BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and an Associated Converter Station Providing an interconnection on the Maywood-Montgomery 345 kV Transmission Line	)	Case No. EA-2016-0358

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF
THE MISSOURI LANDOWNWERS ALLIANCE,
CHARLES AND ROBYN HENKE,
R. KENNETH HUTCHINSON,
RANDALL AND ROSEANNE MEYER, and
MATTHEW AND CHRISTINA REICHERT

Pursuant to the Commission's Order of October 19, 2016, the Missouri Landowners Alliance and the additional interveners listed above hereby propose the findings of fact and conclusions of law set forth below.

These parties are submitting two alternatives for the Commission's consideration. Alternative I, which is their preferred approach, would be used if the Commission decides to immediately hold this case in abeyance until the *Neighbors United*[1] decision is resolved, without issuing any findings or conclusions regarding the merits of the case. Alternative II assumes that the Commission decides instead to issue a Report and Order before that case is resolved, including findings of fact and conclusions of law on the issues presented in this case.

ALTERNATIVE I

Proposed Findings of Fact

[1] *Neighbors United Against Ameren's Power Line v. PSC,* No. WD79883 (March 28, 2017)

1. On August 30, 2016, Grain Belt Express Clean Line LLC (GBE) filed an application with the Missouri Public Service Commission for a certificate of convenience and necessity (CCN) to construct, own, operate, control, manage and maintain a high voltage, direct current transmission line and associated facilities within Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri, as well as an associated converter station in Ralls County. The proposed line would run for approximately 750 miles from a converter station in western Kansas to a converter station near the Illinois-Indiana boarder. Approximately 206 miles of the line would cross through Missouri from a point south of St. Joseph to a point south of Hannibal.

2. Section 229.100 RSMo states as follows:

> No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such therefore; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission.

3. GBE agrees that the line will most likely cross county roads and highways in each of the eight counties where it proposes to build the line.[2]

4. GBE has not filed any documentation in this case showing that it has received the assent of any of the eight County Commissions from the Missouri counties which would be traversed by the proposed line. However, a witness for intervener Missouri Landowners Alliance (MLA) submitted documentation that GBE did receive such assents from all eight County Commissions in calendar year 2012.[3] The witness states that these

[2] Tr. 296 lines 11-22.
[3] Rebuttal Testimony of Louis Donald Lowenstein, Exh. 300, p. 33 lines 2-8; Schedule LDL-3.

documents were cited by GBE as their authorizations from the County Commissions pursuant to Section 229.100,[4] a claim which GBE does not dispute.

5. The MLA's Exhibit 320 consists of a First Set of Requests for Admissions from the MLA to GBE. According to this document, GBE admits that on October 7, 2015, a Circuit Court in Caldwell County, Missouri sustained a Motion for Summary Judgment in Case No. 14CL-CV00222, thereby declaring that the assent received from the Caldwell County Commission in 2012 pursuant to Section 229.100 is void and/or unenforceable.[5] GBE did not appeal that decision.[6]

6. GBE recognizes that it presently does not have all of the needed County Commission assents required by Section 229.100, but states that it will complete this approval process later. [7]

7. GBE argues that the Section 229.100 assents are not a prerequisite to the Commission issuance of a CCN in this case. It states that it applied here for a "line" certificate pursuant to Section 393.170.1, as opposed to an "area" certificate under Section 393.170.2. GBE then argues, in essence, that the county consents are not required when the Application is for a line certificate under 393.170.1, but only for area certificates sought under 393.170.2.[8]

8. The Commission was faced with the same argument raised here by GBE in the recent case where Ameren Transmission Company of Illinois (ATXI) sought a CCN for a transmission line in Case No. EA-2015-0146. In that case, ATXI also argued that because it was seeking only a line certificate under Section 393.170.1, it need not obtain

[4] Id.
[5] Exh. 320 par. 6 and 7, and Exh. 2 thereto, p. 4. See also Staff testimony at Exh. 201 pp. 8-9.
[6] Id. at par. 8.
[7] GBE Initial Brief, p. 22 Section D.
[8] GBE Initial Brief, pp. 14-22, in particular the last par. of p. 18.

the county consents under Section 229.100 before the Commission could issue the CCN.[9] In the ATXI case, the Commission rejected that argument, and held instead that the county consents pursuant to Section 229.100 were an indispensible requirement for the exercise of the CCN.[10] We confirm that ruling here. However, the Commission did grant ATXI a CCN, conditioned upon the company later providing proof that it had received the necessary county consents from the counties which would be traversed by the line.[11]

