BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STATEMENT OF POSITION OF
THE MISSOURI LANDOWNERS ALLIANCE[1]

COMES NOW the Missouri Landowners Alliance (MLA), and for its Statement of Position regarding the agreed upon list of issues states as follows:

1. Does the evidence establish that the Commission may lawfully issue to Grain Belt Express Clean Line LLC ("Grain Belt") the certificate of convenience and necessity ("CCN") it is seeking for the high-voltage direct current transmission line and converter station with an associated AC switching station and other AC interconnecting facilities?

No, it does not. Under Section 229.100 RSMo, Grain Belt will need approval to build the line from the County Commission in each of the eight counties which would be traversed by the line. And under Section 393.170 RSMo, such approvals must be obtained before the Commission may issue a CCN.

Here, the evidence shows that in 2012 Grain Belt did secure the proper consents from the eight County Commissions. However, a number of the County Commissions subsequently rescinded their original approvals. And regardless of the effectiveness of those rescissions, Grain Belt concedes that the approval from the Caldwell County

[1] This Statement of Position is being submitted by not only the MLA, but also by interveners Matthew and Christina Reichert, Randall and Roseanne Meyer, Charles and Robyn Henke, and R. Kenneth Hutchinson. For convenience, all will be referred to here collectively as the MLA.

Commission has since been nullified by a Missouri circuit court. Therefore, Grain Belt does not now have the necessary approvals under Section 229.100 from all eight of the County Commissions where the proposed line would be built. Accordingly, based on the record at this point, the Commission may not lawfully issue even a conditional CCN to Grain Belt.[2]

2. Does the evidence establish that the high-voltage direct current transmission line and converter station for which Grain Belt is seeking a CCN are "necessary or convenient for the public service" within the meaning of that phrase in Section 393.170, RSMo?

No, for several reasons. First, the Staff's testimony alone justifies rejection of the CCN based on circumstances as they exist today. Staff presented a number of key finding which support that conclusion. First, they noted that it is unclear at this point whether the proposed Project is economically feasible, due to the lack of various RTO studies. As Staff noted, the project is still in the "preliminary" design stages, and as the design becomes finalized it can change its operational characteristics and thus its ultimate cost.

Second, Grain Belt's preliminary studies did not identify any constraints on the proposed injection of 500 MW of power at the Missouri converter station. However, those studies assumed that Ameren Transmission Company of Illinois (ATXI) would complete the construction of the Mark Twain transmission project which was the subject of Commission Case No. EA-2015-0146. The Commission granted ATXI a CCN for the Mark Twain project in that case, but it was conditioned upon ATXI receiving the necessary consents from the affected County Commissions pursuant to Section 229.100.

[2] The issue of whether the Commission may or may not issue a conditional CCN before all county consents are secured is now pending in Case No. WD79883 in the Western District of the Missouri Court of Appeals. According to Case.Net, oral argument was held in that case on March 7. So that particular issue is likely to be resolved before this case is finalized.

The issue of those consents is now being litigated in the circuit courts of the five affected counties.[3]

And as Staff further notes, without the Mark Twain project (or something comparable, which is apparently not yet on the drawing boards) the Grain Belt line as now proposed will induce thermal overloads in the MISO system. Unless and until this problem is resolved, Grain Belt should not be permitted to energize the proposed line.

Third, Staff identified a number of reasons why Grain Belt has once again failed to demonstrate that its proposed project is economically feasible. One problem is that the costs of the necessary transmission upgrades at the points of interconnection with the three RTOs are not yet known. "All three RTOs require additional studies before the Project can begin commercial operation, and those studies may require additional upgrades and/or changes in design or operation."

Furthermore, Staff determined that:

1. The project cannot be deemed economically feasible on the basis of Grain Belt's contract with MJMEUC;

2. Some of the costs of the project will potentially be borne by Missouri utilities and their customers who do not even make use of the line; and

3. The project cannot be considered economically feasible on the basis of the relative costs and benefits of wind generation in Kansas.

Accordingly, based on the staff evidence alone the CCN should be rejected.

[3] This litigation is not directly related to the case noted in footnote 2 above, and is not likely to be fully resolved before a final Order is issued in this case, EA-2016-0358.

