

Exhibit No. _____
Issues: Right-of-Way Acquisition,
Landowner Protocol
Witness: Deann Lanz
Type: Direct Testimony
Sponsoring Party: Grain Belt Express Clean Line LLC
Case No.: EA-2016-0358
Date Testimony Prepared: August 30, 2016

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EA-2016-0358

DIRECT TESTIMONY OF

DEANN K. LANZ

ON BEHALF OF

GRAIN BELT EXPRESS CLEAN LINE LLC

August 30, 2016

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

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

3 A. My name is Deann Lanz. I am Vice President, Land for Clean Line Energy Partners LLC
4 ("Clean Line"). Clean Line is the ultimate parent company of Grain Belt Express Clean
5 Line LLC ("Grain Belt Express" or "Company"), the Applicant in this proceeding. My
6 business address is 1001 McKinney Street, Suite 700, Houston, TX 77002.

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

8 A. I graduated *Magna Cum Laude* from Valparaiso University in 1995 with a Bachelor of Arts
9 degree in English and obtained my Juris Doctor *Summa Cum Laude* from Tulane Law
10 School in 1998. I have more than 18 years of experience in commercial land transactions
11 and renewable energy, with specific expertise in land development, land acquisition,
12 construction financing, title and survey and property administration. Prior to joining Clean
13 Line, I was the Vice President of Land for BP Wind Energy North America ("BP Wind"),
14 where during a three year period I oversaw the land work necessary to complete five
15 projects that together are capable of producing more than 1,200 megawatts ("MW") of
16 wind energy. One of these projects was the largest single wind farm built in U.S. history. I
17 also oversaw the land work necessary for dozens of development projects.

18 **Q. Please describe your overall responsibilities as Vice President of Land for BP Wind.**

19 A. During my tenure at BP Wind, I oversaw a team of 16 employees, in areas of land
20 acquisition, title and survey, GIS and Property Administration, as well as dozens of
21 contract right-of-way ("ROW") agents. My team and I were responsible for (i) acquiring
22 all land related to BP Wind's development portfolio and operating assets in accordance
23 with BP Wind's Code of Conduct, (ii) ordering and reviewing all title and survey work on
24 such land, and obtaining title curative documents when needed, in order to ensure that BP

1 Wind could effectively construct, finance, partner and operate its projects, (iii) providing
2 GIS and mapping support to ensure the proper siting and construction of facilities, (iv)
3 ensuring that all payments made to landowners (one-time payments, annual payments and
4 royalty payments) were made accurately and timely, and (v) ensuring that all property
5 records and landowner information were stored properly and safely.

6 **Q. Please describe your job responsibilities at BP Wind in each phase of development.**

7 A Prior to the construction of each of the five completed projects, in addition to the duties
8 listed above, I was responsible for gathering and notifying the construction manager for
9 each project of (i) all legally binding construction obligations of BP Wind as reflected in
10 leases, easements and other legal agreements (of which there were thousands), and (ii) any
11 other issues or preferences expressed by landowners that could affect construction (both in
12 writing via a questionnaire or as captured by ROW agents or other employees in activity
13 notes or obligations registers). During construction on each of the above projects, my team
14 and I worked as a liaison between landowners and contractors to address any issues or
15 concerns raised by landowners, such as documentation of any damages that occurred or
16 addressing any agreements or restrictions that were not being implemented correctly by
17 construction workers.

18 After construction, my team and I worked with landowners, crop adjusters and the
19 construction manager to provide for the evaluation and final settlement of any crop
20 damages or other property damages.

21 **Q. What are your duties and responsibilities as Vice President, Land at Clean Line?**

22 A. I am responsible for coordinating, managing and providing strategic direction for the ROW
23 acquisition for all of Clean Line's transmission line projects. I manage a team of employees

1 with experience in land, development, acquisition and/or due diligence and financing (the
2 “Land Team”). The Land Team oversees the work, on and off the field, of the ROW
3 acquisition contractor and its employees (the “ROW agents”) to acquire the necessary
4 easements for the Grain Belt Express Clean Line Project (“Grain Belt Express Project” or
5 “Project”). The Land Team is responsible for maintaining the records of the easements,
6 exhibits, easement payments, property records and all correspondence related to the
7 acquisition efforts. In addition, the Land Team will work closely with the construction
8 managers to ensure that all ROW acquisition efforts are consistent with construction
9 management policies and practices, and that all legally binding construction obligations
10 negotiated in easements and other legal agreements are provided to and implemented by
11 construction managers and contractors in the field.

