BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Joint Application of Invenergy Transmission LLC, Invenergy Investment Company LLC, Grain Belt Express Clean Line LLC and Grain Belt Express Holding LLC for an Order Approving the Acquisition by Invenergy Transmission LLC of Grain Belt Express Clean Line LLC	))))))))	Case No. EM-2019-0150

JOINT APPLICANTS' REPLY BRIEF

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Invenergy Transmission LLC ("Invenergy Transmission"), on behalf of itself and its parent company Invenergy Investment Company LLC ("Invenergy Investment" and together with Invenergy Transmission, "Invenergy"), as well as Grain Belt Express Clean Line LLC ("GBE" or "Grain Belt"), on behalf of itself and its parent company Grain Belt Express Holding LLC (collectively, "Joint Applicants"), submit this post-hearing reply brief pursuant to the Missouri Public Service Commission's ("Commission" or "PSC") March 6, 2019 Order Adopting Procedural Schedule.

I. Introduction

In their Initial Post-Hearing Brief, Intervenors Missouri Landowners Alliance, Show Me Concerned Landowners, and Joseph and Rose Kroner (collectively, "MLA") took "no position" on Issues 2 and 3 of the parties' April 11, 2019 Joint List of Issues, instead only briefing the first issue related to the PSC's jurisdiction. MLA seeks indirectly to overturn the Commission's recent Report and Order on Remand ("CCN Order")[1] in Case No. EA-2016-0358 ("CCN Proceeding") which found that it had jurisdiction over GBE and granted it a certificate of convenience and necessity ("CCN"). However, that order is now final and is not subject to collateral attack in this case under Section 386.550.[2]

Therefore, although Joint Applicants respond to MLA's arguments, there is actually no need for the Commission to entertain these same technical legal arguments raised by MLA once again as they were resolved by the CCN Order. Because GBE is a public utility and an electrical corporation possessing a CCN, the acquisition of Grain Belt by Invenergy Transmission (the "Transaction") is subject to Commission approval pursuant to Section 393.190.

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[1] Report & Order, In re Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity, No. EA-2016-0358 (Mar. 20, 2019) ("CCN Order").

[2] All statutory citations are to the Missouri Revised Statutes (2016), as amended, unless otherwise noted.

II. MLA's Jurisdictional Arguments Constitute An Impermissible Collateral Attack on the CCN Order

Section 386.550 provides: "In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive." The Commission's CCN Order took effect and became operative on April 19, 2019 under Section 386.490.2. The Commission denied the three applications for rehearing on April 24, 2019, noting specifically that "none of the applications demonstrate sufficient reason to rehear the matter." Thus, the CCN Order is final and conclusive under Section 386.550, and not subject to collateral attack in this proceeding. AG Processing, Inc. v. KCP&L Greater Mo. Operations Co., 432 S.W.3d 226, 230 (Mo. App. W.D. 2014) ("Finality with regard to administrative orders occurs when the agency arrives at a terminal, complete resolution of the case before it."). Show Me Concerned Landowners recognized the finality of the CCN Order when it filed its Notice of Appeal of the CCN Order on May 14, 2019, listing the Commission's classification of GBE as an "electrical corporation" as one of its issues expected to be raised on appeal. Accordingly, MLA's argument opposing the Commission's jurisdiction in this case must be rejected.

MLA asserts that lack of subject matter jurisdiction may be challenged at any time, even on appeal. See MLA Brief at 25. Joint Applicants do not dispute that the lack of subject matter jurisdiction may be challenged at any time, but suggest that MLA is conflating the Commission's subject matter jurisdiction with the Commission's statutory interpretation, which has now been settled via denial of the applications for rehearing in the CCN Proceeding. "As a basic tenet of administrative law, an administrative agency has only such jurisdiction as may be granted by the legislature." Tetzner v. Department of Soc. Servs., 446 S.W. 3d 689, 692 (Mo.App.W.D.2014). "If the agency lacks statutory authority to consider a matter, it is without subject matter jurisdiction." Id. However, in the CCN Proceeding the PSC has found facts that plainly support

the invocation of its statutory authority under Section 393.190 and its general supervisory jurisdiction over a corporation like GBE which owns and controls electric plant under Section 386.250(1).

