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-2014-0207

REPLY POST-HEARING BRIEF OF APPLICANT GRAIN BELT EXPRESS CLEAN LINE LLC

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Grain Belt Express Clean Line LLC ("Grain Belt Express" or "Company"), pursuant to the Missouri Public Service Commission's June 18, 2014 Order Setting Procedural Schedule and Other Procedural Requirements, files this Reply Post-Hearing Brief.

I. Introduction.

Strong support for the Company's Application for a line Certificate of Convenience and Necessity ("CCN") was expressed in briefs submitted by Infinity Wind Power, TradeWind Energy, Inc., Wind on the Wires, The Wind Coalition, the Sierra Club, and the IBEW Unions. An amicus curiae brief in support of Grain Belt Express was also submitted by Energy for Generations, LLC. Reflecting important elements of the energy industry and the public, they each stressed the need for the transmission service that the Company would provide, the economic feasibility of the Project, and the variety of public interests that would be served.

The opposition briefs of the Missouri Landowners Alliance ("MLA") and the Eastern Missouri Landowners Alliance, d/b/a Show Me Concerned Landowners ("Show Me") focused attention on three of the five CCN factors considered by the Commission, but do not challenge the qualifications of Grain Belt Express to own and operate the proposed Missouri Facilities, or the financial resources to support those operations. Staff has acknowledged that the Company

does possess the necessary operational and financial qualifications. See Staff Brief at 21-22. While the Missouri Farm Bureau ("Farm Bureau") and United for Missouri ("UFM") opposed the Company's Application, they do so primarily for reasons relating to the use of eminent domain.[1]

Consequently, Grain Belt Express will devote this Reply Brief to countering the legal arguments asserted by the opponents, and to demonstrate that the overwhelming weight of the factual evidence supports the granting of a line CCN because the Grain Belt Express proposal fulfills a needed service, is economically feasible, and is in the public interest.

A. Grain Belt Express is a Public Utility and may be Granted a CCN in Missouri.

While certain intervenors make much of the fact that Grain Belt Express will have no Missouri retail customers, it is, indeed, a public utility.[2] Moreover, the Commission does grant CCNs to companies that serve no retail customers in Missouri and provide only wholesale transmission service. Staff recognized this, noting that the Project provides an "important link" in Missouri such that it is subject to this Commission's jurisdiction. See Staff Brief at 16.

The term "public utility," defined in Section 386.020(43),[3] includes electrical corporations under Section 386.020(15). An "electrical corporation" is defined broadly and includes every corporation owning, operating, controlling, or managing any "electric plant." Electric plant is defined in Section 386.020(14) as "all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the

[1] The Reichert/Meyer intervenors oppose the Application mainly on grounds related to certain real property that they each own in Chariton County. See Reichert/Meyer Brief at 4-16. The brief of Rockies Express Pipeline LLC proposed conditions to any CCN granted by the Commission at pages 5-10, but did not oppose the Application.
[2] The Staff of the Commission agrees. See Staff Brief at 16-17. The Company is already a public utility at FERC and in Kansas and Indiana. See Company Brief at 6-9.
[3] All statutory references are to the Missouri Revised Statues (2000), as amended, unless otherwise noted.

generation, transmission, distribution, sale or furnishing of electricity for light, heat or power … [emphasis added]."

The Commission has "general supervision" of all "electrical corporations" that have authority under the law or any charter or franchise "to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality, for the purpose of ... furnishing or transmitting electricity for light, heat or power, or maintaining underground conduits or ducts for electrical conducts, … and all gas plants, electric plants ... owned, leased or operated by any ... electrical corporation ...." See § 393.140(1).

Under Section 393.170.1, an electrical corporation must obtain a certificate of convenience and necessity ("CCN") from the Commission before it can begin construction of an electric plant, which includes both transmission and distribution systems as well as generating facilities. See § 386.020(14).

The Commission has previously granted CCNs to public utilities that have no Missouri retail customers and for projects that provide only wholesale transmission service. In 2001 IES Utilities, Inc. ("IES") requested that the Commission issue it a CCN to construct and operate a transmission line in Clark County or waive the requirement in Section 393.170 that it receive such a certificate. IES subsequently changed its name to Interstate Power and Light Co. ("IPL"). Although this transmission line would not be used to serve any customers in Missouri, and would rather provide an alternative transmission source to serve the continued load growth in and around Keokuk, Iowa, the Commission found that it did have authority to require that IPL obtain

a CCN.[4] The Commission found that it was necessary and convenient for the public interest for IPL to construct and operate the proposed transmission line, and therefore granted the CCN because it found that IPL's proposed transmission line was necessary to provide reliable electric service to IPL customers residing exclusively outside Missouri.[5] While the Commission found that the requirements for a CCN were met even where the service was for Iowa customers only, the Grain Belt Express Project provides benefits to customers in Missouri ***and*** elsewhere.

In 2007 the Commission granted a CCN to ITC Midwest LLC ("ITC") as part of its order authorizing IPL to transfer those transmission line assets in Clark County to ITC.[6] Again, no Missouri retail customers are served from this transmission line. Nevertheless, the Commission "conclude[d] that ITC's ownership of the proposed transmission line is both necessary and convenient for the public service because by owning that line ITC will continue to serve customers in the Keokuk, Iowa area that IPL currently serves."[7] The Commission further waived certain reporting requirements imposed on utilities serving retail customers because ITC would have no retail electric customers in Missouri and rates for the transmission line would be set by FERC.[8]

ITC Midwest, a Michigan LLC and wholly owned subsidiary of ITC Holdings Corp. that was organized to acquire the high-voltage electric transmission assets of IPL, is an electrical

[4] In re IES Utilities, Inc., Order Granting Certificate of Public Convenience and Necessity, Case No. EA-2002-296 (2002).
[5] Id.
[6] In re Interstate Power & Light Co., Order Granting Certificate of Convenience and Necessity, Granting Variances from Certain Commission Rules, and Authorizing Sale of Assets, Case No. EO-2007-0485 (2007).
[7] Id. at 4.
[8] Id. at 5-6.

corporation under Missouri law because it owns and operates "electric plant," which includes property used for the transmission of electricity, and is therefore a "public utility."[9]

As recently as last year, the Commission granted a line CCN to Transource Missouri, LLC, a company established to build wholesale regional transmission projects within SPP, as well as other regional transmission organizations ("RTOs").[10] The two Missouri projects for which the Commission granted Transource Missouri a CCN are regional, high-voltage, wholesale transmission projects.[11] Like it did in the ITC Midwest case, the Commission waived certain reporting requirements as Transource Missouri would have no Missouri retail customers.[12]

While the Commission has found projects to be necessary or convenient for the public service that serve members of the public outside of Missouri, Grain Belt Express exceeds this threshold because the Project will provide transmission service directly for public use in Missouri and will provide substantial public benefits in Missouri. It, therefore, meets an even higher standard than that set by the Commission in prior CCN cases.

II. The Missouri Facilities Are Necessary or Convenient for the Public Service.

The Commission articulated the specific criteria to be used when evaluating applications for CCNs in the Tartan case, where Tartan Energy Company filed an application for a CCN to construct gas facilities and to provide natural gas services to retail customers in Missouri.[13] A review of Tartan and its progeny makes clear that those intervenors who challenge the need,

[9] Id. at 3-4. See §§ 386.020(14), (15), (43).
[10] In re Transource Missouri LLC, No. EA-2013-0098, Report and Order at 11, 2013 WL 4478909 (2013).
[11] Id.
[12] Id. at 17, 26.
[13] In re Tartan Energy Company, L.C., Case No. GA-94-127, Report and Order, 3 Mo. P.S.C. 3d 173, 1994 WL 762882, *1 (1994). See In re Intercon Gas, Inc., 30 Mo P.S.C. (N.S.) 554, 561 (1991).

economic feasibility, and public interest of the Project misapply the Tartan criteria and misconstrue the facts of this case.[14]

A. There is a Need for the Service.

1. Legal Standard.

The Missouri Court of Appeals has held that necessity does not require that the improvement be "essential" or "absolutely indispensable."[15] It simply means that the "additional service would be an improvement justifying its cost."[16] Citing the Court of Appeals on this criterion, the Commission in Tartan found a need for the proposed service because natural gas was becoming one of the preferred alternative forms of energy in the central United States.[17] In determining need, the Commission declared:

> The availability of natural gas provides a new energy alternative which may lower energy costs and promote economic development. Natural gas may also provide an inviting alternative for industrial and commercial customers. In addition, the project itself will represent a major capital investment in south central Missouri, which will require the employment of workers during the construction phase of the project, and for the operation of the pipeline.[18]

In addition to supporting its finding of need almost entirely on the availability of natural gas as an alternative and potentially cheaper source of fuel, the Commission also described its public policy rationale behind promoting natural gas in its finding of need. It stated:

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[14] See Staff Brief at 20-37; MLA Brief at 4-39; Show Me Brief at 6-39; Farm Bureau Brief at 4-8; UFM Brief at 3-8, 10-17; Reichert/Meyer Brief at 2-4.
[15] State ex rel. Intercon Gas, Inc. v. PSC, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993).
[16] Id.
[17] Tartan, 1994 WL 762882 at *5.
[18] Id.

> The Commission also notes that as a general policy in recent years, it has looked favorably upon applications designed to spread the availability of natural gas throughout the State of Missouri wherever feasible.[19]

Accordingly, in determining the need for the Project, the Commission must look to the need for alternative sources of fuel, as well as public policy concerns. The open-access transmission service offered by the Company is clearly needed both to expand the availability of low-cost renewable wind energy in Missouri and beyond, as well as to meet the requirements of Section 393.1020, the Missouri Renewable Energy Standard ("RES").

UFM simply misstates the standard of need. See UFM Brief at 3. Citing a 1945 case, UFM poses a standard entirely absent from Tartan and subsequent cases, claiming that the Company must show "a failure, breakdown, incompleteness or inadequacy in the existing regulated facilities." See UFM Brief at 3. Not only does this case predate Tartan by a half century, but it is factually distinct from this case. In People's Telephone Exchange v. PSC, 186 S.W.2d 531 (Mo. App. K.C. 1945), the Court of Appeals upheld the Commission's denial of a CCN to a telephone company that proposed to provide duplicate telephone service in Nodaway County.[20] However, Grain Belt Express is proposing to provide a much needed transmission service that is necessary precisely because of a lack of transmission infrastructure.