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

13 A. I will describe the steps Grain Belt Express is taking to work with the affected landowners
14 by the Project. While some of these steps are similar to what Grain Belt Express proposed
15 in its previous application for a certificate of convenience and necessity (“CCN”) in Case
16 No. EA-2014-0107 (“2014 Case”), several measures are new or enhanced. I will also
17 describe the process for providing notification to landowners and Grain Belt Express’ plans
18 for negotiating with landowners to obtain transmission line easements and any other
19 necessary real estate rights for the Project.

20 **II. LANDOWNER PROTOCOL**

21 **Q. Do you believe that the Landowner Protocol properly recognizes the interests of**
22 **property owners?**

23 A. Yes. Grain Belt Express has established the Landowner Protocol as part of our approach
24 to ROW acquisition for the Project, which we believe recognizes and respects the interest

1 of the landowners. The Landowner Protocol is a comprehensive policy of how Grain Belt
2 Express interacts, communicates, and negotiates with affected landowners. The Landowner
3 Protocol includes: the establishment of a Code of Conduct, our approach to landowner and
4 easement agreement negotiations, our compensation package, updating of land values with
5 regional market studies, tracking of obligations to landowners, the availability of
6 arbitration to landowners, the Missouri Agricultural Impact Mitigation Protocol (the “MO
7 Ag Protocol”) and the establishment of a decommissioning fund. The Landowner Protocol
8 is attached as **Schedule DKL-1** to my testimony.

9 **Q. Please describe each component of the Landowner Protocol.**

10 A. a. Code of Conduct.

11 Grain Belt Express has implemented a Code of Conduct for our employees and ROW
12 acquisition agents, with the goal of acquiring voluntary transmission line easements by
13 respectfully talking to and understanding the concerns and priorities of landowners.
14 **Schedule DKL-2** contains this Code of Conduct, which governs all communications and
15 interactions with property owners and occupants of affected property. We require all of
16 our employees, agents and representatives to follow the Code of Conduct, which among
17 other Company principles, requires that (1) all communications with property owners and
18 occupants be factually correct and made in good faith (2) all communications and
19 interactions with property owners and occupants be respectful and reflect fair dealing and
20 (3) all communications and interactions with property owners and occupants respect the
21 privacy of property owners and other persons. Landowners are provided with contact
22 information for both ROW agents, as well as contact information for the Clean Line
23 corporate office, in order to ensure that a landowner can contact me, employees from the

1 Land Team, or members of the Grain Belt Express team directly to report any possible
2 violations of the Code of Conduct. Reported violations of the Code of Conduct are taken
3 seriously and are investigated by me and the Clean Line management team.

4 b. Approach to landowner and easement agreement negotiations.

5 Grain Belt Express is committed to conducting easement negotiations in a fair manner that
6 is respectful of property rights. The Company desires to establish and maintain long-
7 lasting relationships with landowners. Grain Belt Express strives to implement the
8 following key elements as part of its approach to easement negotiations:

- 9 • Communicating the overall need for the Project to landowners;
- 10 • Seeking to actively involve landowners in the routing process during the open-
11 house and public meetings, as well as during one-on-one meetings between land
12 agents and landowners;
- 13 • Providing clear information to landowners on the routing criteria used by Grain
14 Belt Express;
- 15 • Providing a review and approval process for landowner-requested micro-siting
16 changes on their property;
- 17 • Demonstrating respect for private property rights and existing land uses;
- 18 • Offering a fair and comprehensive compensation package for transmission line
19 easements, which is described in more detail below;
- 20 • Utilizing the same methodology for determining compensation for all
21 landowners in order to ensure that all landowners receive fair and consistent
22 compensation, regardless of who they are or when they sign an easement
23 agreement;

- Listening to landowner concerns and establishing a process for negotiating easement provisions where possible to address these concerns; and
- Documenting agreements with landowners to ensure that negotiated provisions and obligations are met during construction, maintenance and operation.