9. One of the interveners in the ATXI case thereafter appealed the Commission's decision. An opinion was recently issued on that appeal in *Neighbors United Against Ameren's Power Line v. PSC,* No. WD79883 (March 28, 2017). As the MLA points out, documents available from that appeal on Case.Net show that ATXI raised one of the same argument on appeal which it had raised with the Commission: that county consents under Section 229.100 are not prerequisites to issuance of a CCN which is sought for a line certificate under Section 393.170.1.[12]

10. The opinion in *Neighbors United* did not explicitly address the argument raised there by ATXI (and in this case by GBE) regarding the distinction between subsections 1 and 2 of Section 393.170. However, the Western District did rule that the Commission does not have the authority to issue a CCN conditioned upon later receipt of the county consents under Section 229.100. Accordingly, the Court vacated the Order in Case No. EA-2015-0146 which granted the conditional CCN to ATXI. As of this date a

[9] See MLA's Reply Brief in this case, p. 17.
[10] Id.
[11] Report and Order, Case No. EA-2015-0146, p. 40, par. 2.
[12] MLA Initial Brief, p. 71.

mandate has not yet been issued by the Western District, and the decision in that case is still potentially subject to further appellate review.

11. The MLA also contends that a number of the eight county assents obtained by GBE in 2012 have since been rescinded, and that two of those assents still require further approvals from the County Commissions regarding the actual roads which GBE will be allowed to use for their facilities.[13] However, in light of our decision here, we need not address these two issues.

Proposed Conclusions of Law

1. Inasmuch as a mandate has not yet been issued by any appellate court in the *Neighbors United* appeal, the Opinion issued by the Western District on March 28, 2017 is not binding on the Commission. Therefore, if the Commission were to find that GBE had met all of the other criteria for a CCN here, it could legally issue a CCN conditioned on GBE receiving the necessary consents under Section 229.100 at a later time. However, unless the Opinion in *Neighbors United* is subsequently reversed, doing so would likely lead to an appellate court vacating the decision in this case, just as it did in the appeal of the ATXI case.

2. All parties concerned would probably desire that this case be concluded as expeditiously as possible. However, issuing a decision in GBE's favor here, only to have it potentially vacated on appeal, could clearly add to further delays and possibly a new round of evidentiary hearings at the Commission.

3. Weighing all relevant factors, the Commission determines that the most prudent course at this point is to hold this case in abeyance, pending a final resolution of the appeal in the pending *Neighbors United* case. If the final appellate decision in that

[13] See MLA's Initial Brief p. 72.

proceeding holds that the county assents under Section 229.100 are not prerequisites to issuance of a conditional CCN, then the Commission will proceed to issue a final Report and Order on the merits of this case.

However, if the *Neighbors United* decision is allowed to stand, the Commission finds that the decision there, coupled with the Commission's ruling in the ATXI case, would mean that GBE cannot be granted a CCN of any kind until it receives the necessary county consents from all of the counties which will be traversed by the proposed line.

4. Counting from shortly after GBE's acquisition of the county consents in 2012, the proposed line has been a matter of grave concern to affected landowners for some five years now. Even counting from the time that GBE filed its Application in Case No. EA-2014-0207, on March 26, 2014, the matter has been pending for more than three years. The evidence shows that the possibility of the line being built as proposed has put real estate transactions and construction of new homes on hold in the vicinity of the line, and caused other serious disruptions in the lives of people living in the area where the line would be built.

5. For the reasons set forth above, if the final Opinion in the *Neighbors United appeal* remains essentially unchanged regarding the Commission's lack of authority to issue a CCN conditioned on subsequent receipts of county commission assents, then GBE will have 60 days from the issuance of the appellate court mandate in that case to file evidence with the Commission that it has obtained all the necessary County Commission assents under Section 229.100. If GBE fails to do so, then its Application in this case

will be promptly dismissed for failure to meet all of the statutory requirements for the issuance of a CCN.

6. Staff is hereby directed to promptly notify the Commission and the parties to this case when a final mandate is issued by the applicable state appellate court in the *Neighbors United* case presently pending in the Western District of the Court of Appeals in Case No. WD79883.

ALTERNATIVE II

(Which includes findings on the merits of the Tartan criteria)

Proposed Findings of Fact

1. On August 30, 2016, Grain Belt Express Clean Line LLC (GBE) filed an application with the Missouri Public Service Commission for a certificate of convenience and necessity (CCN) to construct, own, operate, control, manage and maintain a high voltage, direct current transmission line and associated facilities within Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri, as well as an associated converter station in Ralls County. The proposed line would run for approximately 750 miles from a converter station in western Kansas to a converter station near the Illinois-Indiana boarder. Approximately 206 miles of the line would cross through Missouri from a point south of St. Joseph to a point south of Hannibal.