MLA also cites inapposite and outdated case law on the need criterion. See MLA Brief at 27-28. Searching for support in State ex rel. Eldon Miller, Inc. v. PSC, 471 S.W.2d 483 (Mo. App. K.C. 1971), MLA claims that Grain Belt Express has failed to demonstrate "that the citizens of Missouri need the proposed Grain Belt project." See MLA Brief at 27. Yet the

[19] Id.
[20] People's Telephone Exchange v. PSC, 186 S.W.2d 531, 536 (Mo. App. K.C. 1945).

record is replete with evidence of need in Missouri, and the case MLA cites is dramatically different on the facts.

In Eldon Miller, applicant Slay Transportation Company applied for a certificate authorizing unlimited authority for irregular route transportation of bulk commodities intrastate.[21] Mr. Slay, the company's president, testified that "he did not have the slightest idea what commodities might be transported under the authority and if any commodities were transported, he had no idea where they would be shipped from or where they would be shipped to. His testimony gave no indication whatsoever as to what services might be performed by his company if the requested authority, or any part thereof, was granted."[22] The witness from the Monsanto Company, for whom the applicant would be shipping commodities, testified that Monsanto had plans to establish new facilities in Missouri. However, he refused to specify any points being considered for such expansion, and gave no indication as to when any new facilities would be constructed. He testified that there had been occasions when Monsanto had difficulties with or had been unable to secure transportation from existing carriers, but was unable or unwilling to give specific information on this subject.[23]

Given these facts, it is not surprising that the Commission found the applicant's proposal to be "pure 'pie in the sky'"[24] and held that what is requested is merely "a blank check which they can fill in at their convenience to authorize service when and if they desire it at some unknown point and at some unknown time in the future."[25] That is not the case here. Grain Belt Express has clearly specified what commodity will be shipped over this Project and identified the

[21] State ex rel. Eldon Miller, Inc. v. PSC, 471 S.W.2d 483, 484 (Mo. App. K.C. 1971).
[22] Id. at 485.
[23] Id. at 486.
[24] Id. at 487.
[25] Id. at 487-88.

geographic points of service. The evidence clearly shows that the Project will ship low-cost wind energy that originates in western Kansas to a point in Ralls County, Missouri, as well as a point at the Illinois-Indiana border. Multiple wind generators have testified that they are prepared to build their projects if the transmission is available. Grain Belt Express has proposed where the facilities will be located and when they would be constructed, and it has explained how its service will help Missouri meet its RES and the broader need for low-cost clean energy. In short, Grain Belt Express has proposed a definitive Project that meets a distinct and actual present need.[26]

2. The Evidence Shows there is a Need for the Service.

Staff and certain intervenors argue that Grain Belt Express has not demonstrated that there is a need for the service it proposes to provide, however, they ignore the clear evidence that shows there is a demand for new, low-cost wind power in Missouri and other states.

Staff's comments regarding need are contained in only two paragraphs that constitute less than one full page. See Staff Brief at 20-21. Furthermore, Staff noted that it "has recommended conditions that may allow Grain Belt Express to show it meets" the Tartan factors, including the need for the service. Id. at 20. Although Staff finds the Company's reliance upon the Missouri RES to be questionable, it overlooked Ameren Missouri's IRP Report which showed that over 1000 MW of low-cost renewable energy will be needed. See Ex. 147; Ex. 334. Given Ameren's

[26] MLA's reliance on the decision of the Arkansas Public Service Commission on a different petition submitted by a different Clean Line project over four years ago in May 2010 is equally irrelevant. See MLA Brief at 23-24. While that Commission noted a lack of present plans to serve customers in Arkansas, the record in this case details the plans of Grain Belt Express to serve customers in Missouri. When Plains and Eastern Clean Line LLC presented its case to the Arkansas Commission, a delivery converter station in Arkansas was not contemplated. The Application submitted to the Arkansas Commission did not include a proposed route and no request for information from wind generators seeking capacity on the line had been completed. See Application, In re Plains and Eastern Clean Line LLC, No. 10-041-U (Ark. P.S.C., May 13, 2010). Stronger and more appropriate parallels should be drawn between the facts of this case and the orders received by Grain Belt Express from the Kansas and Indiana Commissions, as well as by Rock Island Clean Line LLC from the Illinois Commission.

statement that it actually needs 1,003 MW of "New Wind" generation for the period 2015-2024 to meet its full RES goal, the Grain Belt Express Project would be in a position to supply this need without exceeding the rate cap. See Tr. 1352-53 (Berry); Ex. 147 (p. 2).

Staff's only other point on this topic is that the wind farms in western Kansas that would supply energy to the Project are dependent on a "project finance" model. See Staff Brief at 21. However, the evidence shows there is significant demand for renewable energy in Missouri, as well as in the MISO and PJM regions, and that many wind generators seek to build wind projects in western Kansas but need new transmission infrastructure. How these wind generators finance their projects is irrelevant to their need for the Grain Belt Express Project. See Ex. 118 at 23-24 (Berry Direct); Ex. 700 at 3-12 (Goggin Rebuttal); Ex. 725 at 5-6 (Costanza); Tr. 884-84, 887-88 (Langley); Tr. 947-48 (Goggin).

MLA and Show Me claim that the Company has not shown that there is a need for the service because there are no Missouri customers who have signed up for the proposed service. These arguments ignore the need demonstrated by Ameren Missouri's 2014 IRP, the resolution passed by the City of Columbia, the statements in the 2013 annual report of Associated Electric Cooperative Inc. acknowledging its interest in "economical, fixed-price wind energy," the continued retirement of coal plants, Missouri utilities' past purchases of wind energy, the cost-effectiveness of wind energy, and increasingly stringent environmental regulations being implemented and proposed by the Environmental Protection Agency. See Company Brief at 13-17.

MLA, Show Me and UFM cite the fact that no Missouri load-serving entity ("LSE") has signed a contract to take service from the Project. However, that is not surprising since Grain

Belt Express possesses only two of the four CCN's it needs from state commissions to provide that service. Grain Belt Express must obtain the relevant state approvals and know the route it is authorized to build before it can commit to a binding schedule and cost of service. It would hardly be prudent for Missouri utilities to commit to buy the Company's service until the necessary permits for the service are obtained. More significantly, no LSE has opposed this Application and that the utilities who did intervene in the case did not oppose the Project.

Both MLA and Show Me appear to acknowledge the need for the Project in states east of Missouri, yet seem to argue that the sale of transmission service and renewable energy there will not benefit Missouri. First, it is clear that Project will directly serve Missouri. The Company will construct a converter station in Ralls County to deliver 500 MW into Missouri, and the Company has agreed to condition its CCN on installing this converter station. The Ameren IRP and other evidence provided by the Company show that there is a need for low-cost renewable energy in Missouri. Second, the Project's additional converter station on the Illinois-Indiana border to deliver 3,500 MW to PJM is an additional benefit, not a detriment, to Missouri. Higher prices in PJM will allow Grain Belt Express to charge less for its service to Missouri and ensure the Project is economically feasible. See Ex. 120 at 49-50 (Berry Surrebuttal). The total demand for renewable energy in MISO and PJM states in 2020, only six years away, is approximately 175 million MWh. Id. at 48. Since renewable energy as well as RECs can be bought and sold across states, these commodities will be part of a regional market, just like the existing regional market for wholesale electricity. Id. The introduction of such low-cost generation into other areas in the MISO and PJM market will lower prices to all states in the region, including Missouri. Consequently, the Project will result in lower adjusted production

costs, lower demand costs, and lower wholesale electric prices for Missouri. See Ex. 117 at 3-7 (Cleveland Surrebuttal); Ex. 120 at 5-6, 58 (Berry Surrebuttal).

Although MLA and Show Me complain that Mr. Berry did not include a specific analysis of the Missouri rate cap in his Levelized Cost of Energy model, he did something far more valuable: He demonstrated that the Project's delivered cost of energy is cheaper than any other new generation resource. His analysis, confirmed by that of Mr. Cleveland, shows that the rate cap issue is beside the point since the Project can actually ***lower*** rates in Missouri. See Tr. 1352-53 (Berry); Ex. 120 at 18-20 (Berry Surrebuttal); Ex. 117 at 5-6 (Cleveland Surrebuttal).

Finally, several intervenors continue to argue that the Project should have participated in an RTO planning process to demonstrate that it is needed, but they ignore the clear evidence that no such process exists. As Staff fully recognized, neither MISO nor PJM have established a process to determine the need for merchant transmission projects that span multiple regions and that do not seek to recover their costs through an RTO cost-allocation process. See Tr. 1588-90 (Kliethermes). MLA witness Jeffrey Gray admitted that there is no existing RTO process to evaluate "purely a renewable" and inter-regional shipper-pays proposal like the Grain Belt Express Project. See Tr. 1588-90 (Gray). Similarly, Staff witness Daniel Beck and Show Me witness Dr. Proctor acknowledged that there is no RTO process in place for evaluating proposals like the Grain Belt Express Project. See Tr. 1746-47 (Beck); Tr. 1387 (Proctor).

The arguments raised by opposing parties do not offer any persuasive facts to dispute the Company's evidence that there is a need in Missouri and in the region for the Grain Belt Express Project, and that it fulfills the need for transmission service to supply low-cost renewable energy.

B. The Project is Economically Feasible.

The economic proposition put forth by Grain Belt Express is to deliver electricity generated by wind farms that produce no emissions with zero-cost fuel over an HVDC transmission line at a cost that is lower than all other competing resources. The line is funded entirely by the Company and its investors, with no financial risks to electric ratepayers. The questions raised by Staff and certain intervenors have failed to raise any serious issue regarding the economic feasibility of the Project.