The goal of these policies is to obtain voluntary transmission line easements. Because of our approach to compensation, which provides options for ongoing annual payments, we recognize that we are entering into a long-term business relationship with landowners and our intent is to start that relationship off based on a solid foundation of respect and fairness. Our approach to landowner negotiations will not change regardless of when these negotiations take place, whether they be before or after a CCN is issued.

c. Compensation.

There are three primary components to the compensation being offered to landowners by Grain Belt Express: an easement payment, structure payments, and crop or damages payments. The easement payment is meant to reflect at a minimum the fair market fee value of the easement area. The easement area is generally determined by multiplying the width of the easement ROW by the length of the transmission line route on the landowner's property for a total acreage of the easement area.¹ The acreage of the easement area is then multiplied by the per-acre estimated fair market value of the landowner's property to produce the total easement payment. The per-acre estimated fair market value of the landowner's property is determined by multiplying the average per acre value of recent sales for similar land types in the county by 110%. (110% is used to ensure a fair estimate.)

¹ The acreage for irregular shaped parcels is determined using commercial Geographic Information Systems software.

1 The easement area of some of the easements to be acquired may be very small in size.
2 Therefore, for such parcels Grain Belt Express will provide landowners with a minimum
3 payment of \$2,000 per parcel, regardless of the size of the easement area on their land.

4 Structure payments are calculated based on the type of structure selected by Grain
5 Belt Express and the number of structures located on each specific property. During our
6 public outreach process, landowners expressed a desire to have the option for a recurring,
7 escalating annual payment. As a result, during the easement negotiation process, Grain
8 Belt Express will offer landowners, at their option, either a one-time payment or a recurring
9 annual payment for each structure placed on their property. If a landowner elects to receive
10 annual payments, such annual payments will continue to be made for so long as such
11 structures remain on the property. Commencing on the first anniversary of the initial
12 structure payment, such annual payments will increase by two percent (2%) each year. An
13 example of how landowner compensation is calculated is shown in the “Landowner
14 Compensation Example” in the Missouri Landowner Compensation Factsheet attached
15 hereto as **Schedule DKL-3**.

16 Grain Belt Express has established several agricultural mitigation policies, as
17 described in the Direct Testimony provided by Dr. James Arndt. While such policies are
18 meant to prevent or reduce most agricultural impacts, we recognize that some impacts on
19 crops or improvements may not be completely avoidable. Grain Belt Express will pay
20 landowners for any agricultural-related impact (“Agricultural Impact Payment”) resulting
21 from the construction, maintenance or operation of the Project, regardless of when they
22 occur and without any cap on the amount of such damages. For example, if the landowner

1 experiences a loss in crop yields that is attributed to the operation of the Project², then
2 Grain Belt Express will pay the value of such loss in yield for so long as such losses occur.
3 In other words, the intent is that the landowner be made whole for any damages or losses
4 that occur as a result of the Project for so long as the Project is in operation. Grain Belt
5 Express will pay landowners an advanced Agricultural Impact Payment prior to
6 construction, based on the estimated anticipated damages, with a true-up payment, if
7 needed, paid after construction. Landowners may, at their option, choose to negotiate
8 ongoing recurring Agricultural Impact Payments based on anticipated losses, or a one-time
9 up front Agricultural Impact Payment based on anticipated losses. Due to the uniqueness
10 of each parcel of land, the timing and type of Agricultural Impact Payment are meant to be
11 negotiated with each landowner on a case-by-case basis in order to satisfy the unique
12 characteristics of each parcel of land as well as the specific concerns of each such
13 landowner. With regard to losses of marketable timber, Grain Belt Express will pay the
14 landowner for the value of such marketable timber, as determined by a certified forester,
15 and the timber removed shall still belong to the landowner and may be sold or used by the
16 landowner.

17 Grain Belt Express is only seeking an easement, which will allow Grain Belt
18 Express to use a portion of landowners' property necessary for the placement and operation
19 of a transmission line.³ The property will still belong to landowners and can be utilized for
20 activities such as farming, recreation, and other activities that do not interfere with the

² This is calculated by comparing the production of the area impacted to the production of the rest of the field that was not impacted by the construction or operation.