2. On March 26, 2014, GBE submitted an Application for a CCN for essentially the same facilities which are the subject of this proceeding (2014 Case). In a Report and Order dated July 1, 2015, in Case No. EA-2014-0207, the Commission denied the Application. That decision was generally based on findings and conclusions that GBE

had failed to meet its burden of proof with respect to three of the five criteria normally applied by the Commission in deciding CCN cases; i.e., that GBE failed to prove there is a need for its proposed service; that it failed to prove that its proposed project was economically feasible; and that it failed to prove that its proposed service was in the public interest.

Need for the Project

3. In its Application in this case, GBE states that the most significant development since the 2014 case was a Transmission Service Agreement (TSA) which it signed with the Missouri Joint Municipal Electric Utility Commission (MJMEUC). According to the Application, and testimony from a number of GBE witnesses, under their TSA MJMEUC has agreed to purchase 225 MW of capacity on the proposed line. Of that amount, 200 MW would be for transmission service from Kansas to the Missouri converter station in Ralls County, while the other 25 MW would be for service from the Missouri converter station to the Sullivan substation at the Illinois-Indiana boarder, within the PJM footprint.

4. The TSA between GBE and MJMEUC actually does not obligate MJMEUC to purchase any capacity at all on the proposed line. As indicated by the terms of their contract, MJMEUC need not specify how much capacity it will buy, if any, until up to 60 days before the line is completed. The in-service date for the line is presently projected to be November of 2021. Thus MJMEUC has approximately four and a half years from now to decide whether or not it will actually buy any capacity on the proposed GBE line. And given the history of GBE's ability to accurately project an in-service date for its line,

the Commission finds that it is more likely than not that MJMEUC's decision date will be delay beyond even the four and a half years which GBE is currently estimating.

5. Opponents of the line respond that there are too many unknowns between now and MJMEUC's decision date, whenever that may be, for the Commission to assume that MJMEUC will end up actually buying capacity on the line. In response, GBE and MJMEUC state that MJMEUC has also signed a binding contract with a subsidiary of Infinity Wind to take at least 100 MW of power for the Kansas to Missouri service. However, MJMEUC's president and general manager Duncan Kincheloe testified that they nevertheless have a fiduciary duty to their members to periodically evaluate the possible alternatives which might be used in lieu of the existing GBE contract. And as Mr. Kincheloe also testified, no one has a crystal ball which would allow us to determine at this point just what those alternatives might be some four and a half years or more into the future.

6. As to the service under the TSA for delivery of power from the Missouri converter station into PJM, no member utility of MJMEUC has even expressed any interest in using this service. It was not even mentioned in the testimony from the two witnesses for MJMEUC.

7. Given that MJMEUC is not obligated to purchase any capacity on the proposed line, the length of time between now and the time that MJMEUC will be required to make that decision, its commitment to evaluate other alternatives in the meantime, and the rapidly changing options which are available in electricity markets today, the Commission find that it cannot reasonably assume that MJMEUC will actually purchase any capacity on GBE's proposed line.

8. GBE states that it also has a TSA with a company named Realgy to purchase 25 MW of service from Kansas to Missouri. However, Realgy plans to sell power from the GBE line into Illinois, not into Missouri. Therefore, that contract does not help GBE's cause in proving that the proposed line is needed to provide service to customers in Missouri.

9. Other that the TSAs with MJMEUC and Realgy, GBE has no currently effective memorandums of understanding or any contracts with any wind developer or any load-serving utility to buy capacity on its proposed line.

10. As further evidence of the need for the line, GBE states that in its first two rounds (or windows) of its open solicitation for bids on capacity for its line, it received transmission service requests for the Kansas to Missouri service for six times the available capacity. However, all of the bids in the first round were received from fourteen wind developers. It was only after MJMEUC and GBE had essentially agreed upon the major terms of their TSA that MJMEUC then submitted a bid in the second round. Notably, MJMEUC's was the only bid received in this second round of bidding.

11. The bids from the wind developers did not actually bind them to purchase any capacity on the line, the bids were risk-free, they cost nothing to submit, and they did not constitute any sort of commitment from the bidder to do anything further. As such, the Commission finds that the bids from the wind developers are not a reliable measure of their actual commitment to buy capacity on the line.

12. In its Application, GBE also states that the line is needed in order to allow Missouri utilities to meet the requirements of the state's Renewable Energy Standard (RES). However, based on undisputed testimony from Staff, the three investor-owned

utilities on the western side of the state already have adequate supplies of renewable energy to meet their RES requirements. The only other utility in the state which is subject to those requirements is Ameren Missouri. In the 2014 case the Commission found that Ameren Missouri has the ability to meet its RES requirements without purchasing energy transported over GBE's proposed line. The Commission finds that there has been no credible evidence presented in this case that the situation with respect to Ameren Missouri has changed.