1. Legal Standard.

The Commission in the Tartan case found the proposed service to be economically feasible simply because the Tartan investors bore the economic risk of that project.[27] Admonishing the applicant's opponents for "seek[ing] to require Tartan to prove that its application is virtually risk-free," the Commission acknowledged that a risk-free project is "an impossibility."[28] It acknowledged that "estimates will always remain just that -- estimates" and that one cannot calculate actual costs for a new entrant "since the actual costs are not and cannot be known with any certainty until the company is up and running."[29] Although Tartan's cost estimates of its service were a contested issue, the Commission stated that "in this case Tartan bears most of the risk if it has underestimated the economic feasibility of its project, and the public benefit outweighs the potential for underestimating these costs."[30]

As noted by Staff, the Commission rejected a challenge to the economic feasibility of a proposed project that was "assiduously pursued" by Staff and the Office of the Public Counsel,

[27] Id. at *8, 10.
[28] Id. at *10.
[29] Id.
[30] Id., citing In re UtiliCorp United Inc., Report and Order at 6, Case No. GA-94-325 (1994).

finding that "[t]here is little question that UtiliCorp can suffer a complete loss on this project without appreciable damage to its Missouri operation or harm to its ratepayers."[31]

The Commission similarly rejected a challenge to the economic feasibility of a proposed project where ratepayers did not bear any additional risk when it recently granted a CCN to Ameren to site a coal ash landfill next to a generating plant.[32] In determining that Ameren's project was economically feasible, the Commission found that contamination concerns and remediation costs raised by intervenors who challenged the economic feasibility of the project on those grounds were not a concern, as "Ameren Missouri is self-insured and has supplementary insurance against specific risks associated with its different types of plants, including those with a coal ash landfill."[33] The only costs of the project the Commission considered were those that would be borne by Ameren's ratepayers, who would benefit from the reduced transportation costs of storing the ash in a landfill located close to the power plant where it is produced.[34]

Here the evidence shows that Grain Belt Express and its investors bear all risk associated with recovering the costs of the Project. See Tr. 1297-98 (Berry); Ex. 120 at 49 (Berry Surrebuttal). Staff agrees, stating that the Project "is a merchant project for which Grain Belt Express is assuming all of the market risk and will have no captive customers from which it can recover the project costs." See Staff Brief at 22.[35] And while Missouri ratepayers do not bear the cost of this Project, the record is replete with evidence showing that the cost to bring wind energy from western Kansas to Missouri and states farther east via the Project is the lowest cost

[31] In re UtiliCorp United Inc., Report and Order, Case No. GA-95-216 (1995). See Staff Brief at 19-20.
[32] In re Union Elec. Co., Report and Order at 16, Case No. EA-2012-0281, 2014 WL 3812102, at *1 (2014).
[33] Id.
[34] Id. at 20.
[35] Accordingly, Staff's arguments on economic feasibility are irrelevant. While the Company stands firmly behind its studies, whether its assumptions in the RTO market studies are true is irrelevant for the purposes of economic feasibility because if they are untrue, all losses will be borne by investors, not ratepayers, as was the case in Tartan.

solution when compared with wind generation from other states, building natural gas generation, and other resource options. Accordingly, the Project will decrease the generation component of wholesale costs paid by Missouri customers, resulting in lower rates for those customers who bear none of the risk. Clearly, the Project is economically feasible.

2. Grain Belt Express Business Model.

MLA and UFM have both raised questions regarding the business model and structure of the Company as a "private enterprise." See MLA brief at 14-16; UFM brief at 7, 14-16. First, it is clear under Missouri law that Section 386.020(15) contemplates that "every corporation, company, association, joint stock company or association, partnership in person," as well as other entities may become an "electrical corporation." Section 386.020(11) defines "corporation" to include "a corporation, company, association and joint stock association or company." A "company" includes limited liability companies like Grain Belt Express. See Ch. 347 (Mo. Ltd. Liability Co. Act); Application, Ex. 1. Entities like Grain Belt Express are eligible to become public utilities if they own, operate, control or manage "any electric plant." See § 386.020(42). For-profit, private enterprises like Kansas City Power & Light Co., Union Electric Co., d/b/a Ameren Missouri, and Empire District Electric Co. have served as electrical corporations and public utilities pursuant to these statutes for decades. See 2013 PSC Annual Report at 3, 18-19, 24.

Significantly, Missouri recognizes that businesses planning to operate as electrical corporations in the future are eligible to become public utilities. Any such business owning assets that are "used or *to be used* for or in connection with or to facilitate the … transmission … of electricity for light, heat or power" can become a public utility. See § 386.020(14) [emphasis

added]. Because it owns such assets and will provide wholesale transmission service, Grain Belt Express falls squarely within the legal definition of a Missouri public utility. As a public utility at FERC, the Company will file an open-access transmission tariff. See Grain Belt Express Clean Line LLC, 147 FERC ¶ 61,098, Ordered Para. (C) at p. 15 (2014); Ex. 118 at 9 (Berry Direct). Grain Belt Express has already been declared a public utility by the Kansas Corporation Commission and the Indiana Utility Regulatory Commission.

To demonstrate the viability of its proposal, Grain Belt Express used a cost-based approach in the Levelized Cost of Energy analysis ("LCOE") sponsored by Mr. Berry. Although MLA criticized the use of cost data (MLA Brief at 14), Show Me witness Dr. Proctor found this approach entirely proper. See Ex. 400 at 2 (LCOE "is an appropriate method").

Although uncertainty is part of any cost-benefit analysis, this Commission, as well as the utilities in Missouri, must make informed decisions about the future. This Project offers a more beneficial allocation of risk to the public than traditional utility capital projects. Because the Project will not be subject to RTO cost allocation or otherwise embedded in a regulated utility rate base, Grain Belt Express bears the risk of any decrease in benefits or cost overruns between now and when the Project begins construction. See Ex. 120 at 49 (Berry Surrebuttal).

Under the Grain Belt Express shipper-pays business model, all Missourians will be offered the opportunity to benefit from additional competition and lower prices without taking the risk that the Project's benefits are either lower or its costs are higher than expected. Id. Given the necessity to improve air quality and to reduce the emissions of coal-fired power plants pursuant to EPA regulations, the Project provides a means to comply with those mandates

without ratepayer-funded projects. See Tr. 1723 (Beck) ("would certainly be one alternative" for utilities to mitigate environmental compliance risk).

Any decision by a Missouri LSE to buy capacity of the Project would reflect the utility's judgment that the Project is a cost-effective means to meet their needs. See Ex. 118 at 30 (Berry Direct). The prudence of such decision would be subject to review by this Commission as part of its normal regulatory oversight, either in rate cases or fuel adjustment proceedings. See §§ 393.140(11), 393.150, 386.266.

Finally, to the extent that certain parties have suggested that the Company's ability to charge market-based rates would lead to unfair prices or unreasonable profits to investors, FERC has declared that it is responsible for "the justness and reasonableness of the rates" and, based upon its analysis, has concluded that "its rates will be just and reasonable." Grain Belt Express Clean Line LLC, 147 FERC ¶ 61,098 at 5-6 (2014). FERC noted that the Company "is assuming full financial risk for the project, has no captive customers, and neither Grain Belt Express nor any affiliate owns or operates transmission facilities in the same area served by the project." Id. at 6. Since customers will have the alternative of purchasing transmission from incumbent owners in the area, and "Grain Belt Express and its affiliates do not own or control any barriers to market entry or have any incentive to withhold capacity on the Project," FERC found that the requested negotiated rate authority "will result in just and reasonable rates for service on the project." Id. at 7.

3. Wind Generation Assumptions in the Levelized Cost of Energy Analysis.

Several parties criticized the Company's direct testimony for failing to specifically analyze wind energy that will be generated in MISO in states other than Missouri as alternatives

in its levelized cost of energy analysis. At the evidentiary hearing both Mr. Berry and Michael Goggin of the Wind Coalition testified that MISO wind was not a viable alternative to wind from western Kansas, given the likelihood of transmission congestion both now and in the future. See Tr. 945-46 (Goggin); Tr. 1356-57 (Berry) (congestion costs of northwest Iowa/southwest Minnesota wind at $10/MWh v. zero congestion costs of the Project). See also Ex. 120 at 32-35 (Berry Surrebuttal) (comparing specific Iowa/Minnesota wind farm congestion costs over $9/MWh with zero congestion costs for Project).

Notwithstanding these parties' objections, Grain Belt Express presented a complete analysis of MISO wind alternatives through additional levelized cost and production cost studies in the surrebuttal testimony of Mr. Berry and Mr. Cleveland. They demonstrated not only that western Kansas wind generation delivered by the Project is the cheapest alternative (Ex. 120 at 20 [Berry Surrebuttal]), but also that the Project reduces total demand costs, reduces total variable production costs, and lowers locational marginal prices ("LMPs") for Missouri compared to an alternative of MISO wind energy. See Ex. 117 at 5-6 (Cleveland Surrebuttal). See also Ex. 116 at 11-19 (Moland Direct).

MLA criticizes the Company's additional analysis regarding a MISO wind alternative, noting that Ameren Missouri's 2014 IRP did not identify Kansas wind as its preferred wind energy option. See MLA Brief at 6-8, 17-18. Ameren did not study the Grain Belt Express Project or any other new transmission additions from an inter-regional perspective. Therefore, the IRP is relevant to determine the demand for low-cost wind energy, but not the cost effectiveness of the Project versus distant MISO wind resources. The LCOE analysis of Mr.

Berry, especially as presented in his surrebuttal and at the evidentiary hearing, stands unchallenged.

Show Me criticized Mr. Berry's analysis, arguing that the Commission should instead rely on its analysis of MISO wind. See Show Me Brief at 26-29. However, it is Show Me's analysis that is flawed. On the issue of moving power through the AC system, Show Me's analysis is inconsistent and contradictory. It acknowledged that "congestion costs are very specific to the location of the generator and the load," but then asserted that its analysis of congestion costs is preferable to the Company's despite Show Me's failure to make any assumptions about either the location of the generation or load. See Show Me Brief at 28-29.

Show Me misleadingly claimed that Dr. Proctor's analysis of the MISO financial transmission rights auction, which covers ***all points*** within the MISO system, indicated the "probability" of congestion costs being higher or lower than a certain level between remote MISO wind generation and Missouri load. Id. at 29. As Show Me correctly emphasized, however, congestion costs are location specific. Thus, analyzing all points on the MISO system cannot lead to an assessment of specific congestion impacts. Therefore, Show Me's completely non-specific analysis is irrelevant to the question at hand, which is how much does it cost to move MISO wind generation to Missouri load. See Ex. 120 at 31-33 (Berry Surrebuttal).

The Company's analysis of the cost to move MISO wind energy to Missouri is more precise and reliable. First, Dr. Proctor made no specific assumptions about the location of MISO wind generation. Mr. Berry's analysis, on the other hand, analyzed wind farm congestion cost from northwest Iowa and southwest Minnesota, two areas with high wind potential and many wind farms installed to date. Second, Dr. Proctor made no specific assumption about the

location to which power must be moved from MISO wind farms. Mr. Berry assumed the power was moved to Ameren Missouri's load hub. Third, Dr. Proctor analyzed only flat blocks of power, while Mr. Berry based his analysis on actual data from MISO wind generation. Because of its greater detail regarding generator sources, load sink, and production profile, Mr. Berry's analysis of transmission costs from remote MISO wind is more reliable than Dr. Proctor's general observations. See Ex. 120 at 30-33 (Berry Surrebuttal).

