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

POST-HEARING REPLY BRIEF ON REMAND OF THE MISSOURI LANDOWNWERS ALLIANCE AND SHOW ME CONCERNED CITIZENS, ET AL.

PUBLIC VERSION

** Indicates confidential information has been removed**

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1. **Introduction.** This Reply Brief will address as needed the initial briefs on remand from the following parties: the Commission Staff; Grain Belt Express Clean Line LLC (Grain Belt); the Missouri Joint Municipal Electric Utility Commission (MJMEUC); the joint brief of NRDC and Sierra Club; Renew Missouri; and the joint brief of Clean Grid Alliance and the Wind Coalition.

Grain Belt understandably raised most if not all of the plausible arguments in favor of the line in its Initial Brief. Therefore, most of what was said in the briefs of Grain Belt's supporters logically tends, in substance, to duplicate the arguments raised by Grain Belt. Show Me and the MLA see no need to discuss the points made by these other parties which are already addressed here in response to Grain Belt. This does not mean that Show Me and the MLA have ignored most of what was said by Grain Belt's supporters. There is no apparent reason in this reply brief to address any particular issue more than one time, regardless of how many parties raise the same general argument.

As another preliminary matter, both Grain Belt and MJMEUC have in effect incorporated by reference into their initial briefs on remand certain documents which they had already submitted to the Commission.[1] It is not clear what they intend to accomplish by doing so. In any event, to the extent permissible the MLA has already responded to that material when it was originally filed. It will not waste the Commission's time or its own time by responding once again to the 200-plus pages of material incorporated in the Grain Belt and MJMEUC briefs by reference.

[1] MJMEUC incorporates the facts and arguments from its prior two post-hearing briefs, consisting in total of approximately 28 pages, brief p. 1; Grain Belt refers the Commission to its previously filed briefs, as well as its earlier proposed Findings of Fact and Conclusions of Law, consisting in total of approximately 200 pages, brief p. 2.

2. <u>Commission authority to issue the CCN.</u> The permission from the Illinois Commission to build the Grain Belt line in that state was rejected by the Illinois appellate court in *Concerned Citizens v. Illinois Commerce Comm'n,* 112 N.E.3d 128 (Ill App. 2018). As Grain Belt notes, the basis for that decision essentially was that Grain Belt did not qualify as an electrical utility because it did not own, control, operate or manage any electric plant within the state of Illinois.[2]

Grain Belt then spends five pages distinguishing that case from its situation in Missouri, in particular arguing that its 39 easements in Missouri constitute electric plant, thus qualifying Grain Belt as an electrical utility in this state.[3]

Their entire argument misses the point, at least with regard to the positions taken on this issue by Show Me and the MLA. The fact is, neither Show Me nor the MLA have ever argued that the logic of the *Concerned Citizens* case in Illinois should be applied in Missouri.

Instead, in their initial brief on remand, Show Me and the MLA argued that the Commission does not have the authority to grant the CCN on two grounds not even mentioned in the *Concerned Citizens* case*:* (1) that based primarily on case law, the project does not meet the definition of a public utility because it is not devoted to a "public use"; and (2) that jurisdiction over the Grain Belt line has been delegated to the FERC, and not to this Commission.

We know that Grain Belt was quite familiar with the first prong of Show Me's argument, because Grain Belt addressed it at some length in its Reply Brief in the 2016

[2] Initial Brief of Grain Belt, p. 12.
[3] *Id.* p. 9-13.

proceedings.[4] While Show Me had not addressed the FERC jurisdictional issue earlier, that point is simply an extension of the argument regarding the jurisdiction of this Commission over the Grain Belt line. And in any event, it is black letter law that lack of subject matter jurisdiction is an issue which may be raised at any time.[5]

Having no substantive quarrel with Grain Belt's sole argument on this point, Show Me and the MLA are left with nothing to say in reply. Unfortunately, they will be given no opportunity to respond to the additional arguments which Grain Belt will undoubtedly raise in its own reply brief.

3. <u>The Five Tartan Criteria</u>

(1) <u>Need for the Service</u>. This issue is addressed by Grain Belt at pages 20-21 of its initial brief, and it relies solely on its contract with MJMEUC to argue there is a need for the line.