13. GBE submitted a loss of load expectation (LOLE) analysis which showed that with the addition of the proposed line in 2022, the reliability of the bulk power system in Missouri would improve from being 7.7 times lower than the industry standard to being 25 times lower than the industry standard. The Commission finds that what it said in this regard in the 2014 case is still applicable: that the bulk power system "is not currently unreliable and Missouri utilities are not now violating any reliability standards. It would be cheaper and take less time to build a medium-size natural gas plant in Missouri to achieve the same capacity benefit as the Project." (Report and Order, p. 12 par. 29)

14. As in the 2014 case, there again is no evidence that GBE submitted its proposed project to the MISO regional planning process for evaluation of need and effectiveness. As the Commission stated in the 2014 case, "this process identifies high-voltage transmission projects that will provide value in excess of cost under a variety of future policy and economic conditions." (Report and Order, p. 12-13, par. 31) Accordingly, as in the 2014 case, the GBE project has not been evaluated for need and effectiveness in the MISO footprint.

15. GBE also offered the testimony of Mr. J. Neil Copeland, who testified that on the basis of his PROMOD modeling, the proposed line would reduce electricity wholesale prices in Missouri. GBE presented a similar analysis in the 2014 case. Primarily on the basis of testimony from Staff witness Sarah Kliethermes, the Commission rejected the finding of the PROMOD analysis in that case. (Report and Order, p. 14) In this case, Ms. Kliethermes once again recommends for a variety of reasons that the Commission not rely on GBE claims which are based on the results of the PROMOD model. The Commission once again adopts her recommendations in this regard.

16. An issue which falls within the *Titan* criteria of both "need" and "Economic Feasibility" is the Levelized Cost of Energy (LCOE) analysis presented by GBE's witness Mr. David Berry. The analysis was intended to show that the levelized cost of energy from the Kansas wind farms would be less expensive than the levelized cost of several alternative sources of energy. Mr. Berry's LCOE analysis was contested in the rebuttal testimony of Show Me Concerned Landowner's witness Mr. Paul Justis. The Commission need not address the competing claims of Mr. Berry and Mr. Justis, because it finds that Mr. Berry and GBE failed to meet their burden of proving one of the key underlying factors on which the LCOE for the Kansas wind energy was based: the assumption by Mr. Berry that the Kansas wind farms would generate at an annual capacity factor of 55%. In his testimony and his Schedule DAB-5, Mr. Berry offered justification for other variables he used in his LCOE analysis. However, Mr. Berry and GBE offered no support at all for the 55% capacity factor which lies at the heart of his cost analysis for the Kansas wind generation. Therefore, they have failed to meet their

burden of proving that the analysis was reasonable. The Commission therefore finds that the results of Mr. Berry's levelized cost figures for Kansas wind generation are unreliable.

Moreover, credible testimony from other sources, including a report from the U.S. Department of Energy, and testimony of MJMEUC's witness John Grotzinger, tends to show that the capacity factor of the Kansas wind farms will not likely exceed 50%.

17. In its Reply Brief, GBE attempts to justify the 55% capacity factor by reference to data request responses from Mr. Berry's to the MLA, copies of which GBE included with its Reply Brief. However, none of that material was received into evidence during the course of the five day hearings in this case. The Commission agrees with the MLA that the inclusion of that material in GBE's Reply Brief was totally inappropriate. Therefore, the Commission hereby sustains the Motion filed earlier by the MLA to strike the extra-record material relied on in this regard by GBE.

Public Interest

18. Based primarily on inputs supplied by GBE, Mr. Alan Spell submitted an economic impact analysis of the line on behalf of the Missouri Department of Economic Development (DED). However, Mr. Spell's analysis attempted only to quantify the positive economic impacts from the line. He made no attempt at all to quantify any of the numerous negative impacts of the line, such as on agricultural production, the displacement of coal generation, the loss of jobs and tax revenues from generating plants which would likely not be built by reason of the GBE project, the loss of jobs and tax revenues from transmission lines and upgrades which would not be needed by reason of the line, and many others. Accordingly, the DED study presented here suffers from the

same defects as the GBE study presented in the 2014 case. (Report and Order p. 17 par. 55; p. 25)

19. The public interest would be promoted if the proposed line was actually used by MJMEUC, and if MJMEUC's member utility systems were able to realized savings as a result of the existence of the line. However, as previously mentioned, the Commission cannot reasonably assume that MJMEUC will in fact make use of the proposed line when it eventually goes into service.