³ The one exception is for the land on which the converter stations will be located, which land is currently under contract to be acquired in fee.

1 operation of the transmission line. After construction of the facilities, the landowner will
2 retain the ability to continue agricultural production on the entirety of the easement area
3 except for the relatively small footprint of the structures, which typically occupy less than
4 1% of the total easement area. Part of the structure and damages compensation described
5 above is intended to compensate landowners for this impact.

6 If a CCN is issued for the Project, Grain Belt Express will not change its
7 methodology for determining compensation, nor reduce the compensation offered to any
8 landowner prior to the issuance of the CCN.

9 d. Update to land values.

10 Prior to re-commencing easement negotiations, Grain Belt Express will hire a regional
11 appraisal firm with agricultural expertise to perform county-wide market data studies to
12 determine the average per-acre value in each county for specific land types (i.e. crop,
13 pasture, timber, etc.), taking into consideration the size of the comparable sales parcels, as
14 well as any agricultural data that is available on soil type or productivity in connection with
15 such sales, such as state available ratings or scales of soil productivity. The appraisal firm
16 will provide comparable fee sales by land use and land productivity in each county for the
17 previous two years (or more if insufficient comparable sales are available for the previous
18 two years). These comparable sales will be averaged to develop an average fair market
19 value for each land use type. Such average values will then be increased by 10% to create
20 the proposed per acre offer for each land use type in each county. In the event that any
21 land values have decreased since Grain Belt Express' previous market analysis, Grain Belt
22 Express will honor the higher per acre offer offered previously to landowners. Every 12
23 months, Grain Belt Express will analyze and update market data analysis as appropriate in

1 order to determine if there are changes to the average fair market value for each land type
2 in each county.

3 e. Tracking of Landowner Obligations.

4 Grain Belt Express utilizes geoAMPS software programs to capture and report procedures
5 in place for tracking obligations negotiated by landowners in easement agreements and
6 other legal agreements, as well as any obligations captured by agents or other employees
7 in activity notes or landowner questionnaires (“Landowner Obligations”). Prior to entering
8 a landowner’s property for surveys or construction, Grain Belt Express will gather such
9 information and notify all surveyors, the Land Liaison Managers for the primary
10 construction contractor (as described in the Direct Testimony of Thomas Shiflett) and any
11 other field personnel of such Landowner Obligations. During surveys and construction, a
12 member of the Land Team will work as a liaison between landowners and the Land Liaison
13 Managers and contractors to address any issues or concerns raised by landowners. As
14 discussed in the Direct Testimony of Dr. James Arndt, as part of the MO Ag Protocol being
15 introduced by the Company, the Company has agreed to hire an agricultural inspector (the
16 “Agricultural Inspector”). The Agricultural Inspector shall monitor construction activities
17 to ensure that such construction activities are performed in compliance with the MO Ag
18 Protocol and any Landowner Obligations. The Agricultural Inspector will have a
19 professional background in agriculture, soil and water conservation, and general farm
20 operations or practices and will receive specific training on the implementation of the MO
21 Ag Protocol. The Agricultural Inspector will be directly available to landowners during
22 construction to address their concerns and to ensure that Grain Belt Express is meeting any
23 Landowner Obligations or the obligations set forth in the MO Ag Protocol. The Land Team

1 will provide the list of Landowner Obligations to the Agricultural Inspector and to the Land
2 Liaison Manager. Landowners will be able to report any violations of these obligations
3 directly to the Agricultural Inspector and if the Agricultural Inspector determines that such
4 a violation exists, the Agricultural Inspector shall have the authority to stop the
5 construction activities that are in violation of the Landowner Obligations or in violation of
6 the MO Ag Protocol. After construction, the Land Team will work with landowners, crop
7 adjusters, the Land Liaison Manager and the Agricultural Inspector to provide for the
8 evaluation and final settlement of any Agricultural Impact Payment in accordance with the
9 provisions negotiated by landowners in their easement agreements. After construction is
10 completed, the Land Team will ensure that every landowner is contacted personally to
11 confirm that all Landowner Obligations and obligations under the MO Ag Protocol were
12 met during construction, to discuss any concerns, and to confirm that all payments were
13 settled. Grain Belt Express will continue to be in contact with landowners throughout the
14 operation of the Project with regard to ongoing damages, if any, and for those landowners
15 who have elected annual structure payments.