Show Me also asserted that Mr. Berry arbitrarily chose certain Iowa and Minnesota wind farms for his MISO wind analysis. See Show Me Brief at 28. What Mr. Berry did was to select the wind farms located in the windiest parts of MISO relative to the Ameren Missouri load hub. See Ex. 120 at 32 (Berry Surrebuttal). This properly demonstrates that these wind farms experienced not only substantial congestion costs, but also have lower wind speeds than western Kansas, compelling the conclusion that the MISO wind alternative is not viable. Id. at 32-35. Mr. Berry's assumptions are far more precise than those of Dr. Proctor, who made no assumptions about the location of MISO wind generation at all. See Ex. 400 at 26-27 (Proctor Rebuttal).

Show Me also criticized Mr. Berry for analyzing the delivery of energy to the Ameren load, instead of to the Grain Belt Express converter station. See Show Me Brief at 29. However, such criticism makes little sense as there is no historical pricing data to analyze a converter station that has not been constructed. Therefore, analyzing congestion to Ameren's load hub is entirely appropriate, particularly since Dr. Proctor failed to make any assumptions about the load sink and entirely ignored issues of congestion and curtailment in MISO.

Both MLA and Show Me faulted Mr. Berry for using a 55% wind capacity factor for western Kansas wind. However, the record is clear that 55% is an appropriate figure to use for wind generation that will come online in 2018 or 2019 when the Project becomes operational. See Tr. 892-93 (Langley); 976 (Goggin); 1390 (Proctor).

Show Me argues that capacity factors equivalent to those in western Kansas can be obtained within the MISO footprint without considering the cost of major new transmission infrastructure. See Show Me Brief at 27-31. To the extent that MISO does have high capacity factors comparable to those in western Kansas, they are not located in Iowa or Minnesota where wind speeds rate are 8-8.5 meters/second. Wind speeds in the area of Dodge City, Kansas are 8.5-9.0 m/s. See Ex. 120 at 41-42 & Sched. DAB-13 (NREL wind maps of Kansas and Iowa) (Berry Surrebuttal). There is no evidence to suggest that large quantities of power are deliverable to Missouri from North or South Dakota, where wind speeds may be comparable to western Kansas. See Ex. 120 at 30-31 (Berry Surrebuttal). Moreover, no Missouri utilities have entered into power purchase agreements from wind farms in these states. See Ex. 118 (Berry Direct) at Sched. DAB-1 at 2.

MLA also criticized the wind generator data obtained from the Request for Information ("RFI") that Grain Belt Express collected in early 2014. See MLA Brief at 8-12. However, neither MLA nor any other party opposing the Application produced a witness with any expertise or knowledge to contradict these results. The RFI results are the only evidence in this case that estimate capacity factors that are specific to western Kansas using today's turbine technology. As Mr. Berry testified, fourteen wind developers responded to the RFI with a total of 26 wind projects constituting over 13,500 MW. The best 4,000 MW of the RFI responses showed an

average capacity factor of 52%. As confirmed by the wind generators in this case, it is reasonable to assume an additional 3% gain in average capacity factor by the time the Project is in operation due to the continuing advances in wind turbine technology. See Tr. 892-93 (Langley); Tr. 976 (Goggin). Even if no further advances in turbine technology are assumed, a 52% capacity factor for Kansas wind is sufficient for the delivered energy from the Project to be less expensive than all of the alternatives cited by Dr. Proctor. See Ex. 120 at 29.

MLA's assertion that in 2013 Kansas wind had an average capacity factor of 38.1% (MLA Brief at 12) is irrelevant to the Company's capacity factor assumptions. That figure is an average for the *entire* State of Kansas, not the areas of western Kansas where it is substantially windier and where the wind farms supplying energy to the Project would be located. See Ex. 310(HC) (Map depicting location of projects submitted to RFI). Other inconsistencies in capacity factor assumptions alleged by MLA also are resolved when the context of the data is considered. MLA's complaint that the RFI reflects the capacity factor of planned, rather than operating, wind farms, actually makes it more reliable. As several witnesses testified, wind farm capacity factors have improved dramatically in recent years with advances in technology. See Ex. 118 at 27 (Berry Direct); Tr. 891-93 (Langley); Tr. 976-77 (Goggin). Therefore, future wind farms using the latest technology will have higher capacity factors than today's wind farms (such as referenced in Ex. 124, the 2013 Wind Technologies Market Report). For this reason, the EWITS study cited by MLA (prepared in 2009 and updated in February 2011) also underestimates the capacity factors of new wind farms. See Ex. 135.

4. Other Issues Resolved by the Levelized Cost of Energy Analysis.

Although Staff raised several issues regarding the economic feasibility of the Project, all of these concerns are resolved by the levelized cost analysis presented by the Company. Staff states that Grain Belt Express cannot know its final interconnection upgrade costs or operational costs. See Staff Brief at 23. However, as discussed above, absolute cost certainty is not required to prove economic feasibility, and the Company's estimates are reasonable.

All RTO interconnection studies will be completed and submitted to this Commission. The MISO System Impact Study Final Report was recently issued and found that no additional upgrades are needed for the 500 MW injection near Ameren's Maywood Substation. See Ex. 150 at 5. The PJM System Impact Study was released in October and recommended upgrades estimated to cost $510 million. See Ex. 113 at 19 & Sched. AWG-10 (Galli Surrebuttal). Mr. Berry testified that all of these costs have been considered in the Company's latest cost analysis, and that the Project remains not only viable, but the lowest cost option. See Ex. 120 at 19-21 (Berry Surrebuttal). Mr. Berry's model also includes all of the estimated maintenance and operational costs of the Project, which have been discussed with its major shareholder, National Grid USA. The LCOE model reflects all of these estimates and shows the Project to be economically feasible. Id. at 21.

A final concern by Staff is that Grain Belt Express does not intend to export energy from PJM and MISO into SPP in western Kansas. Staff provided no facts or data indicating that there would be a need for injections from MISO or PJM into western Kansas, where coal generation already exists. As Mr. Skelly pointed out, such a business proposition of carrying "coal to Newcastle" is dubious at best. See Tr. 113-14 ("economically nonsensical"). Further, Mr.

Berry's LCOE analysis shows that selling west-to-east transmission capacity is sufficient to recover the Project's cost and deliver power at a competitive price.

The only party that offered any detailed objections to the Company's LCOE analysis is Show Me, which takes exception to a number of the Company's assumptions. However, Grain Belt Express has shown that even if Dr. Proctor's model is used, after making corrections to five key errors in his model, the Project is economically feasible and cheaper than a natural gas combined-cycle plant. See Ex. 120 at 24-30 (Berry Surrebuttal).

The first correction to Dr. Proctor's analysis is the Kansas capacity factor. As discussed above, a 55% capacity is a fully reasonable estimate, and even a lower 52% is sufficient for the Project is a least cost alternative. See Ex. 120 at 24-30 (Berry Surrebuttal). Dr. Proctor provided no evidence specific to western Kansas or current turbine technology to dispute Grain Belt Express' capacity factor. When asked by Chairman Kenney, Dr. Proctor conceded he had no basis to dispute the Company's 55% assumption. See Tr. 1390.

The second required correction is to add appropriate cost escalation to natural gas generation operational costs. Although Dr. Proctor argued that this escalation is unnecessary (Ex. 400 at 21-22 [Proctor Rebuttal]; Ex. 126 at 13 [DR Responses]), Show Me's Brief acknowledged that "the addition of EIA's inflation rate to the combined cycle O&M costs" is appropriate. See Show Me Brief at 31.

The third required correction is to add property taxes to Missouri and MISO wind generation. Show Me acknowledges that this correction, too, is necessary. See Ex. 120 at 29 (Berry Surrebuttal); Show Me Brief at 31.

The fourth correction is to correctly calculate the value of the federal production tax credit ("PTC"). Show Me's analysis did not account for the fact that the tax credit is actually an after-tax benefit. Although this correction is clear and appropriate, it is not essential to discredit Dr. Proctor's conclusions because the Company has shown that even without the PTC, the Project is less expensive than any other non-renewable alternative. See Ex. 120 at 27-29 (Berry Surrebuttal).

The final required correction is to remove an arbitrary 30% increase that Show Me applied to the Grain Belt Express transmission charge. This increase is indefensible because it was not applied to any other alternative. The Company's cost estimate already contains a 17% contingency, so no additional contingency is warranted, and Show Me has offered no credible support to increase the cost of the Project. See Ex. 120 at 24-30 (Berry Surrebuttal). The SPP report cited by Dr. Proctor actually confirms that the Company's current level of budget contingency is appropriate, given its suggested range of -20% to +20% for a project at the stage of the Grain Belt Express Project. See Ex. 127 at 14 (SPP White Paper); Ex. 404 at 12 (SPP Presentation); Ex. 120 at 25-26 (Berry Surrebuttal). Mr. Berry's LCOE analysis already includes all interconnection upgrades, incorporating the results of the PJM System Impact Study which estimated upgrades of $510 million. See Ex. 120 at 19 (Berry Surrebuttal); Ex. 113 at 18-19 (Galli Surrebuttal). Even with these additional expenses for which Grain Belt Express is responsible (Tr. 571 [Galli]), the Project's "delivered energy remains the lowest cost option." See Ex. 120 at 19 (Berry Surrebuttal).

In his surrebuttal Mr. Berry responds to the other issues raised by Show Me concerning his LCOE analysis. See Ex. 120 at p. 41-47. However, with respect to all of these other issues,

even using Dr. Proctor's position, the Project is the least cost alternative. Mr. Berry directly addressed Dr. Proctor's claims that he "confused" inflation rates with cost escalation. See Ex. 120 at 39-40. More significantly, Mr. Berry brought to light Dr. Proctor's bizarre assumption that gas generation O&M costs would not increase by even a penny over the plant's useful life and, therefore, actually decline in real-dollar terms as the plant ages. See Ex. 120 at 40 (Berry Surrebuttal).

Dr. Proctor's assumption regarding capacity credit for Kansas wind generators at 14.5% is unreasonably low compared with the 17.1% capacity credit used by Grain Belt Express. As Mr. Berry explained, nationally-recognized wind integration expert Robert Zavadil used a capacity credit of 33.0% for Grain Belt Express in his loss of load expectation ("LOLE") analysis. See Ex. 109, Sched. RMZ-2 at p.5. In order to be conservative, Grain Belt Express used 17.1% as its model's capacity credit, but could have justified a substantially higher figure. See Ex. 120 at 41 (Berry Surrebuttal).

