that the regulator is charged with protecting, the
12 customers of a participant-funded transmission company do not need to be protected from
13 the imposition of the cost of the new transmission. They have freely chosen to contract for
14 service on the transmission lines; they have become customers because they themselves
15 have determined that they “need” the transmission service. They have decided that the
16 benefit of buying the service outweighs the contractual cost.

17 In short, regulators can safely rely on the presence of voluntary customers and
18 investors, i.e., “the market,” to determine that a participant-funded project is needed. This
19 is what FERC does when deciding whether to issue CPCNs for interstate natural gas
20 pipelines; it examines the “market-based need for a pipeline project.”⁴⁵ FERC explained
21 this reasoning in its 1999 Certificate Policy Statement, which required that project

⁴⁵ Certificate Policy Statement at 61,747

1 developers seeking a CPCN show that the project is financially viable *without any revenues*
2 *from existing (captive) customers.*⁴⁶ Such a showing is the “first indicator of public
3 benefit”⁴⁷ because, as FERC explained, “[c]ompanies [that are] willing to invest in a project
4 without financial subsidies” from captive customers, are “an important indicator of market-
5 based need for a project.”⁴⁸ Similarly, the willingness of customers to enter into “contracts
6 or precedent agreements [for natural gas transmission service] always will be important
7 evidence of demand for a project.”⁴⁹ For FERC, this showing of market-based demand for
8 the project is the “threshold requirement for establishing that a project will satisfy the
9 public convenience and necessity standard.”⁵⁰

10 FERC does not, however, rely exclusively on a showing of market demand to
11 demonstrate the need for a pipeline project, and does not require that the “applicant to
12 present contracts for any specific percentage of the new capacity.”⁵¹ Instead, FERC “will
13 consider all relevant factors reflecting on the need for the project. These might include, but
14 would not be limited to, precedent agreements, demand projections, potential cost savings
15 to consumers, or a comparison of projected demand with the amount of capacity currently
16 serving the market.” Ultimately, FERC will determine whether a project meets the
17 statutory requirement that it be “necessary or desirable in the public interest,”⁵² based on

⁴⁶ *Id.*

⁴⁷ *Id.* (“In sum, if an applicant can show that the project is financially viable without subsidies, then it will have established the first indicator of public benefit.”)

⁴⁸ *Id.*

⁴⁹ *Id.* at 61,748.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Natural Gas Act § 7, 15 U.S.C. § 717f(a).

1 whether the applicant can demonstrate that “the public benefits from the project” -- which
2 prominently include satisfying market need -- “outweigh any adverse effects.”⁵³

3 **Q. What facts has Grain Belt Express presented in this case that the Project is needed?**

4 A. Grain Belt Express has presented substantial facts showing that the Project is needed
5 through the results of its open solicitation process. Through this open process, conducted
6 in accord with the guidance set forth in FERC’s Merchant Transmission Policy Statement,
7 Grain Belt Express has received requests for transmission service that greatly exceed the
8 total capacity of the Project, indicating that there are many customers that demand, or
9 “need,” the service being offered.

10 On January 20, 2015, Grain Belt Express commenced an “open solicitation” in
11 accord with FERC’s May 8, 2014 order authorizing Grain Belt Express to negotiate
12 bilateral agreements for 100% of the Project’s capacity.⁵⁴ In response to this initial
13 solicitation, fourteen wind generators seeking to move low-cost wind power into MISO
14 and PJM responded, requesting service on the line by submitting TSRs” to Grain Belt
15 Express. Grain Belt Express provided a second opportunity for customers to submit TSRs
16 in February 2016. During this time period, MJMEUC submitted two TSRs, one for 200
17 MW for transmission from Kansas to Missouri, and the other for 50 MW from Missouri to
18 PJM. MJMEUC intends to meet a portion of its demand for “low-cost renewable energy”
19 using the Grain Belt Express Project to import wind power from Kansas.⁵⁵

⁵³ Certificate Policy Statement at 61,750.

⁵⁴ *Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098 (2014).