20. In addition, the parties had differing opinions as to how much MJMEUC would actually save if in fact it did end up taking service from GBE under the terms of their TSA. The figure most frequently cited by MJMEUC and GBE is an annual savings of approximately $10 million. This figure is based primarily on an analysis in MJMEUC witness John Grotzinger's Schedule JG-3 of his rebuttal testimony. However, this schedule simply compares the cost of transmission using the GBE line to the cost of transmission for importing Kansas wind into Missouri through the SPP system. But Mr. Grotzinger established no basis for concluding that the importation of wind from Kansas over the SPP system was the next best alternative to use of the GBE project. Moreover, his Schedule JG-3 failed to account for the fact that his suggested congestion costs for the SPP alternative could likely be reduced in the order of 80% through the use of "financial transmission rights." Making this adjustment, the cost of importing Kansas wind over the SPP system is less than importing Kansas wind over the GBE line.

21. On behalf of the MLA, Mr. Joseph Jaskulski testified that by comparing the cost of the Kansas wind using both the GBE line and the PPA with Infinity Wind to the cost of a bid to MJMEUC from a Missouri wind farm, the actual savings to MJMEUC

would be approximately $3 million per year. Inasmuch as this analysis compares the cost of using the GBE line to the next best known alternative at the time, the Commission finds this figure to be more reliable that those cited by MJMEUC and GBE.

22. Two witnesses presented testimony regarding the likely impact of the GBE project on property values along and near the proposed right-of-way: Mr. Kurt Kielisch on behalf of the MLA, and Mr. Richard Roddewig on behalf of GBE. Mr. Kielisch's studies showed that even smaller 345 kV lines have had negative impacts on nearby property values ranging from a low of 11% to a high of 34%. The general results of his testimony are supported by the many landowners who testified at the public hearings about the negative impact the line would have, and already has had, on their property values. On the other hand, Mr. Roddewig contends that the GBE line would have little or no impact on surrounding land values. The Commission finds that the testimony from Mr. Kielisch is more credible than that presented by Mr. Roddewig. As the Commission has found in an earlier case:

> It is undisputed that if given a choice, the average citizen would prefer the same piece of property without a transmission line to the property with the transmission line. It is also undisputed that the aesthetic value of the property will be diminished. (In the Matter of the Application of Union Electric Company, Case No. EO-2002-351, August 21, 2003, Report and Order p. 13.)

The Commission will assume that landowners whose property is on the right-of-way will be fairly compensated for the actual acreage in the easements taken by GBE and for the supporting structures placed on their property. However, property owners near but not on the line will received no compensation for any negative impact on their property.

23. In addition to the negative impact on land values, landowners with property on the right-of-way and those in the vicinity of the line would face many other monetary and non-monetary damages if the Project is built, including but not limited to the following: the negative impact on efforts to restore native Missouri savanna habitat; the negative impact on the numerous Amish families in the area, in particular with respect to their efforts to move to organic farming; the need that some people will feel to relocate if the line is built, despite the evidence that the line would not be harmful to their health; the problems that the support structures would have with normal farming and cattle operations; the inability to build new homes on sites where the line would be located; the problems which the line would cause to crop dusting companies and to the farmers who use their services; the negative impact that the line will have on the growing agri-tourism business in the area; and a common problem to many people who live in the area -- the negative impact that the line and supporting structures would have on the rural landscape. This latter problem is well illustrated by Schedule SN-3 to the rebuttal testimony of Mr. Scott Nordstrom.

County Commission Consents

24. Section 229.100 RSMo states as follows:

> No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such therefore; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission.

25. GBE agrees that the line will most likely cross county roads and highways in each of the eight counties where it proposes to build the line.[14]

26. GBE has not filed any documentation in this case showing that it has received the assent of any of the eight County Commissions from the Missouri counties which would be traversed by the proposed line. However, a witness for intervener Missouri Landowners Alliance (MLA) submitted documentation that GBE did receive such assents from all eight County Commissions in calendar year 2012.[15] The witness states that these documents were cited by GBE as their authorizations from the County Commissions pursuant to Section 229.100,[16] a claim which GBE does not dispute.