Need for the Line

Totally aside from the points made by Staff, Grain Belt has again failed to establish that its proposed project is needed in Missouri in the sense required by the first of the five Tartan criteria.[4]

In the 2014 Grain Belt case, No. EA-2014-0207, the Commission rejected Grain Belt's application for a CCN in part at least because it failed to prove that the proposed line would provide any service to customers in Missouri. As it indicated: "The Commission concludes that GBE has failed to meet its burden of proof to demonstrate that the service it proposes in its application for a certificate of convenience and necessity is needed in Missouri."[5]

After the Order was issued in that case, Grain Belt made a concerted effort to correct that deficiency. It made sales presentations to a number of load-serving utilities in Missouri, including Ameren Missouri, Consolidated Electric Cooperative, and a number of individual municipal systems in this state. None of those efforts were successful, including Grain Belt's initial overtures to MJMEUC.

Eventually, however, Grain Belt discounted the price of its transmission capacity to MJMEUC to the point where MJMEUC conditionally accepted their offer in a Transmission Service Agreement (TSA) dated June 2, 2016. Under what Grain Belt calls a "first mover" rate, MJMEUC was handed the unique opportunity to purchase an initial 100 MW of capacity from Grain Belt at only $1,167 per MW per month. A second 100 MWs was offered for just $1,667 per MW per month. In contrast, Grain Belt's "normal"

[4] While this Statement of Position will focus primarily on the criteria of "need", the MLA reserves the right to argue in its briefs that Grain Belt has failed to satisfy the other Tartan criteria as well.
[5] Report and Order, p. 22.

rate for that identical service from Kansas to Missouri is $5,670 per MW per month, or nearly 5 times the discounted rate offered to MJMEUC for its initial 100 MWs.

Grain Belt now touts the contract as the "most significant" milestone they have achieved since their rejection in the 2014 case. In reality, Grain Belt's inability to attract any customers for its line left it no choice but to buy its way into Missouri.

But even this discounted contract with MJMEUC does not assure the Commission that power from the Grain Belt line will actually be used by customers in Missouri. A number of Grain Belt witnesses have testified that MJMEUC agreed to purchase up to 200 MW of service into Missouri – or comparable language implying that MJMEUC has actually committed to buy capacity on the proposed line. But the fact is that MJMEUC has not committed to buy any capacity on the Grain Belt line.

MJMEUC is not obligated to decide how much capacity it will actually buy until about 60 days before the line becomes energized. Assuming that Grain Belt is finally accurate in forecasting the in-service date of its project, that means that MJMEUC will have nearly 4 1/2 years to determine how much capacity, if any, it wishes to purchase. And while no witness for Grain Belt even mentions this fact, when that time finally comes, MJMEUC can decide it will buy absolutely no capacity at all from Grain Belt. In other words, contrary to what Grain Belt implies in its testimony, MJMEUC has definitely not agreed to purchase 200 MW or any other amount of capacity on the proposed line. It is just as accurate to say they have committed to buy nothing at all.

It is fair to assume that the provision which in effect allows MJMEUC to cancel its contract with Grain Belt was inserted for MJMEUC's protection. For a number of reasons, that provision certainly in not in the best interests of Grain Belt. So if it was

added at the insistence of MJMEUC, that can only mean that MJMEUC wished to retain its option to jettison the Grain Belt contract if it finds something more attractive over the next 4 ½ years. This possibility is particularly relevant here because before signing the TSA with Grain Belt, MJMEUC made no meaningful analysis of what other options it might have. We do not now know the extent to which the relative prices of different supply sources will change over the next 4 ½ years, but we do know that such changes are inevitable.

Accordingly, the Grain Belt/MJMEUC contract provides no assurance to the Commission that MJMEUC and its member utilities will actually buy any capacity on the Grain Belt line. And the problem is, we won't know the fate of that contact until years after a decision is rendered in this case.

As to other potential purchasers of capacity in Missouri, it's déjà vu all over again. Despite its best efforts, Grain Belt once again has no contracts or Memorandums of Understanding with any load serving entity in Missouri to buy capacity on the proposed line – other than its drastically discounted deal with MJMEUC. In fact, it has no such agreements even with any of the Kansas wind farms. So once again, the inherent economics of the project have attracted no takers in Missouri. Just as in the 2014 case, the Commission is again being asked by Grain Belt to simply assume, or rather speculate, that some of its capacity will be used by someone to provide service somewhere in Missouri.

