BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Grain Belt Express Clean Line LLC for 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**

SUPPLEMENTAL BRIEF OF GRAIN BELT EXPRESS

Grain Belt Express Clean Line LLC ("Grain Belt Express" or "Company") respectfully submits the following Supplemental Brief, pursuant to the Commission's July 5, 2017 Order permitting supplemental briefing on "the ATXI opinion's effect on this case and GBE's request and motion for waiver or variance, as well as MLA's motion to dismiss."

INTRODUCTION

Neighbors United Against Ameren's Power Line v. PSC, No. WD79883, 2017 WL 1149139 (Mo. App. W.D., Mar. 28, 2017) ("Neighbors United") [1] does not limit the Commission's ability issue a Certificate of Convenience and Necessity ("CCN") in this docket. That opinion only addressed the authority of the Commission to issue an area CCN under Section 393.170.2[2] and its provision that an electrical corporation show "that it has received the required consent of the proper municipal authorities" before such a CCN is issued. The Court of Appeals held that Section 393.170.2 area CCNs require receipt of Section 229.100 county road-crossing assents, despite the Commission's ability to impose conditions under Section 393.170.3.

The case did not interpret or apply to Section 393.170.1, the lone section under which the Company seeks a line CCN to construct the Grain Belt Express transmission project ("Project").

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[1] Neighbors United is the same decision referred to in the Commission's July 5, 2017 Order as the "ATXI opinion."
[2] All statutory references are to the Missouri Revised Statutes (2016), unless otherwise noted.

Even though the CCN application of Ameren Transmission Company of Illinois ("ATXI") concerned construction of a transmission project, ATXI did not apply to the Commission under Section 393.170.1, nor did the Commission discuss that provision in issuing its CCN. Thus, it is not surprising that the Court of Appeals made no mention of Section 393.170.1.

A misconstruction of Neighbors United, as advocated by MLA and Show Me, as well as Staff, could have far-reaching and potentially grave consequences. Adopting their arguments would be counter to the plain language of 393.170.1, circumscribe the broad statutory powers delegated to the Commission by the Missouri General Assembly, alter a century of case law carefully developed by the Commission and Missouri appellate courts, and impede future investment and development that would benefit the entire State of Missouri. It would install county commissions as gatekeepers to the doors of the Commission, and stifle the development of future projects and infrastructure in Missouri. It is the Commission's duty under the law to ensure that its authority to promote energy infrastructure and sound regulatory policies is not emasculated by a county road-crossing assent statute.

Simply put, while the Neighbors United decision may pose issues for the ATXI certificate, it should not be extended beyond its own words and should not be applied to Grain Belt Express, or to future line certificate cases filed under Section 393.170.1.

ARGUMENTS & AUTHORITIES

I. Neighbors United is Not Binding on the Company's Application.

A. Neighbors United Never Applied Section 393.170.1 -- Only Subsections .2 and .3.

In Neighbors United the Court found that the Commission exceeded its authority under Section 393.170.2 by granting ATXI a contingent CCN under Section 393.170.3 prior to ATXI obtaining all necessary county road-crossing assents under Section 229.100. Therefore, the

holding of Neighbors United is based on a statutory provision of no relevance to the Grain Belt Express Application, which specifically requests a CCN under Section 393.170.1. See Application, Preamble & ¶ 1 (Aug. 30, 2016).

The Court of Appeals only analyzed the mandatory language of the second subsection of Section 393.170, which requires that an applicant file with the Commission "the required consent of the proper municipal authorities." It did so in light of the permissive language of the third subsection of Section 393.170, which permits the Commission to "impose such condition or conditions as it may deem reasonable and necessary." The Court explicitly held that "the general provision of section 393.170.3 gives way to the more specific and mandatory language of section 393.170.2." Neighbors United, 2017 WL 1149139 at *4. It reasoned that its "harmonization of the statute preserves the integrity of both subdivisions [that is, the second and third subsections] of section 393.170" and "gives plain meaning to the legislature's use of the mandatory term 'shall' when it describes what documents the applicant must submit to the PSC before a CCN will be issued." Id.