⁵⁵ David Berry Direct Testimony at 10

1 As reported in Mr. Berry's Direct Testimony, Grain Belt Express has received
2 TSRs from fifteen different entities, which ask to reserve a total of 3,524 MW of capacity
3 on its transmission line from Kansas into Missouri, or more than 6.5 times the Project's
4 available Kansas-to-Missouri capacity.⁵⁶ The total capacity requested to move power to
5 delivery points in MISO and PJM is 20,825 MW, or more than 4.5 times the Project's
6 available capacity.⁵⁷ This level of response, which is far in excess of the amount of capacity
7 actually available on Grain Belt Express, is dramatic evidence of the need for transmission
8 service from western Kansas to the Missouri, MISO and PJM markets. On the basis of
9 these strong market facts, Grain Belt Express and its investors are continuing to invest the
10 substantial funds necessary to develop the Project.⁵⁸

11 **Q. Is the process that Grain Belt Express has undertaken to demonstrate the need for**
12 **the Project similar to the process that participant-funded natural gas pipelines use at**
13 **FERC to show need?**

14 A. Yes. The procedures for allocating capacity through an open solicitation process outlined
15 in FERC's Merchant Transmission Policy Statement are similar to, and conceptually the
16 same as, those used for natural gas pipeline open seasons. In both cases the open
17 solicitation processes are designed to gauge demand for the capacity offered by the project
18 and ensure that the capacity is allocated on a basis that is not unduly discriminatory or
19 preferential. The open solicitation process held by Grain Belt Express was approved by
20 FERC as consistent with the Merchant Transmission Policy Statement.⁵⁹

⁵⁶ David Berry Direct Testimony at 24-25

⁵⁷ *Id.*

⁵⁸ David Berry Direct Testimony at 11-14

⁵⁹ *Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098 at PP 23, 29, Ordering Paragraph (B).

1 The TSRs that resulted from Grain Belt Express’ open solicitation process are
2 evidence of market need for the transmission project in the same way that precedent
3 agreements are evidence of need for a pipeline project. In the case of Grain Belt Express,
4 the amount of transmission capacity being sought through the transmission service requests
5 received by Grain Belt Express indicates that there is an enormous demand for the
6 transmission service offered by the Project, i.e., there is great “need” for the Grain Belt
7 Express Project.

8 **Q. Have other state regulatory commissions that have approved Grain Belt Express’**
9 **applications determined a need for the Project?**

10 A. Yes. Illinois, Indiana and Kansas have all issued the requested approvals and permits for
11 the Grain Belt Express Project. Each of these state commissions found that the Project
12 fulfills a need and provides benefits to the public. For example, the Illinois Commerce
13 Commission (“ICC”) found that “the Project will be needful and useful to the public.”⁶⁰
14 Specifically, the ICC concluded that the Project will allow transmission of large amounts
15 of wind energy from Kansas, at costs significantly lower than that for equivalent power
16 generated in-state.⁶¹ The ICC further concluded that the transmission of low-cost wind
17 energy to Illinois would “reduce wholesale and retail electricity prices,” put “downward
18 pressure on the prices of RECs” and help “Illinois and other PJM and MISO states . . . meet
19 their RPS objectives.”⁶² Furthermore, this potential to “unlock wind resources . . . and
20 place downward pressure on the price of RECs and wholesale energy prices” will promote

⁶⁰ *Application for an Order Granting Grain Belt Express Clean Line LLC a Certificate of Public Convenience and Necessity*, No. 15-0277, at 128 (I.C.C. Nov. 12, 2015).

⁶¹ *Id.* at 124.

⁶² *Id.* at 125.

1 the development of a competitive electricity market.⁶³ In light of these benefits, “the record
2 supports the conclusion that there are considerable economic benefits associated with
3 bringing Kansas wind power to market and that there are no viable alternatives to the
4 Project as the means to accomplish that task in a less expensive manner.”⁶⁴

5 The Kansas Corporation Commission (“KCC”) found a “need” for long-distance,
6 multi-state transmission projects such as the Grain Belt Express Project to promote the
7 development and export of wind power from Kansas, and that such development is vital
8 for the economic growth of the state.⁶⁵ In its Siting Order, the KCC stated that “[w]ithout
9 this project, hundreds of millions of economic development dollars would not be spent in
10 Kansas, and the potential for large scale wind farm development would be lost. The
11 Commission finds that this project will have significant short- and long-term economic
12 development benefits for the state of Kansas.”⁶⁶

13 The Indiana Utility Regulatory Commission (“IURC”) was not required to find that
14 the Project serves a “need” in order to approve it—but it nevertheless concluded that it
15 would. In granting Grain Belt Express the authority to operate as a public utility, IURC
16 found that “the Project will provide benefits to the state of Indiana and the region.”⁶⁷ The
17 IURC concluded that the Project would provide cost-effective renewable power to meet

⁶³ *Id.* at 126.