III. The Commission Has the Jurisdiction and Statutory Authority Pursuant to Section 393.190 To Approve the Transaction Because Grain Belt Express is an Electrical Corporation

A. Grain Belt Express Owns Electric Plant and is an Electrical Corporation under Section 393.190.1

MLA argues that although the definition of "electric plant" in Section 386.020(14) broadly includes "all real estate" and "personal property" that is "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," the CCN Order's final determination that GBE is an electrical corporation should be overturned. MLA claims: (1) the cash or cash equivalents held by GBE are not the type of asset that the General Assembly intended to include within the definition of "electric plant"; and (2) GBE's 39 easements are insufficient because they do not reflect "title" in land and do not contain the conditions that the CCN Order recently mandated. See MLA Brief at 15-18.

MLA first suggests that Section 386.020(14) should only "include assets which will become a part of the facility itself" and that cash or cash equivalents will not physically become part of the Project. This argument unsupported by law or logic. MLA does not dispute that it is well-established in Missouri that cash and cash equivalents constitute "personal property." See Fleischmann v. Mercantile Trust Co., 617 S.W.2d 73, 73-74 (Mo. 1981); In re Armistead, 245 S.W.2d 145, 147 (Mo. 1952) ("money[s] on deposit" are "intangible personal property" subject to taxation); State ex rel. Reid v. Barrett, 118 S.W.2d 33, 37 (Mo. App. St. L. 1938). MLA then declares that the Commission would somehow be obligated to regulate a person with "$10 in a

checking account which will go toward the purchase of a small back-up generator . . . to sell emergency power to his or her neighbor for say a share of the cost of the fuel." See MLA Brief at 16. This far-fetched hypothetical has nothing to do with this proceeding, and is contrary to the facts in the record showing that GBE has far more than $10 in cash and cash equivalents and cannot deal discriminately with a single customer. See Tr. 71-72, 115-117; Exhibit 13(C) at 1.

MLA's second argument fares no better. It is irrelevant that GBE does not hold legal title to the properties on which it has the 39 easements. The point is that GBE clearly owns the easements themselves, and it is undisputed that easements have long been held to be real estate interests in Missouri. Kansas City Power & Light Co. v. Riss, 312 S.W.2d 846, 847 (Mo. 1958) ("an easement is an interest in real estate"); Berry v. Shinkle, 193 S.W.3d 435, 439-40 (Mo. App. W.D. 2006) ("an easement constitutes an interest in real estate"). As the Commission properly recognized, the easements held by GBE are "to be used for or in connection with" the development of the Project whose purpose is the transmission and sale of electricity, and thus fall within the meaning of electric plant under Section 386.010(14). See CCN Order at 37.

MLA also contends that the 39 easements do not contain certain conditions required by the CCN Order regarding the Missouri Landowner Protocol ("Protocol"), and that the absence of such conditions make the easements "meaningless documents." See MLA Brief at 18. However, nothing in the CCN Order required that the current easements contain these conditions today or by any specific date. Rather, it directed GBE to "incorporate the terms and obligations" of the Protocol into the easement agreements. It is also undisputed that, as the Commission recognized, the Company has agreed to comply with the CCN Order by incorporating the Missouri Landowner Protocol, which contains Agricultural Mitigation Policies, into the

easements. See CCN Order at ¶¶ 109, 121. Mr. Detweiler further agreed at the hearing in this case that the Landowner Protocol would be incorporated into all future easements. See Tr. 77.

MLA next argues that the Section 229.100 county road-crossing assents held by GBE cannot be "franchises" because in other proceedings GBE disputed that "franchise" is a proper description and because the Missouri Supreme Court must have silently ruled that such assents are not franchises in the prior appeal of the CCN Proceeding. As to the initial point, regardless of whether a county road-crossing grant of authority is referred to by a Missouri court or GBE as an "assent," a "franchise," a "license," a "permit" or something else, it is nonetheless a valid intangible interest in personal property under Missouri law that grants the holder the ability to erect poles and lay pipes consistent with the rules of the county highway engineer. Such an assent or franchise qualifies as personal property under the definition of electric plant in Section 386.010(14). See Norris v. Norris, 731 S.W.2d 844, 845 (Mo. en banc 1987); State ex rel. Reid v. Barrett, 118 S.W.2d 33, 36-37 (Mo. App. St. L. 1938).