Despite the Court's clear analysis of subsections 2 and 3 only, Staff argues in its Supplemental Brief that the Court's analysis is far broader. But Staff does so by omitting the Court's affirmative statement that its decision is a "harmonization" that preserves the integrity of subsections 2 and 3 to which its opinion applies. Staff's startling omission of the three critical preliminary sentences of the paragraph on page 8 of the Neighbors United slip opinion that it quotes could lead one to erroneously conclude that the Court's decision related to Section

393.170.1.[3] It does not. To the contrary, there is nothing in the decision that discusses or even remotely alludes to Section 393.170.1.

That the Neighbors United decision neither discusses nor alludes to subsection 1 is due to the failure of ATXI to request a line certificate under Section 393.170.1. See Application at 1, In re Ameren Trans. Co. of Illinois, No. EA-2015-0146 (May 29, 2015). As a result, the Commission granted a non-specific CCN under Section 393.170, without indicating whether a line or an area certificate was being granted. See Report & Order at 5, In re Ameren Trans. Co. of Illinois, No. EA-2015-0146 (Apr. 27, 2016). Given the absence of specific findings of fact and conclusions of law on the differences between line and area certificates, and subsections 1 and 2 of Section 393.170, the failure of the Court of Appeals to address arguments in the parties' appellate briefs on these matters is not surprising.

Grain Belt Express submitted its Application under the first subsection of Section 393.170, which plainly does not contain the mandatory language of 393.170.2 upon which the Court of Appeals based its decision. Indeed, Section 393.170.1 contains no language at all regarding municipal or any other governmental consents that an applicant must submit to the Commission before a CCN will be issued. See Application, Preamble at 1 ("Grain Belt Express Clean Line LLC … pursuant to Section 393.170.1 … submits this Application … for a certificate of convenience and necessity ..."). The Neighbors United decision makes no mention of Section 393.170.1, and its holding does not affect applications submitted under that provision.

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[3] The omitted sentences state: "To construe the statute otherwise would render the language of section 393.170.2 meaningless by allowing the PSC to grant a CCN without having received the required documentation. 'All provisions of a statute must be harmonized and every clause must have some meaning.' *Younger*, 957 S.W.2d at 337. Our harmonization of the statute preserves the integrity of both subdivisions of section 393.170 and effectuates the plain meaning of the statute." Neighbors United, 2017 WL 1149139 at *4, slip op. at 8.

B. The Commission and Missouri Appellate Courts Have Always Distinguished Line Certificates (Section 393.170.1) from Area Certificates (Section 393.170.2).

Missouri courts long have recognized the distinction between the first and second subsections of Section 393.170. Section 393.170.1 concerns "line" certificates where a company seeks permission to construct an electric plant or a transmission line, which Grain Belt Express seeks to do here. State ex rel. Union Elec. Co. v. PSC, 770 S.W.2d 283, 285 (Mo. App. W.D. 1989) ("Two types of certificate authority are contemplated under Missouri statutes"); State ex rel. Harline v. PSC, 343 S.W.2d 177, 182-83 (Mo. App. K.C. 1960) ("Harline"). By contrast, Section 393.170.2 relates to "area" certificates sought by a utility to serve retail customers in a particular territory, which is not relevant to this case.

This important distinction, based on decades of Commission and Missouri appellate decisions, was explained in State ex rel. Cass County v. PSC, 259 S.W.3d 544, 548-49 (Mo. App. W.D. 2008). "Permission to build transmission lines or production facilities is generally granted in the form of a 'line' certificate. … A line certificate thus functions as PSC approval for the construction described in subsection 1 of section 393.170. Permission to exercise a franchise by serving customers is generally granted in the form of an 'area' certificate. … Area certificates thus provide approval of the sort contemplated in subsection 2 of section 393.170." Id. at 549 (footnotes omitted). Accord StopAquila.org v. Aquila, Inc., 180 S.W.3d 24, 33 (Mo. App. W.D. 2005) (Section 393.170 is "divided into three distinct subsections"[4]).

[4] These subsections first appeared in the Missouri Revised Statutes of 1949, where the 65th General Assembly took affirmative steps to arrange and classify these three separate sections, and to clarify that they relate to distinct functions that justify different certificates. See Title Page, Vol. II, Mo. Rev. Stat. (1949) ("Compiled, arranged, classified and indexed by the Committee on Legislative Research").