⁶⁴ *Id.* at 127.

⁶⁵ *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Limited Certificate of Public Convenience to Transact the Business of a Public Utility in the State of Kansas*, No. 11-GBEE-624-COC, at 21-22 (KCC Dec. 7, 2011).

⁶⁶ *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Siting Permit for the Construction of a High Voltage Direct Current Transmission Line in Ford, Hodgeman, Edwards, Pawnee, Barton, Russell, Osborne, Mitchell, Cloud, Washington, Marshall, Nemaha, Brown, and Doniphan Counties Pursuant to K.S.A. 66-1,177, et seq.*, No. 13-GBEE-803-MIS, at 14 (Ks. S.C.C. Nov. 7, 2013).

⁶⁷ *Petition of Grain Belt Express Clean Line LLC For: (1) A Determination of its Status as a “Public Utility” Under Indiana Law, et seq.*, No. 44264, at 20 (IURC May 22, 2013).

1 growing demand, and exert downward pressure on wholesale prices in MISO and PJM.
2 The IURC also found that geographic diversity in wind power supply (i.e., wind power
3 produced in different regions) for PJM and MISO will facilitate the promotion of wind
4 power into the grid, reducing the regional variability associated with electricity produced
5 by wind power and improving reliability. In addition, the IURC found that the Project will
6 have a positive impact on the environment, reducing both pollution and water use, and will
7 promote economic development in Indiana.

8 **Q. Will RTOs such as MISO examine the Project and determine that there is a need for**
9 **it?**

10 A. No. There is currently no requirement that MISO examine participant-funded transmission
11 projects; indeed, there is not even a system in place that would allow MISO to do so.
12 Finally, no reason exists for MISO to establish such a process for participant-funded
13 projects like the Grain Belt Express Project. The RTO transmission planning processes,
14 including the interregional coordination processes, are designed only to identify projects
15 to be paid for through the imposition of regional cost allocation on RTO transmission
16 customers.⁶⁸ Because the Grain Belt Express Project is not being paid for by mandatory
17 allocation of its costs to the region, it is not, and cannot be, selected in an RTO transmission
18 planning process.

19 **Q. Will the RTOs evaluate the reliability impact of the Project?**

20 A. Yes. The Project will go through the relevant interconnection study processes to determine
21 whether it can be reliably interconnected to the transmission grid. As Company Dr. Wayne

⁶⁸ See generally Order No. 1000.

1 Galli explains in detail in his Direct Testimony,⁶⁹ the RTOs have extensive study processes
2 to ensure that a new transmission line can safely and reliably connect to the grid.

3 **Q. What does “economic feasibility” mean with respect to a participant-funded**
4 **transmission line like the Grain Belt Express Project?**

5 A. There are two ways to determine that a participant-funded transmission line like Grain Belt
6 Express, is “economically feasible.” One way is to affirm that because the developer of
7 the project is assuming the full financial risk of failure, the project meets the requirement
8 that it be economically feasible. This is the approach the Commission took in *Tartan*.⁷⁰
9 As the explained in a 1999 Commission order applying *Tartan*:

10 The *Tartan Energy Company* case requires the Commission to analyze the
11 economic feasibility of a proposal by asking whether the risk of the failure
12 of the development lies with the investors or the ratepayers. The proposal
13 in this case directly shifts the burden to Osage’s investors . . . If Osage has
14 underestimated the economic feasibility of the project, the loss will be borne
15 by Osage and the project developer (i.e. the investors) and not by Osage’s
16 ratepayers.⁷¹

17 In other words, if the project developer assumes the economic risks of a project,
18 then the *project developer*, and not the public, will suffer a loss if it has underestimated the
19 costs of the project, or failed to earn a sufficient return. The project is thus economically

⁶⁹ Wayne Galli Direct Testimony at 18

⁷⁰ *In Re Tartan Energy Co., L.C.*, No. GA-94-127, 3 Mo. P.S.C. 3d 173 (Mo. P.S.C. Sept. 16, 1994) (“In this case Tartan bears most of the risk if it has underestimated the economic feasibility of its project, and the public benefit outweighs the potential for underestimating these costs.”)