As to the second point, MLA fails to note that the Missouri Supreme Court explicitly stated: "MJMEUC and MLA's briefs assert several points on appeal. The Commission filed a motion to dismiss MLA's appeal, which was taken with the case. Because this Court's review of Grain Belt's points on appeal is dispositive, this Court does not reach the claims raised by MJMEUC or MLA." See Grain Belt Express Clean Line, LLC v. PSC, 555 S.W.3d 469, 474 n.5 (Mo. en banc 2018) (emphasis added). Thus, the Missouri Supreme Court did not even reach the merits of, much less implicitly rule as to any franchise argument by MLA.

Further, MLA *never even raised* this issue at the Missouri Supreme Court and never addressed whether a Section 229.100 county road-crossing assent or franchise was "personal property" under the definition of "electric plant" in Section 386.020(14). Instead, MLA argued

that "the second sentence of Subsection 2 of § 393.170, supra, expressly requires that the county franchises issued under § 229.100 must be secured by the utility before the PSC may issue a CCN." See Exhibit 15, Sched. 8, Substitute Brief of Intervenor MLA. See also Substitute Brief of Intervenor Missouri Landowners Alliance, Grain Belt Express Clean Line LLC v. PSC, 2018 WL 1694893 (Mo., Mar. 29, 2018). MLA's argument regarding Section 393.170.2 before the Missouri Supreme Court has absolutely nothing to do with the meaning of "electric plant" and "personal property" under Section 386.020(14) or the Commission's jurisdiction in this proceeding.

MLA then argues that GBE was required to file certain reports with the Commission, and that Grain Belt's not doing so is an admission that it is not an electrical corporation. MLA's argument is simply wrong—none of the reports cited by MLA were required to be filed by GBE. First, in the CCN Proceeding the Commission granted waivers of requirements related to rate schedules, annual reports,[3] depreciation studies and other matters referenced by MLA. See CCN Order at p. 49 & ¶ 11 at p. 53. Second, as GBE explained in its Responses to MLA's Data Requests, the other reporting rules MLA referenced do not apply to GBE. See Ex. 9. GBE is not and will not be rate regulated by the Commission because it will not offer retail service in Missouri. Rather, it will be regulated as an interstate transmission company by the Federal Energy Regulatory Commission ("FERC") under the Federal Power Act, where it will comply with all reporting requirements. See Ex. 9, Responses to Data Requests G3, G5, G7, G9, G11, G17, G19, G21, 23-24, G26. Because these rules are not pertinent to GBE, they are not relevant to GBE's status as an electrical corporation.

[3] GBE agreed that it will file with the Commission copies of annual reports that it files at FERC and the PSC so ordered. See CCN Order at p. 49 & ¶ 11 at p. 53.

Lastly, MLA argues that GBE's prior rejection of one of MLA's proposed conditions in the CCN Proceeding should prevent the Commission from exercising jurisdiction in this case. As a threshold matter, MLA fails to explain how a party's argument regarding PSC statutory authority in another case could deprive the Commission of jurisdiction. However, what is more significant is that it was MLA who had proposed that the Commission require GBE to seek approval under Section 393.190 if it wished to sell its assets. See MLA Brief at 22, n. 64, citing MLA Initial Post-Hearing Brief at 82, CCN Proceeding (Apr. 10, 2017). Remarkable in its hypocrisy, MLA now chastises GBE for reconsidering its position and deciding in this case to seek PSC approval of the Transaction.

B. Grain Belt Express Will be Devoted to a Public Use under Missouri Law and Will Offer Wholesale, Interstate Transmission Service that is not Unduly Discriminatory or Preferential under FERC Regulations and the Federal Power Act.

MLA argues that because the Company will not offer retail service in Missouri and may negotiate different rates with individual customers under FERC regulations and the Federal Power Act, "case law in Missouri tells us that the Grain Belt project is not an 'electric utility' in the sense that term is used in the CCN statute, Section 393.170." See MLA Brief at 7. However, neither the broad definition of electrical corporation under Section 386.020(15) nor the definition of electric plant under Section 386.020(14) contains the word "retail" or a retail-only service requirement.