The MLA has several responses regarding the issue of need. First, MJMEUC had totally ignored the first "open season" solicitation by Grain Belt, concluding that it had no need for the proposed line.[6] After several more unsuccessful pitches to MJMEUC, and in an obvious effort to buy access to the PJM market, Grain Belt was able to secure a contract with MJMEUC only by selling its product at rates drastically below Grain Belt's actual cost of providing the service. It thereby manufactured a contrived "need" for its product where none had previously existed. In fact, during the course of the 2016 proceedings the combined MJMEUC rate amounted to only 20% of Grain Belt's

[4] Reply Brief of Grain Belt (EFIS 545) pp. 3-7. See also Show Me's Statement of Position on remand (EFIS 306) p. 1.
[5] *See McCracken v. Wal-Mart Stores East*, 298 S.W.3d 473, 476 (Mo. banc 2009) (stating that "Lack of subject matter jurisdiction is not subject to waiver; it can be raised at any time, even on appeal.")
[6] Tr. 846 lines 18-22; Tr. 848 line 17 – 849 line 11; Tr. 989 lines 20 - 25; Tr. 990 lines 1-6; Tr. 1041, lines 6-19; and Tr. 990 lines 9-12 (as discussed in the MLA's Initial Brief from the 2016 proceeding, pp. 49-50).

estimated cost for delivering that power.[7] After the latest reduction for the second 100 MW for MJMEUC, that percentage is now even lower.

In the Tartan case, the Commission found a need for the proposed natural gas pipeline in part because the customers had approached the pipeline about the possibility of providing the service, as opposed to the pipeline soliciting the customers.[8] If this is "strong evidence of need", as the Commission concluded[9], it is only fair to say that when the seller must relentlessly pursue the buyer, then the opposite must be true.[10]

The MLA respectfully contends that the type of "need" created by Grain Belt in inducing MJMEUC to buy its product is not a true "need" for the service in the sense envisioned in the *Tartan* case. By analogy, it seems safe to say that not every family in Jefferson City truly "needs" to own a Cadillac. But if a dealer were for some reason to offer a Cadillac to everyone in the City for say $5.00, would the fact that virtually every family in the City was now driving a Cadillac suddenly prove there really was a "need" for those cars after all?

To the contrary, the MLA submits that actual "need" for any product cannot be artificially created by practically giving it away, as Grain Belt has done here. "Need" is not the same as "Want".

Also, as mentioned in the MLA's initial brief on remand, the near-total lack of interest in the Grain Belt line over the past two years objectively demonstrates that its product is in fact not needed in Missouri.[11] In particular, as Ameren is no doubt aware, it

[7] Tr. 853 line 18 – 854 line 3; Tr. 853 lines 9-19; Tr. 855 line 15 – Tr. 856 line 23 (as discussed in the MLA's Initial Brief from the 2016 proceedings, p. 54)
[8] Tartan Case, slip op. pp. 10-11.
[99] *Id.* p. 11.
[10] See MLA's Initial Brief (IFIS 537) pp. 49-51.
[11] MLA and Show Me Initial Brief on remand, p. 15.

will inevitably be asked in a future proceeding why it chose some other option in its capacity planning process instead of utilizing the Grain Belt line. The answer surly will be that at normal rates from Grain Belt, it had one or more better options for fulfilling its needs for renewable energy. There is no reason to assume that at realistic capacity prices, some other load-serving entity in Missouri would find otherwise.

On the subject of "need", MJMEUC claims that the MLA "conceded that the project was the lowest cost renewable resource available to the MJMEUC members…."[12] That statement is not accurate.

To begin with, the only meaningful means to determine what MJMEUC might have saved by using the Grain Belt line is to compare MJMEUC's total cost of power from that line to MJMEUC's next best alternative at the time it signed the contract with Grain Belt.

The problem is, before MJMEUC signed the TSA with Grain Belt, it did not bother to solicit bids from any other party to replace the expiring Illinois coal contract.[13] Therefore, neither MJMEUC nor anyone else will ever know what the best alternative would have been to signing the TSA with Grain Belt. Moreover, MJMEUC did not even seek bids on the energy component of the Grain Belt package until more than two months after it signed the contract with Grain Belt.[14] Thus when they signed the TSA, MJMEUC had no alternative bids for either transmission or energy to compare to the cost of the Grain Belt project.