Dr. Proctor failed to properly convert his carbon dioxide cost forecast to nominal dollars. Show Me defends this choice by questioning whether the forecast was in real dollars, alleging "there is no evidence in the record to support that assumption." See Show Me Brief at 25. In fact, the record is clear on page 1 of Schedule DAB-3 to Mr. Berry's Direct Testimony (Ex. 118). His statement of general inputs and assumptions confirms that Mr. Berry used a forecast by Synapse Energy Economics, an independent third party, which is expressed in real dollars. Therefore, the record does show that Dr. Proctor failed to convert the real-dollar forecast to nominal dollars. He escalated the price of carbon dioxide to 2019 with inflation, but applied no

inflation adjustment thereafter. As a result, Dr. Proctor's levelized price of carbon is too low. See Ex. 120 at 45 (Berry Surrebuttal).

Given the numerous problems with Dr. Proctor's analysis, and the fact that it is based on traditional utility rate methods inapplicable to merchant transmission lines and independent power producers, it must be rejected. See Ex. 120 at 23 (Berry Surrebuttal). Mr. Berry's LCOE analysis is more reliable, and even Dr. Proctor's analysis, once corrected, actually supports the Project's economic feasibility.

C. The Project is in the Public Interest.

Staff and certain other parties raise a series of issues that bear on whether the Grain Belt Express Project is in the public interest. Although interconnection studies and agreements must still be finalized, and engineering safety protocols and agreements must be established before the Project is constructed and operated, the Company has agreed that all of these matters will be finalized before construction begins. The absence of a particular study or agreement does not stand in the way of the Commission issuing a CCN for the Project which is in the public interest.

1. Legal Standard.

In the Tartan case, the Commission held that the public interest factor "is in essence a conclusory finding as there is no specific definition of what constitutes the public interest."[36] Opponents of the Grain Belt Express Project agree.[37] The Commission concluded, therefore, that "positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public

[36] Tartan, 1994 WL 762882 at *10.
[37] See Show Me Brief at 32; UFM Brief at 12.

interest."[38] Indeed, in Tartan's predecessor case, Intercon Gas, the Commission did not consider public interest as a distinct criterion for its CCN determinations.[39] Because the cost of a service offered by a new entrant is not entirely knowable, the Commission concluded that the public interest "question, therefore, becomes whether the estimates given are reasonable."[40]

The Commission found that the Tartan project "is reasonable,"[41] and that the public interest was served because "Tartan is serious about bringing natural gas to south central Missouri, and has access to the wherewithal to do so."[42] All arguments about the loss of business in one generation resource due to the influx of a new generation resource were soundly rejected by the Commission, which quoted the Court of Appeals on the necessary casualties of progress: "LPG must give way to natural gas just as the mule breeding business vanished upon the advent of the farm tractor and truck; just as wood stoves gave way to LPG. Such casualties are the price paid for 'progress.'"[43]

In Tartan the Commission found that the proposed natural gas service was in the public interest because natural gas is "a preferred energy source for both economic and environmental reasons."[44] Noting its finding of need due to the state's public policy to "to spread the availability of natural gas throughout the State of Missouri wherever feasible," the Commission

[38] Tartan, 1994 WL 762882 at *10.
[39] In re Intercon Gas, Inc., 30 Mo P.S.C. (N.S.) 554, 561 (1991) (in which the Commission applied the following criteria: "(a) a need for the proposed service; (b) the applicant's qualifications, (c) the applicant's financial ability to provide the service, and (d) the economic feasibility of Applicant's proposal").
[40] Tartan, 1994 WL 762882 at *10.
[41] Id. at *10-11.
[42] Id. at *11.
[43] Id., quoting State ex rel. Webb Tri-State Gas Co. v. PSC, 452 S.W.2d 586, 588 (Mo. App. 1970).
[44] Id.

"deem[ed] it to be in the long-term public interest of south central Missouri and the entire State of Missouri to encourage the availability of natural gas."[45]

The Commission has similarly looked to state policies in later cases where it evaluated the public interest factor, stating that "if there is legislation on the subject, the public policy of the state must be derived from such legislation."[46] The public interest served by the Grain Belt Express Project is codified in Section 393.1020, the Missouri RES, as well as the renewable portfolio standard ("RPS") requirements of the other states served by MISO and PJM.

A broad interpretation of a project's public interest is supported by Missouri courts, which have held that "the rights of an individual with respect to issuance of a certificate are subservient to the rights of the public,"[47] and "some of the public may suffer adverse consequences for the total public interest."[48] Citing controlling case law, the Commission has found that "the ultimate interest is that interest of the public as a whole … and not the potential hardship to individuals …."[49]

However, the "public" is not strictly limited to the citizens of Missouri, as MLA and Show Me contend. See MLA Brief at 4; Show Me Brief at 6-7. Nor does the service offered by Grain Belt Express affect its clear status as a public utility that would provide a public service in

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[45] Id.

[46] In re KCP&L Greater Missouri Operations Co., Report and Order at 33, Case No. EA-2009-0118, 2009 WL 762539 (2009).

[47] State ex rel. Mo. Pac. Freight Transp. Co. v. PSC, 288 S.W.2d 679, 682 (Mo. App. K.C.) aff'd sub nom. State ex rel. Mo. Pac. Freight Transp. Co. v. PSC, 295 S.W.2d 128 (Mo. 1956). See In re KCP&L Greater Missouri Operations Co., Report and Order at 33-34, Case No. EA-2009-0118, 2009 WL 762539 (2009); In re Union Electric Co., Report and Order, Case No. EO-2002-351, 2003 WL 22017276 at *15 (2003); MLA Initial Brief at 4.

[48] In re Sho-Me Power Corp., Report and Order, Case No. EO-93-259, 1993 WL 719871 (1993). See In re KCP&L Greater Missouri Operations Co., Report and Order at 33, Case No. EA-2009-0118, 2009 WL 762539 (2009) (holding that "[d]etermining 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"). See In re Union Electric Co., Report and Order, Case No. EO-2002-351, 2003 WL 22017276 at *15 (2003).

[49] In re Union Electric Co., Report and Order, Case No. EO-2002-351, 2003 WL 22017276 at *15 (2003).

Missouri, Kansas, Illinois, Indiana, and elsewhere, despite the contentions of Farm Bureau and UFM to the contrary. See Farm Bureau Brief at 5; UFM Brief at 2; Staff Brief at 16-17. Conceding that it cannot cite to a Commission CCN case that has held that the Commission may consider only the Missouri public in its analysis, MLA relies instead on eminent domain cases which, by their very nature, are local. See MLA Brief at 4. However, the Commission has considered the interests of those outside of Missouri in making a public convenience and necessity determination, and has granted CCNs to companies that serve no Missouri customers or provide only wholesale service.

The transmission line for which the Commission granted a CCN to IPL and later to ITC Midwest serves no Missouri retail customers.[50] Although this transmission line provides an alternative transmission source to serve the continued load growth in and around Keokuk, Iowa, the Commission found that it did have authority to require that IPL obtain a CCN.[51] In its 2007 grant of a CCN to ITC for that line, the Commission "conclude[d] that ITC's ownership of the proposed transmission line is both necessary and convenient for the public service because by owning that line, ITC will continue to serve customers in the Keokuk, Iowa area that IPL currently serves."[52] And just last year the Commission granted a CCN to Transource Missouri, LLC, a company established to build wholesale regional transmission projects within SPP, to construct two regional, wholesale transmission projects.[53] That these companies would serve no

[50] In re IES Utilities, Order Granting Certificate of Public Convenience and Necessity, Case No. EA-2002-296 (2002); In re Interstate Power & Light Co., Order Granting Certificate of Convenience and Necessity, Granting Variances from Certain Commission Rules, and Authorizing Sale of Assets at 3, Case No. EO-2007-0485 (2007).
[51] In re IES Utilities, Order Granting Certificate of Public Convenience and Necessity, Case No. EA-2002-296 (2002).
[52] In re Interstate Power & Light Co., Order Granting Certificate of Convenience and Necessity, Granting Variances from Certain Commission Rules, and Authorizing Sale of Assets at 4, Case No. EO-2007-0485 (2007).
[53] In re Transource Missouri, LLC, No. EA-2013-0098, Report and Order at 11, 2013 WL 4478909 (2013).

Missouri retail customers was irrelevant to the Commission's finding of public convenience and necessity.

Citing a merger case that made no findings on public convenience or necessity, and was in no way related to a CCN application, UFM asserts that the Commission "is not limited to narrowly considering possible benefits and detriments but must consider reasonably expected consequences of the transaction." See UFM Brief at 12. In State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732 (Mo. en banc 2003), the Court analyzed the reasonableness of the Commission's merger approval order Section 393.190.1 using the "not detrimental to the public" standard. There is no discussion of any balancing of benefits and detriments nor of any additional "consequences." Instead, the Court reversed the order of the Commission, finding that it failed to consider and decide all necessary and essential issues.[54] Conversely, Missouri courts firmly hold that where the benefits of a transaction outweigh the individual detriments, the Commission "may not" withhold its granting of the authority sought.[55]

Consistent with these precedents, the Commission granted UtiliCorp a CCN over the challenges of Staff and Public Counsel because "the provision of natural gas service to the Salem area will be in the public benefit, not only as a service to residential customers, but also as an incentive to help promote the economic growth of the economy."[56]

The Illinois Commerce Commission recently made similar findings to those requested by the Company here with respect to the Rock Island Clean Line transmission project -- a similar, participant-funded transmission line delivering low-cost renewable power -- concluding:

[54] State ex rel. AG Processing, Inc. v. PSC, 120 S.W.3d 732, 736 (Mo. en banc 2003).
[55] State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).
[56] In re UtiliCorp United Inc., Report and Order, Case No. GA-95-216 (1995). See Staff Brief at 19-20.

> [T]he proposed line as described in this Order will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives; that Rock Island is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction; that Rock Island is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers; and that the construction of the proposed transmission line Project will promote the public convenience and necessity; . . . [and that] pursuant to Section 8-406 of the Act, a Certificate of Public Convenience and Necessity should be issued to Rock Island as ordered below.[57]

The Project scope and objectives of the Rock Island project are similar to those of the Grain Belt Project as they both seek to connect some of the country's most abundant wind resources by HVDC transmission to areas with a strong demand for low-cost clean energy. Thus, the Illinois Commission's conclusions are pertinent, and were made despite the opposition of its staff and a major LSE. Because the Company meets each of the five Tartan criteria, the Project is necessary or convenient for the public interest, and this Commission should grant the Company its requested CCN.