In distinguishing Section 393.170.2 from Section 393.170.1, the Harline Court stated in 1960: "Certificate 'authority' is of two kinds and emanates from two classified sources. Subsection 1 requires 'authority' to construct an electric plant." 343 S.W.2d at 185. More importantly, Harline rejected the argument that subsection 2 dealt with the construction of a transmission line. Id. at 183 ("We do not read the statute with that understanding"). Accord State ex rel. Union Elec. Co. v. PSC, 770 S.W.2d 283, 285 (Mo. App. W.D. 1989) (rejecting the view "that the two types of authority should be considered interchangeable").[5]

This clear distinction is made in Subsection 3 as well. Under that subsection, the Commission may grant the permission sought under Subsections 1 *or* 2 after determining that "such construction [sought under subsection 1] or such exercise of the right, privilege, or franchise [sought under subsection 2] is necessary or convenient for the public service." See § 393.170.3.

Neighbors United did nothing to change the fact that line and area certificates are distinct, as are the statutory sections under which the Commission may grant those certificates. Therefore, MLA's and Staff's argument that the Neighbors United holding now requires that subsection 1 applicants secure county assents prior to filing with the Commission grossly misinterprets the Court's decision and urges this Commission to cede jurisdiction to local interests. Following the logic of MLA and Staff requires an interpretation of Neighbors United that is not supported by its actual holding. Their argument runs counter to the undisputed fact that subsections 1 and 2 are distinct, serve different purposes, and contain separate requirements.

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[5] "On its face, line certificate authority described under subsection 1 of section 393.170 carries no obligation to serve the public generally along the path of the line. The elements of proving the public necessity of a line are different from the test applied to proving the public necessity of area certificate authority. That difference is reflected in the distinct rules for each promulgated by the Commission …." State ex rel. Union Elec. Co. v. PSC, 770 S.W.2d 283, 285 (Mo. App. W.D. 1989). See 4 CSR 240-3.105(1)(A)-(B).

II. The Commission Should Distinguish its Order in this Case from the ATXI Certificate.

This proceeding presents the Commission with an opportunity to explain fully its reasons for granting a CCN under Section 393.170.1, as well as the long-standing distinctions between line and area CCNs under subsections 1 and 2 of the statute. The Commission can also clarify that Section 393.170.1 contains no language that governmental consents are a condition precedent to this type of certificate. Because Section 229.100 is in a distinct section of Missouri statutes relating to the "Construction and Regulation of Public Roads," it should not be used subjugate the Commission's authority to hear line certificate cases. The Commission can acknowledge that any permit or consent required independently by a state or local authority − such as the Section 229.100 county road-crossing assents or permits from the Department of Natural Resources or Department of Transportation − must be received by an applicant and supplied to the Commission prior to beginning construction.

There is nothing in the Neighbors United decision that precludes the Commission from considering precisely what it is mandated to consider: Whether the construction of the Project is necessary or convenient for the public service. As the Commission has already recognized, this is a question that is reserved to the Commission, and not to individual county commissions. See Neighbors United, Commission Application For Transfer at 6, 11 (Apr. 12, 2017). Requiring county assents or other government permits to serve as a prerequisite to a line certificate would usurp the role of this Commission and deprive it of its mandate to determine whether a project is necessary or convenient for the public service.

As the Commission has stated, county commissions are not authorized to deprive a utility of a hearing before the Commission under Section 393.170.3, nor are they authorized to preclude or delay the Commission's exclusive authority to decide whether construction of a transmission

line is necessary or convenient for the public service under Section 393.170.1. Id. at 6-7. It is, rather, the Commission's duty to "decide exclusively and in the first instance" whether a project meets this standard. Id. at 6. Requiring Section 229.100 county assents or any other governmental approval prior to the Commission's decision "interferes with the legislative purpose of Section 393.170.1" Id. at 8.

Given that Section 393.170.1 was not analyzed or even discussed by the Court of Appeals in Neighbors United, Grain Belt Express respectfully requests that the Commission grant the Company a CCN under that provision. While the Commission is free to acknowledge that other independent legal requirements, such as Section 229.100 county assents, must be met prior to the commencement of construction, those requirements are not conditions precedent to the issuance of a line CCN and do not prevent the Commission from exercising its lawful jurisdiction under Section 393.170.1.