Accordingly, MJMEUC does not know, and never will know, what the best alternative would have been to signing the TSA with Grain Belt. Thus one cannot

[12] MJMEUC's Initial Post Hearing Brief (on remand), p. 4.
[13] Tr. 1050 line 8 – 1051 line 12.
[14] See Rebuttal Testimony of Joseph Jaskulski, Exh. 302, p. 18 lines 361-62.

possibly know what the savings would be from the MJMEUC contract with Grain Belt, compared to the alternatives which were never explored. Or indeed, without the benefit of competing bids at the time the TSA was signed, the best alternative to Grain Belt may have been even less expensive than signing with Grain Belt. And that has been the MLA's position from the outset: that it is impossible to meaningfully determine what savings, if any, MJMEUC might logically expect from the contract with Grain Belt.[15]

After signing with Grain Belt, MJMEUC tried to approximate the "savings" from the Grain Belt contract through a variety of different analyses. All were after-the-fact attempts to produce a proxy "savings" figure in lieu of the only one which would have been accurate. MLA's witness Mr. Jaskulski corrected one of those analyses, and found that the MJMEUC annual savings would amount, at best, to approximately $3 million.[16] However, neither he nor the MLA ever "conceded" that the actual amount of savings (or losses) from the TSA with Grain Belt will ever be quantifiable. That is the fault of no one but MJMEUC.

For the above reasons, the MLA respectfully submits that Grain Belt failed to prove that the need for the line in Missouri is anything but an illusion of its own making.

(2) and (3): Applicant's Qualifications and Applicant's Financial Ability. Whether or not these two criteria are satisfied will seemingly depend on whether the Commission looks solely to the qualifications and financial ability of Grain Belt and Clean Line, or whether it also considers the potential contributions from Invenergy.

[15] MLA's initial brief (EFIS 537) pp. 25-28.
[16] Surrebuttal testimony of Joseph Jaskulski, Exh. 307, p. 3 line 67 – page 5 line 10.

As the MLA argued in its initial brief on remand, with the elimination of Clean Line's entire workforce, and the dramatic downturn in its financial situation, Clean Line and hence Grain Belt no longer meet either the second or third of the Tartan criteria.[17]

In its own brief, Grain Belt essentially argues, instead, that in evaluating these two issues the Commission should rely on the ability and resources of Invenergy, and not merely Grain Belt and Clean Line.[18] Grain Belt's analysis on this point is faulty on several grounds.

First, they argue that in earlier stages of this proceeding the parties tacitly agreed that these two Tartan issues could be decided on the basis of Clean Line's abilities, and not simply those of the Applicant Grain Belt. In fact, Grain Belt points out several times that no party objected when the Staff analyzed this issue on the basis of Clean Line's resources, and not just those of Grain Belt.[19]

However, Clean Line is the ultimate legal owner of Grain Belt, and Clean Line had committed in sworn testimony to finance the development of the project on Grain Belt's behalf.[20] Therefore, for the MLA to have argued in the 2016 proceedings that the Staff and the Commission should have ignored the qualifications and support of Clean line would have been frivolous.

Grain Belt also cites five cases which it claims support the position that the Commission may look to the qualifications and financial ability of Invenergy in deciding whether the Applicant meets the second and third of the Tartan criteria.[21] However, in all of these cases the Commission apparently relied upon support from a company which had

[17] Initial Brief on remand, pp. 16-20.
[18] See generally Grain Belt's Initial Brief on remand, pp. 13-18.
[19] Initial brief on remand, p. 14.
[20] Direct testimony of Mr. Skelly, Exh. 100, p. 16 lines 3-5.
[21] See Grain Belt's brief on remand, pp 13-14, and 16-18.

a legal ownership interest in the Applicant, such as that of a parent corporation. Thus none of those cases support the reliance in this case upon the resources of a third party such as Invenergy.

In the first case, *State ex rel. Intercon Gas, Inc. v. PSC*, 848 S.W.2d 593, 598-99 (Mo. App. 1993) the Court noted that the financial viability of the Applicant MoGas was demonstrated by looking to the resources of its string of parent companies, Omega, ESCO energy, and Edisto Resources.