MLA relies on State ex rel. M.O. Danciger & Co. v. PSC, 205 S.W. 36, 39-40 (Mo. 1918) ("Danciger"), which fails to support its argument.[4] Danciger held that the Royal Brewing

[4] Indeed, Danciger is consistent with PSC decisions issued over the past 18 years allowing other electrical corporations to operate interstate, wholesale transmission projects that are rate regulated by FERC pursuant to an Open Access Transmission Tariff, but which required the permission of the PSC to be constructed in Missouri. See In re Ameren Trans. Co. of Illinois, No. EA-217-0345 (Jan. 10, 2018); In re Transource Missouri LLC, No. EA-2013-0098 (2013);

Company was not furnishing electricity for "public use" and could not be regulated by the PSC when its plant sold power to a limited number of private businesses and residences located within a few blocks of the brewery, with "no explicit professing of public service." Danciger, 205 S.W. at 37-40. MLA then cites other cases where companies were found not to be public utilities because they never offered service to anyone except one customer. Palmer v. City of Liberal, 64 S.W.2d 265, 268 (Mo. 1933) (seller "does not propose to deal with the public, but only to furnish the city of Liberal with electric current"); State ex rel. Buchanan County Power Transmission Co. v. Baker, 9 S.W.2d 589, 590-92 (Mo. en banc 1928) (company that sells electric energy "to only one customer" "is not a public utility"). See City of St. Louis v. Mississippi River Fuel Corp., 97 F.2d 726, 730 (8th Cir. 1938) ("no authority" supporting proposition that because a gas corporation sells wholesale gas to one customer that is a public utility, it is also a public utility). These cases bear no resemblance to the facts of this case and provide no legal basis to reverse the Commission's decision that GBE is a public utility. GBE is explicitly professing to provide public service, will provide such service pursuant to a FERC-approved tariff, and does not have unfettered authority to choose its customers. Tr. 107-108, 115-117, 121-125 (Zadlo).

MLA also relies on Khulusi v. Southwestern Bell Yellow Pages, Inc., 916 S.W.2d 227, 231 (Mo. App. W.D. 1995), where the Court of Appeals upheld a PSC decision that a company publishing advertisements in the classified section of a telephone directory was not performing a public service and is not a public utility. The facts of that case are wholly irrelevant to these proceedings. Finally, the Commission has previously rejected MLA's arguments and conditions related to Illinois decisions that applied Illinois law to a different project which have no bearing

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In re Interstate Power & Light Co., No. EO-2007-0485 (2007); In re IES Utilities, Inc., No. EA-2002-296 (2002).

on the PSC's jurisdiction over GBE under Missouri law. See CCN Order at 47-48 ("The Commission concludes that the remaining proposed conditions [by MLA] are unreasonable, unnecessary, or moot, so those will not be adopted").

MLA does not dispute that under FERC protocols GBE must broadly solicit interest in the Project, and the rates it negotiates must be just and reasonable, without undue discrimination or preference. In its Order Conditionally Authorizing Proposal and Granting Waivers in Grain Belt Express Clean Line LLC, 147 FERC ¶ 61,098 at Para. 9 (2014), FERC stated:

> The Commission's analysis for evaluating negotiated rate applications focuses on four areas of concern: (1) the justness and reasonableness of the rate; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements.

GBE will offer transmission service through an Open Access Transmission Tariff that will be filed with and subject to the jurisdiction of FERC under Section 205 of the Federal Power Act. See Hudson Transmission Partners, LLC, 135 FERC ¶ 61,104 at nn. 1-2 & Para. 14 (2011). Clearly, GBE is an electrical corporation that will operate electric plant devoted to the public use. See CCN Order at 38.

MLA finally declares that if GBE is a Missouri electrical corporation and a public utility, "then it is subject to the entire purview and regulation of the Commission, including the authority of the commission to compel the company to provide service to all residences and businesses in the area where it provided service." See MLA Brief at 9 (original emphasis). The Commission already rejected this identical argument in the CCN Proceeding, ruling that because "[s]tates retain the authority to regulate such matters as . . . facilities used for transmission of electricity" that will "provide energy to Missouri citizens," neither federal regulation nor state law deprived the Commission of jurisdiction. See CCN Order at 39. See also Order Approving Stipulation &

Agreement and Granting Joint Application for Approval of Merger at 4-5, In re ITC Midwest LLC's and Fortis Inc.'s Joint Application for Approval of Merger, No. EM-2016-0212 (Sept. 14, 2016). There is no legal impediment to the PSC exercising such jurisdiction in this case.