16 f. Binding arbitration.

17 If Grain Belt Express and a landowner have reached agreement on the form of easement
18 but are unable to reach agreement on the appropriate compensation, then at the landowner's
19 request, Grain Belt Express will submit the issue of landowner compensation to binding
20 arbitration. Arbitration will be administered by the American Arbitration Association (the
21 "AAA") in accordance with its Commercial Arbitration Rules. Any arbitration will take
22 place in Missouri, and will be conducted under Missouri law. Arbitrators shall be
23 appointed as provided in the AAA Commercial Arbitration Rules, but shall be selected

1 from a pool of qualified arbitrators who are familiar with land use and land values in
2 Missouri. The option of binding arbitration typically costs less, has more simplified
3 procedures, and results in a final decision more quickly than circuit court litigation.
4 Additionally, arbitration will allow both parties select an arbitrator, specifically one with
5 expertise in the matter of property and easement valuation issues in Missouri.

6 g. Agricultural mitigation policies.

7 In response to several concerns raised by landowners and the Commissioners during the
8 2014 Case, Grain Belt Express has established several new agricultural mitigation policies,
9 which are described in the MO Ag Protocol. These policies are described in detail in the
10 Direct Testimony of Dr. James Arndt. The Land Team will document and track all
11 Landowner Obligations, as well as the obligations contained in the MO Ag Protocol and
12 will work closely with the Land Liaison Manager and the Agricultural Inspector in order
13 to ensure compliance with these policies and measures during construction.

14 h. Decommissioning Fund.

15 Transmission lines and their ROWs are rarely if ever retired from service. Over time, they
16 may be upgraded or improved to continue delivering electricity to load. That said, in the
17 circumstance in which the Project is retired from service, Grain Belt Express shall promptly
18 wind-up the activities of the Project, which shall include the following actions, and which
19 shall be at the sole cost and expense of Grain Belt Express:

- 20 • dismantling, demolishing and removing all equipment, facilities and structures;
- 21 • terminating all transmission line easements and filing a release of such
22 easements in the real property records of the county in which the property is
23 located;

- securing, maintaining and disposing of debris with respect to the Project facilities; and
- performing any activities necessary to comply with applicable laws, contractual obligations, and that are otherwise prudent to retire the Project facilities and restore any landowner property within the easements to its original condition.

Commencing no earlier than the 20th anniversary of the completion of the Project, Grain Belt Express will establish and maintain a depository account in an amount reasonably necessary to comply with the above-listed wind-up activities (the “Decommissioning Fund”); provided that if on the 20th anniversary of the date of Project completion, the remaining useful life of the Project is reasonably estimated to be in excess of ten years, the Company may delay the establishment of the Decommissioning Fund until a date that is reasonably estimated by an independent engineer to be ten (10) years prior to the expiration of the useful life of the Project facilities. The Decommissioning Fund may be collateralized with a letter of credit or cash, or any combination thereof.

Q. Are any of the components of the Landowner Protocol new or different from what was offered to landowners in the previous filing?

A. Yes. In response to concerns raised by landowners and commissioners during the 2014 Case, Grain Belt Express has: (1) reviewed its ROW acquisition policies and added more regionalized market studies for purposes of determining the appropriate easement consideration, (2) committed to offering landowners the option of binding arbitration in instances where an agreement on appropriate compensation is unable to be reached, (3) adopted the MO Ag Protocol, and (4) committed to the establishment of the decommissioning fund.

1 **III. THE LANDOWNER NOTIFICATION OF THE FILING**

2 **Q. What steps have been taken to notify landowners with property within the ROW of**
3 **the Proposed Route?**

4 A. Grain Belt Express is providing notice of its filing in this docket by U.S. mail to every
5 person or entity listed by the county tax collector as an owner of property located within
6 the ROW of the Proposed Route.