27. The MLA's Exhibit 320 consists of a First Set of Requests for Admissions from the MLA to GBE. According to this document, GBE admits that on October 7, 2015, a Circuit Court in Caldwell County, Missouri sustained a Motion for Summary Judgment in Case No. 14CL-CV00222, thereby declaring that the assent received from the Caldwell County Commission in 2012 pursuant to Section 229.100 is void and/or unenforceable.[17] GBE did not appeal that decision.[18]

28. GBE recognizes that it presently does not have all of the needed County Commission assents required by Section 229.100, but states that it will complete this approval process later. [19]

29. GBE argues that the Section 229.100 assents are not a prerequisite to the Commission issuance of a CCN in this case. It states that it applied here for a "line"

[14] Tr. 296 lines 11-22.
[15] Rebuttal Testimony of Louis Donald Lowenstein, Exh. 300, p. 33 lines 2-8; Schedule LDL-3.
[16] Id.
[17] Exh. 320 par. 6 and 7, and Exh. 2 thereto, p. 4. See also Staff testimony at Exh. 201 pp. 8-9.
[18] Id. at par. 8.
[19] GBE Initial Brief, p. 22 Section D.

certificate pursuant to Section 393.170.1, as opposed to an "area" certificate under Section 393.170.2. GBE then argues, in essence, that the county consents are not required when the Application is for a line certificate under 393.170.1, but only for area certificates sought under 393.170.2.[20]

30. The Commission was faced with the same argument raised here by GBE in the recent case where Ameren Transmission Company of Illinois (ATXI) sought a CCN for a transmission line in Case No. EA-2015-0146. In that case, ATXI also said that because it was seeking only a line certificate under Section 393.170.1, that it need not obtain the county consents under Section 229.100 before the Commission could issue the CCN.[21] In the ATXI case, the Commission rejected that argument, and held instead that the county consents pursuant to Section 229.100 were an indispensible requirement for the exercise of the CCN.[22] We confirm that ruling here. However, the Commission did grant ATXI a CCN, conditioned upon the company later providing proof that it had received the necessary county consents from the counties which would be traversed by the line.[23]

31. One of the interveners in the ATXI case thereafter appealed the Commission's decision. An opinion was recently issued on that appeal in *Neighbors United Against Ameren's Power Line v. PSC,* No. WD79883 (March 28, 2017). As the MLA points out, documents available from that appeal on Case.Net show that ATXI raised one of the same argument on appeal which it had raised with the Commission: that

[20] GBE Initial Brief, pp. 14-22, in particular the last par. of p. 18.
[21] See MLA's Reply Brief in this case, p. 17.
[22] Id.
[23] Report and Order, Case No. EA-2015-0146, p. 40, par. 2.

county consents under Section 229.100 are not prerequisites to issuance of a CCN sought for a line certificate under Section 393.170.1.[24]

32. The opinion in *Neighbors United* did not explicitly address the argument raised there by ATXI, (and in this case by GBE) regarding the distinction between subsections 1 and 2 of Section 393.170. However, the Western District did rule that the Commission does not have the authority to issue a CCN conditioned upon later receipt of the county consents under Section 229.100. Accordingly, the Court vacated the Order in Case No. EA-2015-0146 which granted the conditional CCN to ATXI. As of this date a mandate has not yet been issued by the Western District, and the decision in that case is still potentially subject to further appellate review.

33. The MLA also contends that a number of the eight county assents obtained by GBE in 2012 have since been rescinded, and that two of those assents still require further approvals from the County Commissions regarding the actual roads which GBE will be allowed to use for their facilities.[25] However, in light of our decision here, we need not address these two issues.

Conditions to the CCN

34. GBE and Staff have agreed to a number of Conditions which the Commission should impose on any CCN issued in this case.[26] None of the parties have taken exception to any of these conditions.

35. In its Statement of Position and in its Initial Brief, the MLA suggested eight additional or expanded Conditions to those agreed upon between Staff and GBE. No

[24] MLA Initial Brief, p. 71.
[25] See MLA's Initial Brief p. 72.
[26] Staff Exh. 206.

party addressed the suggestions from the MLA, until GBE did so belatedly in its Reply Brief.

Proposed Conclusions of Law[27]

Since GBE brought the Application in this case, it bears the burden of proof. The burden of proof is the preponderance of the evidence standard. In order to meet this standard GBE must convince the Commission it is "more likely than not" that its allegations are true.

The first issue for determination is whether the evidence establishes that the high-voltage direct current transmission line and converter station for which GBE is seeking a certificate of convenience and necessity are necessary or convenient for the public service. When making a determination of whether an applicant or project is convenient or necessary, the Commission has traditionally applied five criteria, commonly known as the Tartan Factors, which are as follows:

a) There must be a need for the service;

b) The applicant must be qualified to provide the proposed service;

c) The applicant must have the financial ability to provide the service;

d) The applicant's proposal must be economically feasible; and

e) The service must promote the public interest.