IV. The Commission Has Jurisdiction to Approve the Transaction Pursuant to Section 393.190 Because Grain Belt Express Owns Assets that Are Necessary or Useful in the Performance of Its Duties to the Public

On March 20, 2019, the Commission issued its CCN Order, granting GBE's application for a CCN and establishing certain conditions. See CCN Order at 51-54. The CCN Order took effect on April 19, 2019 under Section 386.490.2, and the Commission denied the three applications for rehearing on April 24, 2019. Because GBE is now a public utility holding a CCN, the Transaction is subject to Commission approval pursuant to Section 393.190.

MLA asserts, however, that "[e]ven if Grain Belt is an electrical corporation, the Commission still lacks the jurisdiction and authority to approve the sale under Section 393.190 because the sale does not transfer any assets of Grain Belt which are "necessary or useful in the performance of its duties to the public." See MLA Brief at 22.

Section 393.190.1 provides, in pertinent part:

> No . . . electrical corporation . . . shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.

Section 386.020(15) defines an "electrical corporation" as "every corporation, company … owning, operating, controlling or managing any electric plant[.]" "Electric plant" is in turn defined in Section 386.020(14) as "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[.]"

In the CCN Order, the Commission explicitly found that GBE's 39 easements that it has signed with Missouri landowners are interests in real estate, and that its cash on hand for project development is personal property. See CCN Order at 37 (such "real estate and personal property are to be used for or in connection with Grain Belt's Project" and "meet the definition of electric plant"). Because the Commission specifically determined that GBE is an electrical corporation and thereby subject to the Commission's jurisdiction in the CCN Proceeding, the Commission likewise has jurisdiction and authority under Section 393.190 in this proceeding to approve the sale of GBE to Invenergy Transmission. See Joint Applicants' Initial Brief at 3-6.

Notwithstanding these Commission findings, MLA asserts that because Grain Belt is not currently providing any service to the public, it has no assets that are currently "necessary or useful in the performance of its duties to the public." MLA Brief at 22-23. With this argument, MLA is improperly inserting the word "currently" into the statute where it neither exists nor is implied. As support for its argument, MLA cites to the testimony of Invenergy witness Kris Zadlo during the evidentiary hearing, wherein Mr. Zadlo confirmed that the assets of GBE will be used to provide electric service sometime in the future, that is, upon construction of the GBE Project. MLA Brief at 23. The exchange from the evidentiary hearing was as follows:

> **Q. As of today, is it fair to say that none of those assets you're talking about are necessary or useful in currently supplying electric service to the public by Grain Belt?**
> A. They're assets that are going to be needed for Grain Belt.
> **Q. In the future?**
> A. Correct.[5]

The wording of the question reveals the fatal flaw in MLA's argument. The question strays from the statutory language of Section 393.190.1 by adding the word "currently" and replacing the statutory language "performance of its duties to the public" with "supplying electric service to

[5] Tr. 100, line 19 – Tr. 101, line 1.

the public." Accordingly, while Mr. Zadlo's response to the question was accurate, it does not in any way undercut the Commission's jurisdiction under Section 393.190.1.

First, the word "currently" is not part of the statute, so the future necessity and usefulness of GBE's assets trigger the applicability of Section 393.190.1. Second, "performance of its duties to the public" is much broader than "supplying electric service to the public." GBE is currently performing development tasks which are a necessary precursor to the future supply of electric transmission service. The assets held by GBE—including the CCN, the 39 easements, the cash and cash equivalents, and the county assents—are *presently* necessary and useful for those development tasks. Accordingly, GBE's assets are "necessary or useful in the performance of its duties to the public" in both the present and future, and the Commission has jurisdiction over the Transaction under Section 393.190.1.

MLA cites to several cases in alleged support of its alternative reading of Section 393.190.1. MLA Brief at 23-24. However, each of those cases merely recite or paraphrase the statutory language and do not address the statute's applicability to assets that are currently used in development activities and will be used for the future provision of electric service. While MLA imagines certain "implications" of these cases, no such implications exist. See MLA Brief at 23.