⁷¹ *In the Matter of the Application of Osage Water Company*, No. SA-99-268, 8 MO P.S.C. 3d 366 (Mo. P.S.C. October 14, 1999)

1 feasible from the perspective of the Missouri public, which will receive the benefits of the
2 project, without assuming the risk that it will cost more to construct or earn a lower profit
3 than expected.

4 The other way to approach the question of “economic feasibility” is to determine
5 whether or not a project is a viable business venture. From a regulator’s perspective, in the
6 case of a participant-funded project, this is not a relevant question, because the public is
7 not footing the bill, and the project developers have voluntarily assumed the risk of failure.
8 That said, Grain Belt Express has presented substantial facts showing that the Project is
9 economically feasible as an independent business venture. Fifteen potential transmission
10 customers submitted TSRs that are collectively seeking transmission capacity several times
11 what the Grain Belt Express has available. These TSRs indicate that transmission
12 customers have a strong interest in purchasing transmission capacity from Grain Belt
13 Express, which will lead to the Project’s successful financing and construction.

14 **Q. Will Grain Belt Express take the risk of the Project’s success and profitability?**

15 A. Yes. As a participant-funded project, all costs of the Grain Belt Express Project are borne
16 by Grain Belt Express and its investors. As I explained above, in Section II of my
17 testimony, these costs will not be recovered from Missouri’s captive ratepayers. In addition
18 to using a participant-funded model, Grain Belt Express has made an independent
19 commitment not to seek regional cost allocation—if it were to become available—without
20 express authorization from the Commission. This commitment is discussed in Company
21 witness David Berry’s Direct Testimony.⁷² Under the Commission’s approach in *Tartan*,
22 which is to determine whether the public or the developer assumes the risk of an

⁷² David Berry Direct Testimony at 9

1 uneconomic project, the Grain Belt Express would clearly be economically feasible
2 because the public faces no such risk.

3 **Q. What facts show that the Project is likely to be a successful investment for Grain Belt**
4 **Express' investors?**

5 A. Whether the Project is likely to be a successful investment for Grain Belt Express' investors
6 should not be of any concern to the Commission, which has no responsibility for protecting
7 the voluntary investors in Grain Belt Express, and which is not in a better position to
8 evaluate the success of the investment than the voluntary investors themselves. In other
9 words, the Commission has no reason for, or basis for, "second-guessing" the investors,
10 who believe that investment in the Grain Belt Express will be successful—or they wouldn't
11 be investing.

12 Nevertheless, there is additional evidence that the Project is likely to be a successful
13 investment for Grain Belt Express' investors. As I discussed above, the results of the open
14 solicitation demonstrate that there is demand for the Project's capacity far in excess of the
15 actual capacity available. This demand provides important evidence that the project is
16 economically feasible. Not only is there sufficient demand to account for all of the capacity
17 on the Project, but there are more customers that have requested to purchase service on the
18 Project than Grain Belt Express has service to sell. One reason for this excess demand is
19 that the Grain Belt Express Project offers access to large amounts of low-cost, desirable
20 wind power. As shown in Mr. Berry's Levelized Cost of Energy ("LCOE") analysis,
21 Kansas wind power is less expensive than the new solar and natural gas plants, and is also
22 less expensive than wind power generated in Missouri or elsewhere in MISO.⁷³ Taken

⁷³ David Berry Direct Testimony at 28

1 together, the MJMEUC contract, the successful open solicitation, and the cost-
2 competitiveness of wind power delivered by the Project, provide additional strong evidence
3 that Grain Belt Express is financially viable.

4 **Q. In what ways does the Grain Belt Express Project serve the public interest?**

5 A. The Grain Belt Express Project will serve the public interest in numerous ways. Most
6 fundamentally, the Project is a substantial investment being made in Missouri to supply
7 low-cost, clean energy to the state and region without imposing costs or risks on electric
8 customers that do not directly benefit from this aspect of the Project. The Project also
9 serves the public interest in the various ways discussed in my testimony and the testimony
10 of other Grain Belt Express witnesses. To summarize:

- 11 • The Project will reduce wholesale electricity prices and the cost for Missouri utilities to
12 serve their electric load;⁷⁴
13
- 14 • The Project will reduce the emissions of carbon dioxide, nitric oxides, and sulfur
15 dioxides;⁷⁵
16
- 17 • The Project provides Missouri utilities access to lower-cost power supplies than would
18 otherwise be available, including an estimated savings to MJMEUC of \$10 million per year
19 and additional savings possible for other Missouri utilities;⁷⁶
20
- 21 • The Project allows Missouri and other states in the region to cost effectively meet their
22 state renewable energy standards and goals;⁷⁷
23
- 24 • The Project's participant-funded business model protects Missouri's captive electric
25 customers from the costs and risks inherent in traditional, rate-based transmission;
26
- 27 • The Project meets the clear need for interregional transmission—and provides the multiple
28 benefits of interregional transmission--while avoiding the contentious and problematic cost
29 allocation processes across multiple RTOs;

⁷⁴ Schedule JNC-2

⁷⁵ Neil Copeland Direct Testimony at 4

⁷⁶ Mark Lawlor Direct Testimony at 3; David Berry Direct Testimony at 44

⁷⁷ David Berry Direct Testimony at 37-44

- 1
2 • The Project provides a major new source of electric generation and links four regions and
3 three RTOs, which increases reliability during times of peak load or generator outages;⁷⁸
4 and
5
6 • The Project will be a source of economic development to Missouri through increased
7 property taxes,⁷⁹ construction jobs,⁸⁰ and manufacturing jobs.⁸¹
8

9 Together, these benefits support the finding that the Grain Belt Express Project
10 advances the public interest in Missouri.

11 **Q. Is there a federal process available to permit the Grain Belt Express Project in**
12 **Missouri?**

13 A. Yes. Under Section 1222 of the Energy Policy Act of 2005, DOE has the authority to
14 develop, in collaboration with private entities, new electric power transmission facilities
15 and related facilities located within any state in which the SWPA or the Western Area
16 Power Administration operate. This provision allows the project undertaken jointly by the
17 DOE and the private entity to take advantage of the authority of federal power
18 administrations to construct transmission without state regulatory approval. The DOE
19 recently authorized such a joint project for the Plains & Eastern Clean Line Project (“Plains
20 & Eastern”), which is under development by Grain Belt Express’ parent company, Clean
21 Line Energy Partners LLC. The Plains & Eastern will be located in SWPA and crosses
22 Oklahoma and Arkansas. SWPA also operates in the state of Missouri, so this approach is
23 available to Grain Belt Express.

⁷⁸ Edward Pfeiffer Direct Testimony at 5

⁷⁹ Richard Tregnago Direct Testimony at 3-4

⁸⁰ Thomas Shiflett Direct Testimony at 13; Mark Lawlor Direct Testimony at 15-17

⁸¹ Wayne Galli Direct Testimony at 37-39; Mark Lawlor Direct Testimony at 15-17

1 **Q. What benefits are there to Missouri if the Commission approves and regulates the**
2 **Grain Belt Express Project rather than if Grain Belt Express pursues federal siting**
3 **authority?**

4 A. It is preferable for the Commission to approve and regulate the Grain Belt Express Project
5 rather than to have Grain Belt Express partner with the DOE to do business in Missouri.
6 The Commission understands the needs of Missouri and Missouri landowners, and can
7 ensure that those interests are represented and protected. In particular, the Commission
8 can exercise its authority to impose conditions on the Project, many of which Grain Belt
9 Express has already agreed to in its 2014 Case.⁸² Moreover, in approving the Project, the
10 Commission will have authority over routing, agricultural mitigation requirements, and the
11 siting of the converter station in Missouri.

12 In the case of the Plains & Eastern Line, DOE's intervention was necessary in part
13 because the Arkansas Public Service Commission concluded that the law did not clearly
14 grant it the right to permit the project.⁸³ In Missouri, however, the Commission clearly has
15 the authority to approve the Project, and Missouri is the only state that the Grain Belt
16 Express Project will pass through that has not yet given its approval. The Commission
17 should exercise its authority for the benefit of the Missouri public and approve the Project
18 subject to appropriate conditions.

⁸² David Berry Direct Testimony at 45

⁸³ *In the Matter of the Application of Plains and Eastern Clean Line LLC For a Certificate of Public Convenience and Necessity to Construct, Own and Operate as an Electric Transmission Public Utility in the State of Arkansas*, Docket No. 10-041-U, at 9-12 (Ar. P.S.C. Jan. 11, 2011).