Need for the Project

As the Commission stated in the 2014 case, it finds that it is more appropriate to consider aspects of the Project related to the effect on Missouri utilities and consumers

[27] Some of these proposed Conclusions are taken directly from the Report and Order in the 2014 case.

rather than how it might affect Kansas wind developers or utilities and consumers from other states.[28]

GBE claims that its Project is necessary to serve the needs of MJMEUC under the terms of their TSA. However, the Commission finds that GBE has failed to demonstrate that MJMEUC is likely to actually purchase any capacity on the line when it is placed in service. MJMEUC's final decision in that regard is speculative at this time. There is too much uncertainty regarding the final outcome of MJMEUC's decision for the Commission to rely on the TSA between MJMEUC and GBE as proof that the proposed line is needed.

As to GBE's TSA with Regaly, the Commission finds that the 25 MW of power which Regaly would purchase from the Missouri converter station will be used to serve customers in Illinois. So while Regaly and its Illinois buyers may feel the line is needed, the Regaly TSA does not demonstrate that the proposed line is needed for providing service to Missouri utilities and their customers.

As to GBE's two open solicitations for bids on capacity, other than the bid from MJMEUC all of the bids came from Kansas wind developers. However, there is no evidence that any of the wind developers would be providing service to customers in Missouri, other than the Infinity Wind contract with MJMEUC. Inasmuch as the MJMEUC TSA with GBE is not deemed to be sufficient evidence of the need for the line, the Commission finds that the evidence regarding the responses to the GBE open solicitations prove nothing about the need for the line in providing service to Missouri utilities and their customers.

[28] Report and Order, p. 21.

GBE's claim that the line is needed to help Missouri utilities meet their RES requirements was addressed by the Commission in the 2014 case.[29] GBE has presented nothing new of significance with respect to this issue. Therefore, for the reasons enunciated in the 2014 case, the Commission finds that GBE has once again failed to prove that its line would be of value to Missouri utilities in meeting their RES requirements.

Likewise, the Project is not needed for grid reliability because GBE did not submit the Project to the regional planning process, it has not identified any existing deficiency or inadequacy in the grid that the Project addresses, and it has not shown that the project is the best or least-cost way to achieve more reliability.

With regard to the PROMOD modeling submitted for GBE by Mr. Copeland, the Commission finds that the Staff conclusions regarding his study are persuasive. Accordingly, the Commission gives his study and conclusions no weight in deciding any of the issues in this case.

Similarly, the Commission can give no weight to the LCOE analysis performed by GBE witness David Berry. In addition to the problems with that study cited by Show Me witness Paul Justis, Mr. Berry failed to establish that the critical 55% capacity factor used in his study was reasonable. Having failed to meet his burden of proof on that issue, all of the cost figures for Kansas wind using the GBE line are unreliable.

In summary, the Commission concludes that GBE has failed to meet its burden of proof to demonstrate that the service it proposes in its Application for a certificate of convenience and necessity is needed in Missouri.

[29] Report and Order p. 21-22.

Public Interest

The Public Interest is a matter of policy to be determined by the Commission. It is within the discretion of the Commission to determine when the evidence indicates the public interest would be served. Determining what is in the interest of the public is a balancing process. In making such a determination, the total interests of the public served must be assessed. This means that some of the public may suffer adverse consequences for the total public interest. Individual rights are subservient to the rights of the public. Depending on the outcome of the balancing process, this could mean that the rights of nearby property owners are subservient. However, it could just as well mean that the rights of MJMEUC and its customers, or the rights of any other segment of the population, must be made subservient to the rights of the remaining members of the public.

In this case, GBE asserts that the Project would result in benefits to MJMEUC and to the public as a whole. However, the Commission concludes that there is no basis in the record of this case for finding that the line will produce any meaningful benefits to anyone, other than the economic benefits identified in the DED analysis which would be offset in whole or in part from the economic detriments created by the line.

On the other hand, as discussed above, the line would be certain to create both monetary and non-monetary damages for landowners living in the vicinity of the proposed line. In this case, the evidence shows that any actual benefits to the general public or to MJMEUC and its customers are outweighed by the burdens on affected landowners. Accordingly, the Commission concludes that GBE has failed to meet its

burden of proof to demonstrate that the Project as described in its application for a certificate of convenience and necessity promotes the public interest.

Conditions (To be included in the event the Commission does find in GBE's favor on the Tartan criteria)

The Commission finds that the conditions agreed upon by Staff and GBE, as shown at Exhibit 206, are reasonable. That Exhibit is hereby incorporated into this Report and Order, and GBE is directed to comply with each of the conditions as set forth in that Exhibit.