[57] In re Rock Island Clean Line LLC, Order at 222, Case No. 12-0560 (Ill. Comm. Comm'n, Nov. 25, 2014).

2. Staff's Studies.

Staff argues that its concerns require a new series of detailed studies, but independent experts engaged by Grain Belt Express have testified that such studies are either impractical or unnecessary. Staff also continues to be worried about negative congestion costs which are either insignificant or actually benefit Missouri. For example, when the Company indicated that an average LMP congestion component in one scenario could increase from 6¢/MWh to 21¢/MWh, Staff characterized this adjustment as an alarming 250% increase and accused Mr. Berry of "down play[ing] the effect" of this pennies-on-the-dollar congestion. See Staff Brief at 31 (responding to Ex. 120 at 10 [Berry Surrebuttal]).

Staff ignores the next sentence of Mr. Berry's testimony where he notes that MISO's feasibility study found no thermal constraints, meaning that the Project's power is deliverable to MISO load in eastern Missouri without any uneconomic re-dispatch of units or congestion. See Ex. 120 at 10 (Berry Surrebuttal); Ex. 111 at 14 (Galli Direct). That finding was confirmed by the MISO System Impact Study that was released in late November, 2014. See Ex. 150.[58]

The irony of Staff's position is that while it criticizes the Company's modeling as using "generic assumptions" in an "off-the-shelf data package" (Staff Brief at 28), it has conceded that it does "not do production [cost] modeling" (Tr. 1542), "does not [purport] to be able to model the Eastern Interconnection accurately" (Tr. 1538-39), and has presented the Commission only with what Staff witness Sarah Kliethermes described as a "crude analysis" regarding the Project's effect on Ameren Missouri's off-system sales margin revenues. See Ex. 206 at 9.

[58] This study, marked as Exhibit 150, was the subject of the Company's Motion to File Late-Filed Exhibit which was granted on December 16, 2014.

In an effort to bring a better analysis to bear, the Company retained Robert Cleveland, an experienced production cost modeler and engineer, to study the wholesale power market and rate impacts of the Project. He concluded that under a business-as-usual scenario Ameren would experience an approximate $1 million decrease in adjusted production costs in 2019 with the Project. The other scenarios that Mr. Cleveland studied showed even greater net savings, from a $3.9 million decrease in a slow-growth scenario to a $14.4 million decrease in a green-economy scenario. See Ex. 117 at 5-6 & Sched. RC-2 at 5-6. Despite the specific data presented by the Company relating to the Project's effect on Missouri and on MISO (from both Mr. Cleveland and wind integration expert Robert Zavadil), Staff continues to claim that no such data have been presented in the record. See Staff Brief at 32.

Grain Belt Express provided Staff and other interested parties with specific Missouri and MISO load profiles, a database of all generators in MISO and Missouri, including each generator's unit-specific minimum and maximum capacity forced outage rate, and minimum and maximum ramp rates, as well as wind profiles. See Tr. 1163-74 (Berry). During his cross-examination by Staff counsel, Mr. Berry confirmed that Staff's concerns regarding a special protection scheme ("SPS") near Ameren's Audrain Plant to manage congestion were unfounded, as Ameren had advised the Company that the SPS was "not applicable." See Tr. 1174 (quoting Ex. 211). Staff witness Shawn Lange testified that he had no basis to disagree with Ameren's conclusions. See Tr. 1652-54.

Communications with Staff led Ms. Kliethermes to correct several million-dollar errors in her congestion calculations. See Ex. 145 (Motion to Accept Correction). Given Staff's apparent unfamiliarity with such analytics, Grain Belt Express offered testimony from Mr. Cleveland and

Mr. Zavadil to explain how the PROMOD cost model works, and why additional studies of issues such as the Project's effect on ancillary services would be impractical or inappropriate. See Ex. 110 at 14-15 (Zavadil Surrebuttal) ("it makes little sense to study a single project, and much more sense to perform a comprehensive study of a large region"); Ex. 117 at 7-9 (Cleveland Surrebuttal) ("PROMOD is more sophisticated than Ms. Kliethermes describes"). Mr. Berry and Mr. Zavadil both confirmed that such studies are run by RTOs, not individual utilities or market participants. 1357-58 (Berry); Ex. 110 at 14-15 (Zavadil Surrebuttal).[59]

Indicative of Staff's inability to run its own production cost model or decision not to retain an expert who could do so is Staff's last-minute assertion at the evidentiary hearing that Ameren Missouri's "cost would go up by $1,340,000." See Tr. 1561. Ms. Kliethermes later asserted that this "congestion cost is worth 2,265,000" (Tr. 1584), which Staff attributes to "negative congestion." See Staff Brief at 31. The source of Staff's figure is a mystery. This claim reflects Staff's deep confusion about the PROMOD results presented by Grain Belt Express, and its view that negative congestion somehow increases prices.

The record is clear that the congestion component of LMPs in Missouri decreases because of the Project. Mr. Berry clearly articulated that if negative congestion results from the Project's injection of 500 MW in Ralls County, it will mean that power is cheaper to buy in Missouri than in other areas of MISO, and that this should be viewed as a benefit to Missouri, not a detriment. See Ex. 120 at 11-12 (Berry Surrebuttal). Staff's conclusion that lower LMPs in Missouri will result in higher cost-of-service rates (even as Mr. Cleveland's analysis proves otherwise) is both unsupported and inexplicable.

[59] "In light of the (1) complexity, (2) regional nature, (3) multi-party nature, (4) long time frame, and (5) prohibitive data requirements described below, in my judgment it is not feasible for Grain Belt Express to perform the kind of detailed study of ancillary services that Ms. Kliethermes appears to be suggesting as a requirement." Ex. 110 at 14.

3. Description of the Project.

The size of the Project has been clear from the beginning of this case. Grain Belt Express proposed to deliver 500 MW into its Missouri converter station in Ralls County and 3,500 MW to its converter station at the Illinois-Indiana border. See Application, ¶¶ 6, 10; Ex. 118 at 6 (Berry Direct); Ex. 113 at 20-21 (Galli Surrebuttal). Staff's confusion on this point is difficult to discern, given the Company's consistent message. See Staff Brief at 24-25.

The problem may be found in Staff's failure to distinguish between the Project's capacity and the engineering ratings that will be assigned to the converter stations. As Dr. Galli testified, the Missouri converter station may have a nameplate rating as high as 1,000 MW, given its mid-point position between the converter stations at the western and eastern ends. He explained that "when dealing with multi-terminal DC lines, there is a rule of thumb that states that the smallest converter station should be rated between 20-30% of the largest converter station so that during faulted conditions, the equipment in the smallest station is not over stressed." See Ex. 113 at 21.

At the evidentiary hearing, Dr. Galli confirmed once again that the Project intended to deliver 4,000 MW, with 500 MW to be delivered into MISO at the Missouri converter station and 3,500 MW into PJM. See Tr. 473-75. He explained that the rating of the Missouri converter station would be between 500 MW and 1,000 MW, depending upon the final technical analysis. Id. at 474-75. Whatever the final technical design rating, Grain Belt Express has agreed that it will not inject any more than 500 MW at the Missouri converter station unless this Commission specifically approves. See Ex. 120 at 54, 56 (Berry Surrebuttal). Grain Belt Express has submitted an interconnection request to MISO for only a 500 MW interconnection, and that is

the basis upon which MISO is conducting its interconnection studies. See Ex. 113 at 21-22 (Galli Surrebuttal); Ex. 150 at 5, 7 (MISO System Impact Study Final Report) (Nov. 2014).

4. The Project is Beneficial to Missouri.

The Grain Belt Express Project will bring benefits to Missouri, ranging from low-cost, clean energy to an increase in both temporary and permanent new jobs, as well as increased state income tax and local property tax revenues. See Ex. 114 at 3-6 (Loomis Direct); Ex. 115 at 1-6 (Loomis Surrebuttal); Ex. 120 at 6, 16 (Berry Surrebuttal). No other party provided expert testimony or an economic analysis to counter the testimony and studies produced by Dr. David Loomis.

Cross-examination of Dr. Loomis focused on articles relating solely to Illinois wind (not the far more robust wind resources in western Kansas), and on general criticism of studies that do not consider countervailing economic losses or displacement. See Tr. 1505-09 (Loomis). Dr. Loomis noted that while his study only focused on the gross effects of the Grain Belt Express Project, this is consistent with economic studies supported by the Department of Energy's National Renewable Energy Laboratory. See Tr. 1506-09. He confirmed that during the Project's construction phase, the estimated increase in total tax revenue for Missouri is $3.74 million per year. See Tr. 1509. His study also did not discuss other indirect benefits of the Project, such as improved health or environmental effects, or any decline in asthma attacks or decrease in injuries or fatalities from coal mine accidents as a result of lower coal production. See Tr. 1675-76 (Stahlman).

Failing to comprehend the nature of tax credits, MLA claims without any legal support that tax credits are literally paid for by taxpayers. See MLA Brief at 36. Asserting that

"Missouri's share" of the production tax credit is $60 million, MLA argues that this amount must be deducted from the positive impacts estimated by Dr. Loomis. However, as Dr. Loomis explained, tax credits simply reduce the tax liability of a qualifying taxpayer, and do not raise taxes for individuals or businesses who do not qualify for the tax credit. See Tr. 1510-11.

No party has rebutted the detailed estimates provided by the Randolph County Assessor that annual property tax revenue may exceed $650,000, with 70% of that supporting local school districts. See Sched. DAB-9, Ex. 120 (Berry Surrebuttal); Tr. 25-32 (Vol. 5, Local Public Hearing (Aug. 14, 2014)). Similar property tax revenues will flow to the other seven counties that the Project's HVDC Line will traverse, depending upon the number of miles. See § 153.034 (taxation of electric company property). The Missouri converter station will also provide new property tax revenue to Ralls County. Id.

Another benefit of the Project is increased electric reliability. As Mr. Zavadil's Direct Testimony explains, the Project will improve resource adequacy and decrease Missouri's loss of load expectation ("LOLE"). MLA attempts to twist this benefit into a detriment of the Project by arguing that the same reliability benefit could be achieved at less cost by building a fossil-fuel power plant. But a fossil-fuel plant would not offer the same benefits of zero-fuel costs, zero emissions, RES compliance, and wholesale power price reductions. MLA's argument ignores the Company's LCOE analysis, which shows that the Project is a more economic way to produce energy than a new natural gas combined-cycle plant.