The second case cited by Grain Belt is *Ameren Transmission Co. of Illinois*, Report & Order at 3 (Jan. 10, 2018).[22] However, Grain Belt did not include any further citations for that case, such as the docket number. Thus even after a search through EFIS, the MLA was unable to locate that particular case. However, it seems safe to assume that the Commission was relying there on the parent company, Ameren, for support of the project. This would be in accord with the next case cited by Grain Belt.

In *Ameren Transmission Co. of Illinois*, Report & Order at 22-23, No. EA-2015-0146 (Apr. 27, 2016), Grain Belt acknowledges that the Commission was simply relying on the support of the parent company, Ameren Corp.[23]

In *re Transource Missouri, LLC*, Report & Order at 12, No. EA-2013-0098 (Aug. 7, 2013) Transource Missouri, the Applicant in that docket, was a direct subsidiary of Transource Energy, LLC, which in turn was established by Great Plains Energy (the parent corporation of the two Transource companies) and American Electric Power.[24]

The final case relied upon by Grain Belt for this proposition is *Tartan Energy*. As the MLA explained in its initial brief on remand, p. 16, this was another case where the

[22] *Id.* p. 13.
[23] Grain Belt brief, p. 13.
[24] Report and Order, p. 11.

Commission relied on the people and organizations with a direct ownership interest in the Applicant.

In short, all of the cases cited by Grain Belt on this issue merely support the reliance on the resources of Clean Line, and not those of a third party with no ownership in the Applicant.[25] Thus based on Grain Belt's own analysis, it is asking the Commission to take a position here for which there apparently is no precedent.

Along the same lines, the NRDC and Sierra Club cite the case of *Love 1979 Partners v. PSC*, 715 S.W.2d 482, 489 (Mo. banc 1986). They claim, without explanation, that the case "is precedent for approval of a project that is contingent on a transfer of assets."[26] With all due respect to opposing counsel, after several readings of the page they cite, and indeed the entire case, the MLA is at a loss to find anything in that case which is at all applicable to the issue at hand.

Grain Belt also relies heavily on this issue on the testimony of Staff.[27] However, that testimony ultimately hurts Grain Belt more than it helps them. Mr. Murray devoted almost his entire testimony to discussing the financial resources of Invenergy, and not those of Clean line or Grain Belt. And he strongly implied that Grain Belt was financially qualified to complete the project only as long as the resources of Invenergy were also included in the equation.[28]

At no point did Mr. Murray state or imply that Clean Line and Grain Belt were capable on their own of meeting the third Tartan criteria. In fact, he expressly stated that

[25] This potentially might not include the second case relied upon by Grain Belt, which the MLA has not been able to locate.
[26] Joint Brief on Remand of NRDC and Sierra Club, p. 4.
[27] Grain Belt's initial brief on remand, p. 14-18.
[28] Revised Staff Supplemental Rebuttal Report, Exh. 208, p.7 lines 1-8 and 12-18; p. 8 line 8 – p. 9 line 7.

with appropriate conditions to a CCN, "Grain Belt, under Invenergy ownership, still has the financial ability to be granted a CCN…."[29]

Grain Belt throws a minor hiccup into this issue by claiming Staff concluded that Grain Belt "is financially capable to construct the Project."[30] However, the source cited by Grain Belt for this proposition clearly shows that the quotation excerpted by Grain Belt was from Staff's Rebuttal Report in the 2016 proceedings. It was not a statement of Staff's current position, as reflected in the Supplemental Rebuttal Report filed by Staff this past December.[31] Grain Belt's error is confirmed by Staff's own testimony.[32] Accordingly, the MLA stands by its contention that there is no evidence that Clean Line and/or Grain Belt are financially capable of constructing the proposed project.

A more fundamental problem with Grain Belt's argument on this point is that it is once again taking for granted that future decisions of the Commission will be made in Grain Belt's favor.[33] Specifically, before the sale of Grain Belt to Invenergy may close, those parties need not only the CCN in this proceeding, but also the permission of the Commission for the sale of the Grain Belt project to Invenergy in a case which has yet to be filed.[34] If that sale is not approved, then of course Grain Belt never gains access to the resources of Invenergy.