As long as a line CCN issued under Section 393.170.1 specifies that construction shall not occur until all necessary government consents and permits are received by Grain Belt Express, there is nothing in the Neighbors United case, Missouri statutes, or the Commission's regulations that prohibit such a determination. And there is no basis for the Commission to apply the reasoning of Neighbors United regarding Section 393.170.2 to Section 393.170.1.

III. Prior Commission Decisions do not Support Dismissing the Application.

The older PSC cases MLA cites[6] do not support the dismissal of the Grain Belt Express Application for a line CCN. In these cases, the applicant either was seeking both the authority to construct a project and to operate it as a retail service for direct use by the public, or the facts are so distinct as to make their holdings irrelevant here.

[6] MLA Motion to Dismiss at 4-6.

In In re Saline Sewer Co., 1970 WL 224089, No. 16,788 (Mo. P.S.C. 1970), the applicant sought service area authority to operate a sewer company across 958 acres in Murphy, Missouri. Similarly, in In re Bonneville Water Co., 1975 Mo. PSC Lexis 17, 20 Mo. P.S.C. (N.S.) 240 (1975), the applicant sought service area authority to operate a water distribution company in St. Francois County, Missouri. In Southwest Water Co., 25 Mo. P.S.C. 637 (Oct. 22, 1941), the applicant sought a CCN both to construct a water system, as well as "to own and operate the system in order to furnish the service to the public as a public utility." In re Southwest Water Co., Report and Order at 3 (Mo. P.S.C. Feb. 11, 1941). Thus, the references to "franchise" or other local permission in these cases clearly relate not simply to building infrastructure, but directly serving residents and businesses within a city, county, or other specific area.[7]

Despite finding no support on the face of Section 393.170 itself, nor in prior PSC cases, MLA points to a natural gas pipeline decision in In re Missouri-Kansas Pipe Line Co., 17 Mo. P.S.C. 98, 102 (1928) ("Mo-Kan Pipe Line"), in support of its claim that the Commission has required county assents for a line CCN. Because the Commission simply withheld a CCN from an interstate gas pipeline "until such time" that the applicant showed "that it has received the consent of the municipal authorities for its proposed pipe lines," this case clearly does not support dismissal of the Grain Belt Express Application. To the contrary, the Commission made numerous factual and legal findings regarding the need for the project, its economic feasibility, and its financial resources prior to the applicant demonstrating that it had received such consent.

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[7] Moreover, MLA's extensive discussion of what is and what is not considered a "municipality" is a red herring. The Project does not cross any municipal boundaries. As the Missouri Route Selection Study shows, neither of the two segments of the Missouri Route come closer than 0.5 miles of a municipality. See Sched. JPG-1 at 117 (Segment 1: Recommended Route B is no closer than 0.5 miles from any town) & Table 5-5 at 119 (Segment 2: Recommended Route D is no closer than 0.5 miles from any town), Ex. 119 (Puckett Direct Testimony).

Id. at 103-104.[8] This is consistent with the Commission's longstanding practice of making substantive decisions on CCN applications where county or municipal consents have not yet been provided.

At most, the Mo-Kan Pipe Line case supports the Company's request in the alternative, discussed in Section V, that if the Commission concludes that Neighbors United prevents it from issuing a line CCN under Section 393.170.1 because Grain Belt Express has not yet received all the necessary Section 229.100 county assents, it should nevertheless proceed to issue a decision with detailed findings of fact and conclusions of law on whether the Project is necessary or convenient for the public service. Nothing in Mo-Kan Pipe Line supports the dismissal of this proceeding.

Early in its history the Commission adopted the practice of issuing preliminary or conditional CCNs where county or city consents had not yet been provided. In re Dunham, 3 Mo. P.S.C. 593, 607 (1915) ("in the absence of [local government consents] a preliminary order may be issued upon such terms and conditions as the Commission may designate"). See In re Meyers, d/b/a/ Lanagan Tel. Co., 8 Mo. P.S.C. 597, 602-03 (1919) (findings of convenience and necessity of retail telephone exchange confirmed by granting the CCN in a supplemental order after county consent received).