7 **Q. What additional landowner outreach steps were taken?**

8 A. Mark Lawlor, Director of Development for Grain Belt Express, describes in his direct
9 testimony the public outreach, the Open Houses and other public engagement during the
10 2014 Case, as well as in connection with this case. Mr. Lawlor’s testimony further
11 describes the notices that were provided to landowners around such public outreach, Open
12 Houses and meetings, all in order to allow for input and participation by such landowners.

13 **IV. EASEMENT AGREEMENTS**

14 **Q. How does Grain Belt Express plan to obtain the necessary easement agreements?**

15 A. Grain Belt Express wants to acquire all of the ROW necessary for the Project through
16 voluntary transactions. The Company will make numerous attempts to meet with any
17 affected landowner personally to discuss its offer and, to the extent that such landowner
18 cannot be contacted personally or does not want to meet in person, Grain Belt Express will
19 send a copy of the offer and all other required documentation relating thereto is delivered
20 via certified mail or registered-first class mail-return receipt requested to the applicable
21 landowner. The Company will respond promptly and courteously to any landowner’s or
22 tenant’s (or their designated representative or counsel) inquiry, comments or questions.
23 Grain Belt Express will use all other commercially reasonable efforts to acquire any
24 easement and will give any applicable landowner or related tenant a reasonable period of

1 time to review and discuss any proposed offer to acquire such easement. The Company
2 will give full and fair consideration to any comments, questions or suggestions of any
3 landowner in respect of the proposed easement agreement and will review and consider
4 proposed minor changes or shifts in the location of the easement on the landowner's
5 property. Each landowner will be given a reasonable opportunity to consider any offer.
6 With respect to property owned by multiple parties, to the extent that the Company is
7 unable to locate all landowners or any landowners are not willing to agree to the
8 conveyance of an easement, Grain Belt Express will use all commercially reasonable
9 efforts to enter into a voluntary agreement with any landowner that has been located and is
10 otherwise willing to agree to convey an easement.

11 **Q. Please describe what a typical easement agreement contains.**

12 A. Grain Belt Express has a standard form of agreement, the Transmission Line Easement
13 Agreement ("Easement Agreement"), that it will present to landowners. It is attached as
14 **Schedule DKL-4**. The Easement Agreement provides for the development, financing and
15 safe construction and operation of the Project, and is broad enough to cover most situations
16 and concerns raised by landowners, without making such Easement Agreement overly
17 burdensome or lengthy. The Easement Agreement is not meant to be "one size fits all" for
18 every situation. Because each parcel of land is unique and because some landowners may
19 have specific concerns that other landowners may not, Grain Belt Express has previously
20 negotiated reasonable modifications to the Easement Agreement with both landowners and
21 their attorneys.

22 **Q. Please describe what rights Grain Belt Express will acquire through its Easement**
23 **Agreements.**

1 A. The Easement Agreement includes the rights to construct, operate, repair, maintain and
2 remove one overhead transmission line and related facilities, along with rights of access to
3 the ROW for such transmission line. No other uses by Grain Belt Express or others are
4 permitted under the Easement Agreement.

5 **Q. What happens if a landowner doesn't want to negotiate with Grain Belt Express?**

6 A. The Company is allowing sufficient time for negotiations with each individual landowner
7 along the route. Grain Belt Express is committed to conducting easement negotiations in
8 a manner that respects the private property rights of landowners and achieves a voluntary
9 easement acquisition. The Company is also committed to working with landowners to
10 minimize the impacts of the Project upon their property. In order to ensure that
11 infrastructure projects in the public interest can be completed, the entities building them
12 need the right to condemn certain easements, particularly in cases of parcels that have title
13 issues, parcels with missing or unlocatable landowners or heirs, or parcels where
14 landowners refuse all reasonable attempts at contact or negotiation. Grain Belt Express
15 views the use of eminent domain as a last resort that is appropriate only after exhausting
16 all reasonable attempts at voluntary easement acquisition and title curative work. In all
17 cases, landowners are entitled to due process and payment of fair market value for any
18 easement acquired, and will retain ownership of their land.

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

20 A. Yes.

21