And Grain Belt is not likely to find any takers for any additional capacity at what they refer to as the normal rate for the Kansas to Missouri service. Certainly, none of the investor-owned utilities in Missouri has shown any interest. Grain Belt submitted a bid

to Consolidated Electric Cooperative, but did not even make its "short list" of bidders. And finally, direct retail sales in Missouri are not an option.

The problem is, at Grain Belt's normal rate for capacity, neither MJMEUC nor any other utility in Missouri would logically buy any capacity on the proposed line for delivery into this state. Based on a recent bid to MJMEUC from a Missouri wind farm, the purchase of Missouri wind would be less expensive than buying wind from Kansas and transporting it at the normal rate over the Grain Belt line into Missouri.

And the cost advantage of Missouri wind does even take into account other factors favorable to the Missouri wind option: the 25% "bonus" afforded under Missouri's RES for renewable energy generated in this state, and the minimal need for additional high-voltage transmission lines throughout Missouri.

As shown by MJMEUC's initial rejection of Grain Belt for some two years, MJMEUC had no "need" for Grain Belt's line until Grain Belt devised its discounted "first mover" rate – a rate clearly designed to gain a foothold in Missouri. And of course without that foothold, Grain Belt could not extend its line into the more lucrative markets in PJM and points east.

In other words, the only "need" for the line was created by Grain Belt where no such need had existed. And that need still does not exist if the "normal" charges reflective of the basic economics of the project are applied. The MLA respectfully submits that a contingent contract, based on an artificially low, below-cost rate, extended to a single buyer, does not satisfy either the "need" or the "public interest" prongs of the Tartan criteria.

Despite the above observations, if the Commission assumes that MJMEUC might eventually buy some capacity on the Grain Belt line, that should not logically end the decision-making process on this issue. At that point, the MLA submits that the Commission would then need to balance the modest benefits of a potential purchase by MJMEUC (the only likely user of the line in this state) against the definite detriments to Missourians of building a high-voltage transmission line, complete with hundreds of large steel support structures, over a 200 mile path through northern Missouri.

So, what are the real benefits to MJMEUC and its retail customers of its contract with Grain Belt? Clearly, the only logical way to measure those benefits is to compare the total cost that MJMEUC would pay for power under the contracts with Grain Belt and Infinity, to the total cost it would pay for the next best alternative. That comparison and only that comparison would show how much MJMEUC would truly save by signing on with Grain Belt and Infinity.

Comparing the Grain Belt contract to the Illinois contract it is replacing, for example, is a meaningless exercise. If the difference between the Grain Belt contract and the expiring Illinois contract was say $10 million per year, but MJMEUC could have signed a contract with a third party and saved say $3 million compared to the Grain Belt contract, then of course the $10 million "savings" is not a savings in any meaningful sense at all. The savings in that example would be only $3 million per year.

So the next logical question for the Commission is this: what was the annual cost to MJMEUC of the next best alternative to the Grain Belt contract? Surprisingly, as MJMEUC admits, they do not know the answer to that question. And they do not know because they did not bother to seek bids when looking to replace the Illinois contract.

They simply signed up with Grain Belt, not knowing what other options might be available.

To make up for this deficiency, in its presentation to the Commission MJMEUC has resorted to speculative and after-the-fact comparisons of other alternatives to the Grain Belt contract. As the evidence will show, however, none of those comparisons provide a reliable means to measure the amount (if any) which MJMEUC might save if the Commission allows Grain Belt to build its line through Missouri.

It is also impossible to quantify the damages which Missourians will suffer if the line is built, but we know they will be real and they will be heart-wrenching. One cannot put a price tag on the inability to finally build a new home at a location which would now be draped by a 4,000 MW power line; or the negative impacts the line will inevitably have on farming a right-of-way punctuated with miles of steel towers; or the decrease in property values of nearby property, for which the owners will receive no compensation whatsoever; or the decision by some people, for whatever reason, to uproot their families and move to a different location if the proposed line is built. And of course there is the 200 mile eye-sore that Grain Belt dismisses as something the locals will simply learn to live with. So admittedly, it is impossible to quantify the damages which 200 miles of line and steel structures will cause to the people of Missouri.

But this much we do know. The only potential benefit which Missouri is likely to see is totally dependent on developments in the energy business over the next 4 ½ years, the results of which will determine if MJMEUC opts out of its contract with Grain Belt. And even assuming it does not do so, the level of any benefits to MJMEUC and its customers are purely speculative at this point.