In subsequent cases, including those MLA cites, the Commission consistently followed the practice of making substantive decisions regarding applicants who sought not only a line or construction CCN, but also an area or retail service CCN. For example, where the Bonneville Water Company sought a CCN to operate and maintain a water distribution system in St.

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[8] The Commission also made findings concerning retail ratemaking and financing issues that were appropriate at that time, given that Congress had not yet preempted the field of interstate natural gas pipelines, which it did with the Natural Gas Act of 1938.

Francois County, the Commission discussed the need for the utility to serve over 100 residential and commercial customers, the applicants' financial and technical abilities, and the economic feasibility of the proposal. In re Bonneville Water Co., 1975 Mo. PSC Lexis 17 at *2-6, 20 Mo. P.S.C. (N.S.) 240 (1975). It granted a conditional CCN, directing the utility to furnish a schedule of rates, the consent of the proper municipal authorities, and other information.

Similarly, in In re Saline Sewer Co., 1970 WL 224089, No. 16,788 (Mo. P.S.C. 1970), the Commission made findings regarding the need for sewer service, as well as the economic feasibility and financial resources of the applicant in its report and order. However, because the applicant had not obtained the permission of Jefferson County to cross its roads, the Commission withheld granting a CCN but retained jurisdiction. It stated that a CCN "will be issued upon a showing" regarding additional financial support, as well as obtaining "permission from the Jefferson County Court to cross any roads in Jefferson County." Id. at 4-5.

These cases are consistent with other Commission precedents where applicants seeking to serve retail customers lacked municipal or county consents to serve public, but were issued conditional or "preliminary" CCNs. The Commission retained jurisdiction for the purpose of issuing a final certificate when the appropriate consents were submitted. See In re Gray Summit Water Co., 1968 WL 186483 *1-*10, No. 16,038 (Mo. P.S.C. 1968) (issuing findings regarding need and economic feasibility); In re National Devel. of Clay County, Inc., 1965 WL 170831, No. 15,031 (Mo. P.S.C. 1965) (jurisdiction retained; Supplemental Report and Order issued upon further submissions, with Commission making the "Preliminary and Conditional Certificate" permanent); In re Frimel Water System Inc., 1964 WL 129896, No. 15,398 (Mo. P.S.C. 1964) (conditional CCN granted for a retail service area CCN pending approval of Jefferson County Court); In re Central Mo. Gas Co., 1958 WL 105450, No. 13,976 (Mo. P.S.C. 1958) (preliminary

retail service area and line CCN granted subject to provision of "franchises or permits from the proper municipal authorities").

While the authority of these cases may be affected by Neighbors United because they granted area certificates governed by Section 393.170.2, they demonstrate that a long line of Commission decisions have properly granted line CCNs without requiring the prior submission of county or other governmental consents that may be required prior to beginning construction of a project. In subsequent cases the Commission has granted line CCNs without requiring such governmental consents as a condition precedent. In re Transource Missouri LLC, Report and Order, No. EA-2013-0098 (Aug. 7, 2013) (county consents provided over two years after CCN granted); In re IES Utilities, Inc. and ITC Midwest LLC, Order Granting Certificate of Convenience and Necessity, No. EO-2007-0485 (Aug. 30, 2007); In re IES Utilities, Inc., No. EA-2002-292 (Apr. 18, 2002).

The only case MLA cites where the Commission dismissed an application is In re Southwest Water Co., 25 Mo. P.S.C. 637 (Oct. 22, 1941), a short two-page order on rehearing. However, when the facts of the case, detailed in a multi-page Report and Order issued eight months earlier, are considered, the real reason for the dismissal is obvious. It was the presence of a superior competitor endorsed by its prospective customers, not simply the absence of a county consent.

Southwest Water Co. applied for a CCN both to construct a water system, as well as "to own and operate the system in order to furnish the service to the public as a public utility." In re Southwest Water Co., Report and Order at 3 (Mo. P.S.C. Feb. 11, 1941). The request to serve an area, not simply to construct infrastructure, implicates the requirement under Section 393.170.2 that the "required consent of the proper municipal authorities" be received. More importantly,

the Commission found that a competitor, Public Water Supply District No. 7, had been previously organized and that an election had been conducted where "the overwhelming majority of the vote cast" demonstrated "that the local citizens considered they will be properly served by the construction of the system proposed by District No. 7." Id. at 3-5. Given these facts, it is not surprising that the PSC concluded it was "without power to grant the authority" requested by the potential competitor Southwest Water Co. and dismissed the application. Id. at 5.