5. Public Outreach Process.

Over the past several years Grain Belt Express has made a conscious effort to reach out to the public in a widespread and transparent fashion. Company employees and representatives

have spoken with thousands of individuals across the Project area, including property owners, planning and zoning officials, local business leaders, local office holders, state-wide elected and appointed officials, and leaders of environmental, conservation, and business organizations. These efforts are described in detail in the Missouri Route Selection Study prepared by the Louis Berger Group, as well as in the pre-filed and hearing testimony of the Company's Director of Development Mark Lawlor. See Ex. 104 at 4-8 & Sched. TBG-2 (Route Selection Study) (Gaul Direct); Ex. 101 at 2-18 (Lawlor Direct); Ex. 102 at 1-4 (Lawlor Surrebuttal).

In the first stage of its outreach that began in May 2010, Grain Belt Express gathered information regarding wind resource areas and delivery points which resulted in the identification of a broad Study Area. See Ex. 101 at 7-8 (Lawlor Direct). In order to acquaint itself with the landscape and to engage stakeholders through this area, the Company scheduled a series of Roundtable meetings with county commissioners, planning and zoning officials, local Farm Bureau managers, University of Missouri extension officials, and anyone who was recommended as having a broad understanding of the local community and geography. Id. at 10. Representatives from 41 Missouri counties were invited to such meetings, which were attended by more than 250 people at 24 Roundtables. Id.

Mischaracterizing this effort as one that "sought first and foremost to curry favor with political, community and business leaders" (Show Me Brief at 32), Show Me impeaches its baseless allegation by listing well over a dozen groups and public agencies that the Company met with, including the Missouri Farm Bureau who Show Me's counsel also represents. See Show Me Brief at 32-33. As Mr. Lawlor testified, the public outreach process that began in 2010 continued as various routes were studied and refined. See Ex. 101 at 7-11.

During the second stage of the outreach process, thirteen open houses were conducted in the eight counties in northern Missouri where potential routes were being considered. More than 11,500 people were invited to these meetings, with each invitation including a high-level map of the routes. Id. at 12-13. These meetings were advertised in local newspapers, and more than 1,200 people attended, including landowners potentially affected by these proposed routes. Id. The Company conducted additional meetings with landowners, as well as state agencies, environmental groups, and business associations, including the Missouri Farm Bureau and The Nature Conservancy. Id. at 17.

When the Company filed its Application earlier this year, formal notices were sent by certified mail to every person or entity that could be identified through public records as an owner of property located within the right-of-way. Id. at 18. Show Me's claim that landowners had little or no opportunity to provide input is without any factual basis and contrary to the record in this case.

6. Eminent Domain.

Without regard for Missouri's careful stewardship of the law of eminent domain, Show Me, Farm Bureau, and UFM argue that the Commission should consider an issue on which it has no jurisdiction to issue a decision. See Show Me Brief at 41, Farm Bureau Brief at 5-8, UFM Brief at 7-10. Because issues regarding eminent domain are not pertinent to its duties under Section 393.170, the Commission lacks the power to address the issues raised by Show Me, Farm Bureau, and UFM which are appropriate matters for the General Assembly. Instead, the Commission's duty in this case is to focus on the evidence relevant to whether the Project "is

necessary or convenient for the public service" by applying the five Tartan factors. Public policy issues regarding eminent domain are not relevant to those factors.

Nevertheless, UFM attempts to bootstrap the eminent domain issue to the public interest factor in this case. See UFM Brief at 7-10. It incorrectly claims that because Grain Belt Express is a "private enterprise," the Project will not be devoted to public service. Id. Farm Bureau appears to agree. See Farm Bureau Brief at 5. Neither party cites any Missouri appellate decision to support this proposition.

The power of eminent domain is the inherent power of a state to take private property so long as the purpose for which land to be taken is a public purpose and the state pays just compensation. State ex rel. Jackson v. Dolan, 398 S.W.3d 472, 476 (Mo. 2013); City of Kansas City v. Powell, 2014 WL 4976980 at *5 (Mo. App. W.D., Oct. 7, 2014), as modified (Nov. 25, 2014). The power of eminent domain clearly permits the taking of private property. State ex rel. St. Louis Union Trust Co. v. Ferriss, 304 S.W.2d 896, 898-98 (Mo. 1957).

While the power of eminent domain is an inherent state power, the legislature may delegate this authority to public ***and*** private entities, subject to constitutional limitations. City of Kansas City v. Hon, 972 S.W.2d 407, 409 (Mo. App. W.D. 1998); Osage Water Co. v. Miller County Water Auth., Inc., 950 S.W.2d 569, 572 (Mo. App. S.D. 1997). Eminent domain "may be exercised by private corporations to the extent and for the purposes authorized by law." State ex rel. N.W. Elec. Power Co-op., Inc. v. Waggoner, 319 S.W.2d 930, 934 (Mo. App. K.C. 1959).

The Missouri Supreme Court has noted: "We cannot say that public bodies are the only entities that may be invested with the power of eminent domain—the authority to designate those entities with whom it may invest that power is solely that of the legislative branch." Annbar

Associates v. West Side Redev. Corp., 397 S.W.2d 635, 647 (Mo. en banc 1965). "We cannot, and should not, second guess the legislative branch of government as to what bodies may be invested with the power of eminent domain." Id. Accordingly, "[t]he granting of that power to private enterprise is not an inherent prohibition of the constitution." Id.

Yet UFM, Farm Bureau, and Show Me feel at quite at liberty to second guess what the Missouri Supreme Court would not. Their general opposition to eminent domain is precisely what Missouri law has authorized and regulated for well over a century, including amendments enacted most recently in 2006 which offer additional protections for landowners. See § 523.010, *et seq.*, (Cum. Supp. 2012). Any opposition to the ability of the state to delegate the power of eminent domain to a private entity should be raised with the General Assembly, not at the Public Service Commission which has no power to alter state statutes.

Show Me's proposal that this Commission somehow override the eminent domain statute is equally irrelevant and contrary to the law. See Show Me Brief at 41. "In Missouri, the right of eminent domain rests with the state and does not naturally inhere in counties, municipalities or public service corporations." State ex rel. Missouri Cities Water Co. v. Hodge, 878 S.W.2d 819, 820 (Mo. en banc 1994). Because the right to condemn can be exercised only upon delegation from the state, it follows that the right to withhold such delegation equally lies with the legislature. Id. Such right has long been the province of public utilities such as Grain Belt Express. "There is no question that, whatever it may have been in its historical origin, Section 523.010 now not only provides a procedure for but confers upon the public utilities therein named the substantive right of eminent domain." Southwestern Bell Tel. Co. v. Newingham, 386 S.W.2d 663, 667 (Mo. App. Spfld. 1965).

Finally, it must be recognized that the Company has made clear that it "will not seek to exercise eminent domain authority … unless and until it has exhausted reasonable efforts to acquire transmission line easements through voluntarily negotiated agreements." See Ex. 101 at 21 (Lawlor Direct). The Company's easement compensation offers and inclusive approach are intended to lead to voluntary negotiations with landowners, which will include the resolution of final siting issues. See Company Brief at 40.

III. Conditions.

A number of the parties have proposed conditions under Section 393.170.3 to be attached to any CCN that is issued by the Commission. Grain Belt Express has accepted many of these conditions and proposed modifications to those which are either not feasible or reasonable given the scope of the Project and the relief sought. See Company Brief at 41-54. As the statute specifies, such conditions must be "reasonable," as well as "necessary" to serve the broad public interest of Missouri. Any such conditions must reflect the fact that Grain Belt Express proposes a unique means to bring low-cost renewable wind generation to Missouri and states farther east through an HVDC Line that spans three RTOs with a shipper-pays, non-cost allocated business model.

Given that the Company will not be rate regulated by this Commission, will not be subject to its IRP process, and will be interstate in nature, conditions reflecting the traditional "PSC way" of overseeing vertically-integrated, investor-owned utilities serving retail customers should not be imposed so as to diminish the value which the Grain Belt Express Project offers. See Tr. 1746-47 (Commissioner Hall questions to Mr. Beck regarding Company's unique case).

A. Modifications Recommended to Staff Conditions.

The Company has reviewed the numerous conditions that Staff proposed, indicating why only a few should either be rejected or modified. See Company Brief at 42-53. Without repeating those arguments, Grain Belt Express highlights the modified conditions that it recommends:

- The Company will not recover any Project costs from Missouri retail ratepayers through either SPP or MISO regional cost allocation without the approval of this Commission. See Ex. 120 at 52-53 & Sched. DAB-14 at 4. Staff has now agreed that the Company's offer is sufficient to satisfy its concerns. See Tr. 1564-65 (S. Kliethermes response to Commissioner Hall questions).
- Any interconnection upgrades resulting from the Project whose costs are allocated by an RTO to an LSE benefitting from such upgrades are excluded from the foregoing condition. See Ex. 120 at 52-53 & Sched. DAB-14 at p. 4 (Berry Surrebuttal).
- All RTO interconnection studies and agreements prepared by or for the RTOs related to the Project will be submitted to the Commission without a future proceeding to specifically approve or accept such studies and agreements. See Ex. 120 at 51-52 & Sched. DAB-14 at 9-10 (Berry Surrebuttal).
- Given the foregoing RTO interconnection studies and agreements, no additional technical studies recommended by Staff relating to the MISO energy markets, ancillary services, wind integration, modeling of the entire Eastern Interconnection, and a study of the Missouri converter station at 1000 MW will be

required. See Ex. 120 at 58-59 (Berry Surrebuttal); Tr. 1357-58 (Berry); Ex. 110 at 14-15 (Zavadil Surrebuttal).

B. Routing, Construction, and Land Issues.

In response to conditions recommended by Staff and certain other landowner intervenors, Grain Belt Express explained that while many of the conditions are acceptable, those that seek to dictate specific actions that may be harmful to particular property should be rejected or modified. See Company Brief at 50-53.