The MLA included a list and discussion of eight additional or expanded Conditions at pages 73-86 of its Initial Brief in this case. For the reasons set forth there by the MLA, the Commission finds that those Conditions are also reasonable. Accordingly, GBE is further directed to comply with each of the following eight conditions:

1. Before the line may be energized in Missouri, an officer of GBE must certify to the Commission that the Ralls County converter station has been built and is fully capable of operating to the specifications described in Grain Belt's testimony in this case, including the ability to accept approximately 500 MW of power from the Kansas converter station. In addition, before the line may be energized in Missouri, Grain Belt must file copies with the Commission of contracts which bind one or more load-serving utilities in Missouri to purchase a total of approximately 500 MW of capacity on the Grain Belt line, and separate contracts which also bind said utilities to purchase energy to be transmitted over the Grain Belt line of approximately 500 MW in total, with all

contracts for the purchase of capacity and energy to be effective for a period of at least 15 years.

2. Before construction of the line may begin, GBE must file a proposed decommissioning fund with the Commission which will provide sufficient funding to remove all of the Project facilities at any time that the Project is abandoned or is no longer used for the purposes described by GBE in its Application in this case.

3. The following documents shall be incorporated into the GBE easement agreements with landowners, and made binding upon GBE: the Missouri Agricultural Impact Mitigation Protocol; the Missouri Landowner Protocol; and the Grain Belt Code of Conduct.

4. If ATXI's Mark Twain line is not operating as authorized by the Commission in Case No. EA-2015-0146 at the time the GBE line is completed, then the GBE line may not be energized in Missouri until GBE has submitted studies satisfactory to Staff that the concerns voiced by Staff at Exhibit 201, pages 56-58, have been adequately resolved.

5. GBE must agree to pay landowners at least the amount of its highest and best offer for a right-of-way easement if the matter of compensation is later taken to arbitration or to court.

6. GBE must agree to seek approval of the Commission for the sale or other disposition of its assets to the same extent as is applicable to regulated utilities in Missouri under Section 393.190 RSMo.

7. GBE must agree to seek approval of the Commission before issuing any form of indebtedness to the same extent as is applicable to regulated utilities in Missouri under Section 393.200 RSMo.

8. GBE must agree to make two changes in the standard form easement agreement which appears at Schedule DKL-4 of the direct testimony of Ms. Deann Lanz: (1) the following statement must be added to the easement at the conclusion of existing paragraph 3: "Grain Belt Express will pay landowners for any agricultural-related impact ('Agricultural Impact Payment') resulting from the construction, maintenance or operation of the Project, regardless of when they occur and without any cap on the amount of such damages"; and (2) the words "gross negligence" must be removed from Section 11.c of the Easement Agreement appearing at Schedule DKL-4.

Consent of the County Commissions (MLA's suggested conclusions of law in the event that the Commission does find in GBE's favor on the Tartan criteria)

Although some parties have pointed out that the decision in the *Neighbors United* case is not yet final, and have argued that it does not even apply here to GBE's request for a line certificate, the Commission feels it would not be prudent to simply ignore that decision, and proceed as if it did not exist. To do so would certainly result in the decision here being vacated if the opinion in *Neighbors United* is not reversed or substantially modified upon further appellate review.

Weighing all relevant factors, the Commission at this point will neither grant nor deny the CCN for GBE. Instead, it will hold this case in abeyance at this point, pending a final resolution of the appeal in the pending *Neighbors United* case. If the final appellate decision in that proceeding holds that the county assents under Section 229.100 are not prerequisites to issuance of a conditional CCN, then the Commission will issue a conditional CCN, subject to GBE obtaining all of the necessary county consents.

However, if the *Neighbors United* decision is allowed to stand, the Commission finds that the decision in that case, coupled with the Commission's ruling in the ATXI case, would mean that GBE cannot be granted a CCN of any kind until it receives the necessary county consents from all of the counties which will be traversed by the proposed line.

Accordingly, if the final Opinion in the *Neighbors United* appeal remains essentially unchanged regarding the Commission's lack of authority to issue a CCN conditioned on subsequent receipts of county commission assents, then GBE will have sixty days from the issuance of the appellate court mandate in that case to file evidence with the Commission that it has obtained all the necessary County Commission assents under Section 229.100. If GBE fails to do so, then its Application in this case will be promptly dismissed for failure to meet all of the statutory requirements for the issuance of a CCN.

Staff is hereby directed to promptly notify the Commission and the parties to this case when a final mandate is issued by the applicable state appellate court in the *Neighbors United* case presently pending in the Western District of the Court of Appeals in Case No. WD79883.

Respectfully submitted,

Missouri Landowners Alliance, et al.

/s/Paul A. Agathen
Paul A. Agathen
485 Oak Field Ct.
Washington, MO 63090
Paa0408@aol.com
(636)980-6403
MO Bar No. 24756
Attorney for
Missouri Landowners Alliance et al.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 25th day of April, 2017.

/s/ Paul A. Agathen
Paul A. Agathen