In sum, none of the cases cited by MLA support the dismissal of the Grain Belt Express Application, given that it is premised on Section 393.170.1 which does not require the consent of any governmental authority before the Commission can issue a CCN.

IV. The Commission Should Also Waive its Regulations under 4 CSR §§ 240-3.105(1)(D)1 and 3.105(2).

The Company has asked that the Commission grant it a waiver from its filing requirements to the extent the Commission believes Neighbors United requires that county assents be furnished prior to the PSC granting a line CCN, pursuant to Commission rules. See Request of Grain Belt Express and Motion for Waiver or Variance of Filing Requirements at 4-7 (June 29, 2017) ("Request"). MLA and Staff argue that the waiver request of Grain Belt Express seeks the waiver of a statutory requirement of Section 393.170 and/or Section 229.100. See MLA Motion to Dismiss at 4; Staff Supp. Brief at 3.

The Company does not seek a waiver of any statutory requirement. Rather, it seeks a waiver of the Commission's regulations at 4 CSR 240-3.105(1)(D)1 and 3.105(2) that require the *filing* of all Section 229.100 county assents before the PSC can issue a line CCN.

Because Section 393.170.1 contains no language regarding a governmental consent of any kind relating to a line CCN, there is nothing to be waived under that statute.

Regarding Section 229.100, Grain Belt Express understands that it must obtain county assents before it "erect[s] poles for the suspension of electric light, or power wires … through, on, under, or across the public roads or highways of any county of this state …." The Company does not seek a waiver of this statute, recognizing that it is an independent requirement that stands on its own. However, by its own terms, Section 229.100 has no relevance to whether a project "is necessary or convenient for the public service" under Section 393.170.3, and the Tartan[9] factors used to analyze those issues. Judgments regarding those matters are to be made exclusively by the Commission under Section 393.170. More importantly, there is nothing in Section 229.100 that prohibits the Commission from issuing a CCN under Section 393.170.1.

The Commission's regulations require that when the approval of "affected governmental bodies is required," a certified copy of a "consent or franchise by a city or county" or "the required approval of other governmental agencies" be provided. See 4 CSR 240-3.105(1)(D)1-2. If any items required under 4 CSR 240-3.105(1) are "unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought." See 4 CSR 240-3.105(2). As with all of the Commission's regulations, a waiver or variance may be granted. See 4 CSR 240-2.060(4) [waivers relating to application]; 4 CSR 240-3.015 [referring to standards set forth in 2.060(4)]. Considering its past practice of granting line certificates without Section 229.100 assents, it would be consistent and within the Commission's authority to state that such assents are not required for a line CCN under Section 393.170.1 and that, to the extent Neighbors United is interpreted to require such assents under its regulations, the Commission waives such rules.

[9] In re Tartan Energy Co., 3 Mo. P.S.C.3d 173, 1994 WL 762882 (1994).

Section 2.060(4) provides that a party may apply for a waiver from "commission rules, tariff provisions, as well as those statutory provisions which may be waived." As previously stated, Grain Belt Express only seeks a waiver of the filing requirements of 4 CSR 240-3.105(1)(D)1 and 3.105(2). See Request at 4-7.

The Company is required under 240-2.060(4)(B) to provide the reasons for the proposed variance and "a complete justification setting out the good cause for granting the variance or waiver." As the Company noted in its Request, since 2002 the Commission has routinely granted CCNs under Section 393.170.1 for the construction of "electric plant"[10] and other utility infrastructure with the understanding that Section 229.100 county assents or other governmental approvals be provided to the PSC prior to construction. See Request at ¶ 13 (Commission cases decided between 2002 and 2016). The cases cited above in Section III show that between 1915 and 1975 it was similarly the practice of the Commission to issue conditional or preliminary CCNs until the requisite approvals were supplied.

Therefore, to the extent the Commission believes that Neighbors United, despite its failure to discuss or even cite Section 393.170.1, requires that county assents be furnished prior to the PSC granting a line CCN, good cause exists for a waiver to be granted. Because ATXI never requested such a waiver, this issue was never discussed by either the Commission or in Neighbors United. As noted previously, Grain Belt Express agrees that prior to beginning construction of the Project under Section 393.170.1, it will submit such county assents to the Commission.