MLA also argues that if the Commission asserts jurisdiction over the Transaction in this case, it would require the Commission to assert jurisdiction over every sale of obsolete equipment. MLA Brief at 24. This is not the case, as demonstrated by past instances in which the Commission has determined that a company's obsolete assets are not "necessary or useful in the performance of its duties to the public." See In re Application of Cletus Uhrhan for Change of Elec. Supplier from Union Elec. Co. to Jackson Elec. Distrib. Dep't, Order Granting Change

of Electric Supplier at 2, No. EO-2006-0554 (Aug. 22, 2006) (assets which have only salvage value remaining are not "necessary or useful"); In re Application of First Choice Technology, Inc. and NetLojix Telecom, Inc. for Approval of an Asset Purchase Agreement, Order Approving Transfer of Assets and Canceling Certificate of Service Authority and Tariff at 4, No. XM-2009-0263 (Feb. 25, 2009) (an entity which no longer has customers remaining in Missouri need not obtain approval of sale of assets, as assets are not "necessary or useful" in the performance of [the company's] duties to the public"). These cases address the applicability of Section 393.190.1 at the conclusion of service or the end of an asset's useful life—situations that are clearly distinguishable from transactions involving assets that are useful or necessary for current development activities and future electric service, as with the GBE Project.

Conversely, the Commission has a history of asserting jurisdiction under Section 393.190.1 over transactions involving assets intended to be used for future service. In two such cases, Union Electric Company d/b/a Ameren Missouri ("Ameren") asked the Commission to approve the transfer of wind generation assets from a developer to Ameren prior to the commercial operation date of such assets. See In re Application of Union Elec. Co. for Permission and Approval of a Certificate of Convenience and Necessity Authorizing it to Construct a Wind Generation Facility, Order Approving Third Stipulation and Agreement at 2, No. EA-2019-0021 (Mar. 6, 2019); In re Application of Union Elec. Co. for Permission and Approval of a Certificate of Convenience and Necessity Authorizing it to Construct a Wind Generation Facility, Order Approving Third Stipulation and Agreement at 2, No. EA-2018-0202 (Oct. 24, 2018). The Commission issued orders approving the transactions approximately twenty (21) and twenty-six (26) months prior to the commercial operation date deadlines for the respective wind generation assets. See In re Union Elec. Co., Direct Testimony of Ajay K. Arora

at p. 7, ln. 15 – p. 8, ln. 3, No. EA-2019-0021, (order issued March 6, 2019 for a commercial operation date deadline of December 2020); In re Union Elec. Co., Application at ¶10, p. 5, No. EA-2018-0202 (order issued October 24, 2018 for a commercial operation date deadline of December 2020). Thus, MLA's claim that this case would represent the "first and only time" the Commission has approved the sale of assets that will be used for future service is demonstrably false. See MLA Brief at 24.

Finally, the General Assembly has granted the Commission authority to issue CCNs to entities that are not currently providing electric service, but will do so in the future. Section 393.170.1 provides that "no…electrical corporation…shall begin construction of a gas plant, electric plant…without first having obtained the permission and approval of the Commission" (emphasis added). Section 393.170.3 further provides that the Commission may grant a CCN "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" (emphasis added).

It would make little sense for the General Assembly to grant the Commission authority to issue CCNs to entities not currently providing electric service, but then strip the Commission of any authority to review and approve the transfer of the assets of such entities holding CCNs. Accordingly, MLA's interpretation of Section 393.190.1 cannot prevail. This is especially true since Section 386.610 provides that the statutory provisions governing the Commission's authority "shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities." MLA's overly restrictive and narrow view of Section 393.190 and other provisions of the Public Service Commission Law must be rejected.

V. Conclusion

There is no need for the Commission to even entertain MLA's legal arguments, as they constitute an improper collateral attack on the recently finalized CCN Order. To the extent the Commission revisits these arguments, GBE clearly owns electric plant and qualifies as an electrical corporation under Missouri law. Further, GBE's electric plant is currently used in development activities and will be used for the future provision of electric service, giving the Commission jurisdiction over the Transaction under Section 393.190.1.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all parties of record by email or U.S. mail, postage prepaid, this 15th day of May, 2019.

/s/ Anne E. Callenbach
Attorney for Invenergy Transmission LLC