1 **Q. How can the Commission balance the public benefits of the Grain Belt Express**
2 **Project with concerns about landowner interests and property rights?**

3 A. First, the Commission can rely on the commitments made by Grain Belt Express. As
4 detailed in the Direct Testimony of Ms. Deann Lanz, Grain Belt Express has taken a
5 number of steps to recognize and respect the interests of landowners. For example, Grain
6 Belt Express intends to pay a premium for easements, compensating landowners for use of
7 their property by paying 110% of the average per acre value of recent sales for similar land
8 types in the county.⁸⁴ In other words, although Grain Belt Express is only seeking to
9 purchase an easement, it will propose an easement payment to landowners that at a
10 minimum equals the fair market fee value of the land.⁸⁵ Even if Grain Belt Express requires
11 a very small parcel of land, each landowner will receive a minimum payment of \$2,000.⁸⁶
12 In addition, Grain Belt Express will pay landowners, at their option, either a one-time
13 payment or a recurring annual payment for each structure located on their property. If a
14 landowner elects to receive annual payments, such annual payments will increase by 2%
15 per year.⁸⁷ If Grain Belt Express and a landowner have reached an agreement on the form
16 of easement but are unable to reach agreement as to the appropriate compensation, Grain
17 Belt Express, at the landowner's request, will submit the dispute to binding arbitration

⁸⁴ Deann Lanz Direct Testimony at 6

⁸⁵ By contrast, most natural gas pipeline projects offer only 100% of fair market value. *See generally* FERC Docket Nos. CP16-17, CP16-13, CP16-12, CP15-91, and CP14-529 (certificate applications stating that easements would be purchased at "fair market value").

⁸⁶ Deann Lanz Direct Testimony at 6

⁸⁷ Deann Lanz Direct Testimony at 7

1 administered by the American Arbitration Association.⁸⁸ Grain Belt Express will use
2 eminent domain only as a last resort.⁸⁹

3 Second, the Commission can require Grain Belt Express to live up to its
4 commitments to landowners by imposing relevant conditions in Grain Belt Express'
5 certificate related to compensation, arbitration and other potential landowner concerns.

6 **Q. Have the benefits described by Grain Belt Express shown that the public convenience
7 and necessity is served by the Project and that it is in the public interest?**

8 A. Yes. In light of the numerous benefits that will be conferred on Missouri and the region, I
9 conclude that the Project offers service that is both convenient and necessary for the public
10 and that it is in the public interest. This is particularly true because Grain Belt Express will
11 assume all financial and market risk for the Project, and the costs of the Project will not be
12 recovered from captive Missouri ratepayers.

13 **Q. Does this conclude your Direct Testimony?**

14 A. Yes.

⁸⁸ Deann Lanz Direct Testimony at 11

⁸⁹ Deann Lanz Direct Testimony at 16

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

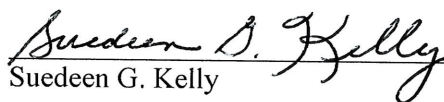
In the Matter of the Application of Grain Belt Express)
Clean Line LLC for a Certificate of Convenience and)
Necessity Authorizing it to Construct, Own, Control,) Case No. EA-2016-_____
Manage, Operate and Maintain a High Voltage, Direct)
Current Transmission Line and an Associated Converter)
Station Providing an Interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

AFFIDAVIT OF SUEDEEN G. KELLY

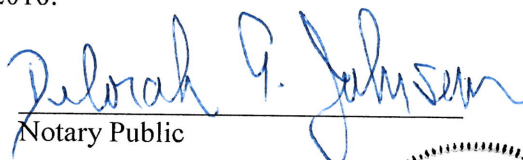
CITY OF WASHINGTON)
) ss
DISTRICT OF COLUMBIA)

Suedeem G. Kelly, being first duly sworn on her oath, states:

1. My name is Suedeem G. Kelly. I am the Chair of the Energy Regulation, Markets and Enforcement practice at Akin Gump Strauss Hauer & Feld LLP.
2. Attached hereto and made a part hereof for all purposes is my Direct Testimony on behalf of Grain Belt Express Clean Line LLC consisting of 36 pages, having been prepared in written form for introduction into evidence in the above-captioned docket.
3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.


Suedeem G. Kelly

Subscribed and sworn before me this 29th day of June, 2016.


Notary Public

My commission expires: _____

DEBORAH A. JOHNSON
Notary Public of District of Columbia
My Commission Expires June 14, 2020