Thus in asking the Commission to decide the two Tartan criteria on the basis of Invenergy's expertise and stronger financial status, they are necessarily asking the

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[29] *Id.* p. 9 lines 8-9.
[30] Grain Belt initial brief on remand, p. 24.
[31] See Revised Staff Supplemental Rebuttal Report, Exh. 208 or 211, p. 6 lines 11-14.
[32] *See* Staff's Initial Brief, p. 24, first full par.
[33] In the 2016 proceedings Grain Belt told the Illinois Commission it had already received the consent of this Commission for the line, when in fact the Commission had not yet issued its decision. Tr. Vol. XV, p. 887 line 15 – page 889 line 9.
[34] *See,* e.g., Revised Staff Supplemental Rebuttal Report, Exh. 208, p. 6 lines 16-20; and Schedule KZ-3 to supplemental direct testimony of Mr. Zadlo, Exh. 145, Article 6, Section 6.1.1(c)(v).

Commission to assume that it will later approve the sale of Grain Belt to Invenergy. And this request is being made by Grain Belt before the Commission has even seen or heard a word of evidence in the case which will decide that issue.

This is particularly presumptuous on Grain Belt's part, in that they have stated unequivocally that the Commission does not even have the authority to approve the proposed sale which they now take for granted will be approved.[35]

Even if Grain Belt successfully manages to disavow its earlier position, which seems unlikely,[36] it is totally inappropriate for Grain Belt to even suggest to the Commission that it should assume it will approve the sale of Grain Belt to Invenergy before that case is even filed.

Perhaps Grain Belt feels justified in doing so by claiming that the "sale" case is not likely to be contested.[37] That assumption is certainly questionable, but in any event it does not justify Grain Belt's implicit request that the Commission should assume it will decide that case in Grain Belt's favor.

Grain Belt is not the only party to assume how the Commission will rule in a case which has yet to be filed. Renew Missouri wrongly declared that Invenergy is now the new owner of Grain Belt.[38] And even Staff claims that because Grain Belt and Invenergy will later file an application for approval of the sale, "a new Tartan analysis must focus on Invenergy rather than Clean Line."[39]

Despite the prognoses of what the Commission will do in some unfiled case, as

[35] Reply Brief of Grain Belt, EFIS 545, p. 43.
[36] *State ex rel. Intercon Gas, Inc. v. Public Serv. Comm'n,* 848 S.W. 2d 593, 600 and f.n.4, 602 (Mo. App. 1993) (holding that a position conceded by a party at the Commission proceedings may not be changed on appeal).
[37] Notice of Intended Case Filing, Case No. EM-2019-0150, par. 8.
[38] Renew Missouri's Remand Brief, p. 4.
[39] Staff's Initial Brief, p. 11.

matters now stand there is no basis for granting a CCN to the Applicant on the basis of speculation about its possible access to Invenergy's resources.

(4) Economic Feasibility of Proposal. Grain Belt supports its position on this issue primarily with broad generalizations about the market for wind generation.[40] And while it contends that "the economic feasibility of the Project continues to be strong"[41], it does not even attempt to make a case for the economic feasibility of the Missouri segment of the line, without access to the PJM market.

As the MLA and Show Me discussed in their initial brief on remand, there is a definite possibility that the line will ultimately terminate in Missouri, thereby precluding access to the very markets which could make the project economically feasible.[42]

As the NRDC and Sierra Club suggest, Missouri might be a "loss leader" for Grain Belt. But as they then note, according to the concurring opinion the project relies for its economic viability on the higher prices in the PJM market.[43] But of course if the project cannot reach the PJM market, it is left only with the loss leader segment of the line in Missouri.

Grain Belt also agrees that "it was the 3500 MW portion of the Project to be sold in the PJM that demonstrates the financial viability of the project overall.[44]

In addressing this issue, MJMEUC contends that "the non-discounted FERC Grain Belt rate is less than the cost of moving energy from SPP to MISO."[45] To the

[40] Initial Brief on remand, pp. 21-23.
[41] *Id.* p. 23.
[42] Initial Brief on remand, pp. 23-27.
[43] Joint Brief on Remand of NRDC and Sierra Club, p. 2.
[44] Grain Belt Initial Brief (EFIS 529) p. 36.
[45] MJMEUC's Initial Post-Hearing Brief (on remand), p. 6.

extent that may once have been true, at this point we have no idea how the "normal" rate on the Grain Belt line will compare with service from SPP to MISO.