[10] "Electric plant" is broadly defined in Section 386.020(14) to include "all real estate, fixtures and personal property," as well as other assets, used in the generation, transmission, and distribution of electricity.

V. Alternatively, the Commission Should Issue a Report & Order with Tartan Findings and Withhold Issuing a CCN until County Assents are Provided.

Although the Commission has clear authority to issue a CCN under the plain language of 393.170.1, if the Commission concludes that the Neighbors United decision prevents it from issuing a line CCN under Section 393.170.1 because Grain Belt Express has not received all the necessary Section 229.100 county assents, it should nevertheless proceed to issue a Report & Order with detailed findings of fact and conclusions of law on the Tartan factors, and on any other issue except for the county consent matters. If it concludes that the Project is necessary or convenient for the public service, it should declare so but may withhold issuing a line CCN to Grain Belt Express.

Such a decision should explicitly state, consistent with decades of Commission past practice, that a CCN will be issued once the county assents are received and filed with the Commission. This course of action would not conflict with the Neighbors United decision, and is supported by the numerous Commission cases discussed in Section III, beginning with the 1919 In re Dunham case and continuing to the 1970 Saline Sewer Company case. This result would also be consistent with administrative efficiency, and would avoid a substantial waste of time and effort by the Commission, its Staff, and all the other parties. It would allow the Commission a full opportunity to voice its opinions on the value of the Project.

As previously noted, several county commissions have stated that they now believe granting Section 229.100 assents to the Company was premature, and that they await a decision by the Commission that states whether the Project is necessary or convenient for serving the public interest. See Sched. LDL-4 at 1-3 (Clinton and Chariton Counties), 8-10 (Ralls and Monroe Counties), Ex. 300 (Lowenstein Direct Testimony). Although findings with regard to the CCN issues are not, strictly speaking, relevant to a Section 229.100 assent related to erecting

poles and wires in the rights-of-way of county roads, the Commission's conclusion that the Grain Belt Express Project is in the public interest should assure the county commissions that the Company is qualified and prepared to abide by the county's rules and regulations, as prescribed by the county highway engineer.

If such a course were followed by the Commission, it would be carrying out its mandate under the Public Service Commission Law to oversee public utility issues and would not be ceding power or jurisdiction to individual counties under Section 229.100 which regulates public road-crossings unrelated to the private property interests of landowners.

CONCLUSION

The Neighbors United decision provides no basis for dismissing this proceeding, given its specific focus on the interplay of Sections 393.170.2 and 393.170.3. The Grain Belt Express Application was brought under Section 393.170.1 and is ripe for decision.

If the logic of MLA and others opposing the Company's request is followed, individual counties will have de facto authority to decide whether the construction of an interstate transmission line is in the public interest on the basis of a road-crossing statute that was simply designed to make certain that county infrastructure was not impaired or damaged. Having county commissions serve as gatekeepers to this Commission would be contrary to the powers granted under Section 393.170.1 to the Commission by the General Assembly.

While local governments should continue to exercise the right to issue franchises or consents when a public utility seeks retail service authority under Section 393.170.2, a road-crossing law like Section 229.100 or a similar municipal ordinance should not be a condition precedent to the Commission judging whether the construction of electrical infrastructure under Section 393.170.1 is in the public interest. Any other outcome would defy not just the logic of

Section 393.170.1, but its plain language, not to mention decades of case law, Commission rules, and over 100 years of Commission practice.

It would announce to the world that investments designed to bring low-cost energy and other benefits to Missouri customers are now subject to the politics of a few county commissions, and that developers and investors contemplating infrastructure projects should not come to Missouri. Such an outcome would be contrary to the precepts under which this Commission has long operated, contrary to Missouri law, and inconsistent with good government and sound public policy.

WHEREFORE, Grain Belt Express Clean Line LLC respectfully requests that the Commission issue its Report and Order in this proceeding, and grant a line certificate of convenience and necessity under Section 393.170.1 to Grain Belt Express Clean Line LLC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record in this case on this 18th day of July 2017.

/s/ Karl Zobrist
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