With regard to the Company's Missouri easement agreement, no party has asserted that it is contrary to Missouri law. The Company is committed to working with all landowners and other groups to incorporate principles from its Agriculture Impact Mitigation Policy into the easement agreement, and does not object to a condition in its CCN to that effect. See Tr. 367-68 (Lawlor). Grain Belt Express will confer with landowners, as well as the Missouri Department of Agriculture (if landowners or the Department of Agriculture wish to do so) in order to reach such an agreement. As it exists, the easement agreement provides a robust, multi-faceted compensation package. The compensation package includes a payment for 100% of the fair market value of the land within the easement area, despite the fact that the landowner will continue to own the land and can use it to farm and graze or for any other purpose that does not interfere with the transmission line. Another payment will be made for the erection of each transmission tower on a landowner's property ("structure payments"), which payments may be taken in a lump sum up-front or in annual payments as long as the structure is on the property with a payment escalator of 2% each year. See Sched. CR-2 (Easement Calculation Sheet); Sched. CR-3 (Structure and Damages Calculation Sheet), Ex. 552 (Reichert Rebuttal). Also

included in the easement agreement is a provision that Grain Belt Express will compensate landowners or their tenants for any damage to improvements, livestock and crops as a result of the Company exercising its rights under the agreement without time or dollar limitation. See Sched. CR-4, ¶3 at p. 2, Id.

The Commission should not set any mandatory distances between the HVDC Line and particular structures such as other utility infrastructure or residences. Each situation must be considered on its own facts and reflect the particular nature of the impact and the structure. As Mr. Gaul testified, maximizing distances from residences was a key criterion in the routing study. See Tr. 1063-65 (Gaul). As adjustments are made to the route, Grain Belt Express will seek to minimize these impacts.

The ability to make minor deviations to transmission line route is essential to completing any inter-state transmission line, particularly one the length of the Grain Belt Express Project. If the Company receives a CCN and moves the Project forward, it must adhere to the requirements of other state and federal permitting agencies such as the U.S. Fish and Wildlife Service and the Army Corps to name a few. Minor shifts may also be required as a result of boundary surveys, which more accurately depict a division of land than what is publicly available in county records. (See cites in Gaul redirect, 1070 and 1071). Adjustments may also address safety concerns. Providing this type of flexibility is quite common in transmission line siting decisions.

Therefore, the Company recommends that Staff's proposed condition that the CCN be limited to the location of the line specified in the Application allow for micro-siting as more information about landowners' property is obtained and field surveys are performed and environmental permitting and engineering is completed. See Ex. 102 at 19 (Lawlor Surrebuttal).

The following language should be added to Staff's condition: "… ; provided, however, minor deviations to the location of the line will be permitted as a result of surveying, final engineering and design, and landowner consultation." See Sched. DAB-14 at 1, Ex. 120 (Berry Surrebuttal). The Company recommends that the following language be added for clarity: "Such minor deviations will be permitted without further Commission approval."

Given that minor deviations are a virtual certainty in the siting and construction of any major transmission line, the ability of the Company to make such adjustments is imperative, particularly given the absence of any specific procedures established by the Commission. This would be consistent with the practices currently employed by certificated public utilities who are able to make minor routing adjustments without additional Commission approval.

Grain Belt Express has accepted the overwhelming majority of Staff's other conditions related to routing and land use, including the condition that no occupied residential structure will be removed without a voluntary agreement for the purchase of the property. See Sched. DAB-14 at p. 1, Ex. 120 (Berry Surrebuttal). Given the Company's willingness to abide by 23 of 27 restrictions and mandates proposed by Staff (and having agreed to minor modifications to the remaining four), the Commission should find the additional language proposed by the Company on route deviations to be satisfactory and appropriate.

Additional conditions proposed by other parties are not necessary. Certain parties propose that the Commission establish post-CCN complaint or arbitration procedures. See MLA Brief at 54; Reichert/Meyer Brief at 11. Such procedures need not be specified, given the other conditions that the Company has agreed to fulfill, as well as the existence of current procedures

under the Commission rules at 4 CSR 240-2.070 that provide for informal and formal complaints.

The Commission should also reject any proposal to establish a decommissioning fund. See MLA Brief at 52-53. No such fund has ever been established by this Commission when granting approval for the construction of an electric transmission line. Moreover, the financial conditions which Grain Belt Express has agreed to meet prior to installing transmission facilities on any easement property are sufficient to address any concerns in this regard. See Ex. 120 at 54-55 (Berry Surrebuttal). As part of these conditions, the Company agreed to Staff's recommendation that a verified reconciliation statement certified by a Grain Belt Express officer be provided to confirm the financial commitments to fund the Project and to service its debt. See Tr. 1433-34 (Murray).

Finally, there should be no condition with regard to transfer of functional control to an RTO as that issue has been previously resolved by the negotiated rate authority order issued by FERC. See Order Conditionally Authorizing Proposal and Granting Waivers, Grain Belt Express Clean Express LLC, 147 FERC ¶ 61,098 at Para. 30 (2014).[60]

C. 229.100 Consent Condition.

Alleging that the Commission may not issue a CCN without the Company first having obtained Section 229.100 consents of the county commissions where the Project will be located, certain intervenors have a woeful understanding of that statute and Missouri case law. See MLA Brief at 40-52; Show Me Brief at 38-39. An application for a line certificate under Section 393.170.1 makes no reference to the "franchise" authority that both MLA and Show Me assert.

[60] "As noted above, in order to ensure regional reliability and operational efficiency, the Commission expects that any merchant transmission projects connected to an RTO or ISO turn over operational control to the RTO/ISO."

Because that statute does not require a municipal consent for the line certificate sought here, failure to obtain all Section 229.100 consents does not preclude the Commission from granting a CCN conditioned upon the provision of such consents in the future.

Section 229.100 provides:

> 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 in this state, without first having obtained the assent of the county commission of such county therefor; and no poles shall be erected or such pipes, conducts, 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 [emphasis added].

Such "assent" is required under Section 229.100, as well as the Commission's regulations which call for evidence of the approval of affected governmental bodies. See 4 CSR 240-3.105(1)(D). But because Section 393.170.1 addressing line certificate CCN requirements does *not* require municipal consent -- unlike the requirements for an area CCN under Section 393.170.2 -- failure to obtain all Section 229.100 consents does not preclude the Commission from granting a CCN conditioned upon producing them in the future.

Section 229.100 is not a franchise statute. Franchises are granted by municipal authorities to allow a public utility to serve the public residing within their jurisdiction, and are a requirement for a utility to obtain an "area" CCN under Section 393.170.2. That section requires

that a public utility file with the commission a verified statement that it has received the required consent of the proper municipal authorities before an "area" CCN is issued. The Missouri Court of Appeals has recognized that the permission and approval that may be granted pursuant to Section 393.170 is "of two types":

> The PSC may grant CCNs for the construction of power plants, as described in subsection 1, or for the exercise of rights and privileges under a franchise, as described in subsection 2. Traditionally, the PSC has exercised this authority by granting two different types of CCN, roughly corresponding to the permission and approval required under the first two subsections of section 393.170. Permission to build transmission lines or production facilities is generally granted in the form of a "line certificate." See 4 CSR 240–3.105(1)(B). 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." See 4 CSR 240–3.105(1)(A). Area certificates thus provide approval of the sort contemplated in subsection 2 of section 393.170.[61]

Grain Belt Express is seeking a "line" CCN under Section 393.170.1. This is required before an "electrical corporation" may "begin construction of" "electric plant." As described above, electric plant "includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used" for "the generation, transmission, distribution, sale or furnishing of electricity," including "for the transmission of electricity for light, heat or power." See §

[61] State ex rel. Cass County v. PSC, 259 S.W.3d 544, 548-49 (Mo. App. W.D. 2008). See Harline v. PSC, 343 S.W.2d 177 at 185 (Mo. App. K.C. 1960); In re KCP&L Greater Missouri Operations Co., No. EA-2009-0118, Report and Order at 27-28, 2009 WL 762539 (2009).

386.020(14). There is no reference in Section 393.170.1 to municipal franchises, consents or other approvals, as there is in Section 393.170.2.

Furthermore, the Commission's regulations recognize the distinction between a "consent" and a "franchise." See 4 CSR 240-3.105(1)(D)1 ("When consent or franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise, or an affidavit of the applicant that consent has been acquired [emphasis added]"). While Section 393.170.2 addresses area CCNs and requires the approval of the proper municipal authorities, Section 393.170.1 regarding line CCNs is silent regarding municipal or other governmental approval.

Because the PSC's statute does not require evidence of Section 229.100 consents under Section 393.170.1, the Commission may condition a line CCN upon a utility obtaining such consents in the future.[62]

IV. Waiver of Reporting Requirements of Commission Rules 4 CSR 240-3.145, 4 CSR 240-3.175, and 3.190(1), (2) and (3)(A)-(D).

Grain Belt Express has requested that the Commission waive the reporting requirements of 4 CSR 240-3.145, 3.175, and 3.190(1), (2) and (3)(A)-(D). Staff agrees that if the Commission issues a CCN to Grain Belt Express, these waivers should be granted, with the understanding that the Company will file with this Commission its tariff that is approved by FERC. See Staff Brief at 39. Grain Belt Express has no objection to that stipulation.

MLA does not oppose the granting of these waivers, with the understanding that Grain Belt Express will not sell capacity to any end-use retail customer in Missouri. See MLA Brief at 55. Grain Belt Express did not request in its Application to serve retail customers and is not

[62] See Transource Missouri, LLC, Report and Order at 35, No. EA-203-0098 (2013).

asking for an area CCN under Section 393.170.2 to serve retail customers. Therefore, this issue is not before the Commission and is not ripe for a decision in this case. None of the other parties to the case has taken a position on the Company's waiver requests.

Based upon the foregoing, the Commission should grant the waivers requested by the Company. Grain Belt Express will file its FERC-approved tariff with the Commission, as well as its annual report filed at FERC.

V. Conclusion.

The overwhelming weight of the evidence demonstrates that the Commission should grant a line Certificate of Convenience and Necessity under Section 393.170.1. This will allow the Company to proceed with the Project which will provide transmission service that is needed, that is economically feasible, that will be operationally and financially sound, and that is in the public interest.

The Grain Belt Express Project will promote the generation of electricity by wind farms that will produce no emissions with zero-cost fuel, and will deliver it over a high-voltage, direct current transmission line funded entirely by the Company and its investors at a cost that is lower than all other competing resources. With the conditions that Grain Belt Express has agreed to, the Project is clearly in the public interest, and this Commission must grant a Certificate of Convenience and Necessity as requested.

Dated: December 22, 2014

By /s/ Karl Zobrist

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all parties of record by email or U.S. mail, postage prepaid, this 22nd day of December 2014.

/s/ Karl Zobrist
Attorney for Grain Belt Express Clean Line LLC