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_____**[46] But Mr. Zadlo testified that at this point they do not know what their normal rate will be for the sale of capacity from Kansas to Missouri.[47] Thus MJMEUC's assertion about the relative cost of the normal FERC rate compared to the SPP-to-MISO cost is not supported by the record.

On this fourth criterion, the Staff testimony supports the MLA's position. As stated in the Revised Staff Supplemental Rebuttal Report:

> since Grain Belt has not completed the RTO studies, the costs to integrate Grain Belt's converter station are unknown, therefore there continues to be insufficient information to conclude that the Project is economically feasible.[48]

And the underlying facts of that statement remain true, despite any commitments which Grain Belt has made to keep Staff informed of future developments on this matter.

Accordingly, for the foregoing reasons Grain Belt has failed to meet its burden of proving that the project will be economically feasible, particularly because Grain Belt and Invenergy may be unable (or unwilling) to extend the line beyond Missouri.

(5) Promotion of the Public Interest. The MLA and Show Me have only one comment to add to what they said in their initial brief on remand. As Grain Belt agrees, in addressing the public interest criteria the objective should be to balance the benefits of

[46] Tr. Vol. 23, p. 2059 line 24 – 2060 line 2.
[47] Tr. Vol. 22 page 2043 line 23 – page 2044 line 4.
[48] Exh. 208, p. 11.

the line against the detriments of the line, taking into consideration the interests of the public as a whole.[49]

Yet sadly, with one possible exception,[50] neither Grain Belt nor any other party makes any mention whatsoever of the need to consider the true-to-life personal and financial hardships which will befall those living on or near the proposed right-of-way. Apparently, in their view, the negative effects on the landowners are not even worthy of mention.

4. <u>Recommended Conditions to the CCN</u>

In its initial brief on remand, the MLA addressed the need for five conditions to a CCN which were not covered or not adequately covered by the agreements between Staff and Grain Belt: (1) the need for a more detailed and robust decommissioning fund; (2) the incorporation of certain documents into the standard form easement; (3) preventing Grain Belt from reducing its highest and best offer for an easement if the matter of damages went to arbitration or to court; (4) two modifications to specific language in the easement; and (5) the need to address the uncertainty in Illinois.

All but the last of these proposed conditions were included in the MLA's Remand Statement of Position.[51] The condition which sought to mitigate the uncertainty in Illinois did not surface until the latest round of hearings, and thus was suggested for the first time in the MLA's initial brief on remand.[52]

While Grain Belt could not have been expected to address the last of these proposed conditions in its initial brief on remand, it chose to ignore the MLA's position

[49] Grain Belt initial brief (EFIS 529) p. 26, 52-53.
[50] Staff's Initial Brief (remand) at p. 5, quoted from the concurring opinion regarding the commissioners' sympathy for the sincere concerns expressed by the landowners during the local public hearings.
[51] See Conditions numbered there as 2, 3, 5 and 8.
[52] See MLA's initial brief on remand, p. 38.

as to its proposed conditions (1), (3) and (4) as well. Accordingly, as to those three issues, the MLA cannot reply to what Grain Belt did not say. And once again the MLA will again have no opportunity to address any arguments raised by Grain Belt in its reply brief regarding these issues. That leaves only one condition to which Show Me and the MLA may respond here.

As to item (2), as listed above, Grain Belt says it has agreed to incorporate the documents in question into its easement agreement with landowners.[53] However, the MLA contends that this agreement should be formalized by including it as a condition to the CCN.[54] Without doing so, the agreement runs the risk of being lost down the road in the multitude of material already filed in this case.

5. Waiver of Reporting Requirements. Neither the MLA nor Show Me has taken a position on this matter.

6. Conclusion. The parties supporting the proposed line have made no arguments in their initial briefs on remand which detract in any significant way from the points made by the MLA and Show Me in their own initial brief on remand. Accordingly, the MLA and Show Me renew their requests for relief as set forth at page 38 in the Conclusion of their initial brief on remand.

Respectfully submitted,

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[53] Initial brief on remand, p. 31
[54] Initial brief on remand, p. 33-34.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 16th day of January, 2019.

/s/ Paul A. Agathen
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