Tangential matters relating to Need and Public Interest

There are a number of somewhat peripheral matters which arguably bear on the issue of need and public interest, and which therefore merit brief mention here.

First, Grain Belt claims that its line will add marginally to the reliability of the bulk power system in Missouri. Actually, the minuscule amount of any addition to reliability should not even be a factor here, primarily because the reliability of the bulk power system in Missouri is in no need of improvement. Moreover, just as in the 2014 case, any improvement in system reliability from the Grain Belt project comes at a price far in excess of what would otherwise be done to increase reliability by the amount attributable to the Grain Belt line, if that was the objective.

Grain Belt also touts the prospect of new jobs. If the Commission even considers this issue to be relevant to the issuance of a CCN, the evidence will show that once again Grain Belt has presented the Commission with only half the story about the potential economic impacts of its proposed line.

The prospect of additional property tax revenues presents the same slippery slope as does the issue of jobs. But if this question is nevertheless deemed relevant, the evidence will show that the numbers presented by Grain Belt for additional property taxes are good for only one year in the life of the project. In subsequent years, Grain Belt cannot even provide an estimate of what the property taxes might amount to.

Finally, Grain Belt claims that its project will reduce emissions from fossil plants. However, roughly the same level of reductions would occur regardless of the source from which Missouri utilities purchase renewable energy. Thus the emissions issue is not even a legitimate factor is the decision of this case.

3. if the Commission grants the CCN, what conditions, if any, should the Commission impose?

If the Commission does decide to grant the CCN, the MLA supports the conditions recommended by Staff, as listed at pages 62 – 69 of the Staff Rebuttal Report, including the caveats listed at the outset of the discussion of those conditions.

The MLA specifically opposes the following language which Mr. Berry proposes to add to the staff condition listed at item VII.1 at page 9 of Mr. Berry's Schedule DAB-9: "; 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."

In addition, the MLA proposes that the following additional or expanded conditions be added by the Commission to those suggested by Staff:

(1) Grain Belt should be required to have a Decommissioning and Restoration Plan which would be established by a bond, letter of credit or some equivalent financial security instrument, to ensure that when the project facilities are no longer used and useful, whenever that may occur, they will be removed from the Missouri right-of-way and the land restored to its prior condition. Furthermore, whatever the Commission ultimately requires in the way of a decommissioning fund, the final Grain Belt proposal should be submitted for Commission approval. That document should then be incorporated by Grain Belt into its easement agreements with landowners.

(2) Before the line may be energized in Missouri, an officer of Grain Belt must certify to the Commission that the Ralls County converter station has been built and is fully capable of operating to the specifications described in Grain Belt's testimony, including the ability to accept approximately 500 MW of power from the Kansas converter station and to deliver at least 50 MW of power from the Missouri converter

station to the PMJ Sullivan substation. By way of explanation, if Grain Belt's Application is approved "as is" by the Commission, Grain Belt apparently would have the right but not the obligation to actually build the Missouri converter station. If Grain Belt cannot sell enough capacity into Missouri at a high enough price, it would have no reason to spend $100 million on a converter station in this state. And if the Missouri converter station is not built, then of course the line will provide absolutely no benefit to the people of this state.

(3) In accordance with the surrebuttal testimony of Deann Lanz, at page 5 lines 13-20, the following documents should be incorporated into the Grain Belt easement agreements with landowners, and made binding upon Grain Belt: the Missouri Agricultural Impact Mitigation Protocol; the Missouri Landowner Protocol; and the Grain Belt Code of Conduct.

(4) The CCN should be conditioned on Ameren Transmission Company of Illinois (ATXI) securing the necessary approvals from the five County Commissions where the Mark Twain project authorized in Case No. EA-2015-0146 is to be built, and in going forward with construction of that project.

(5) Grain Belt should not be allowed to reduce its highest and best offer for landowner compensation for easements and structures if the issue of compensation later goes to arbitration or to court.

(6) If grain belt is given "reasonable flexibility" to adjust the route of the line after receiving a CCN, as requested in its Application, and if after receiving the CCN it then proposes to move the line to a different parcel of land owned by a different landowner, that landowner should have 60 days after receiving official notice of the

proposed change to file a complaint with the Commission regarding Grain Belt's proposed change in the route of the line.

(7) Grain Belt should agree to be subject to Sections 393.180 and 393.200 RSMo, which generally require investor-owned utilities in Missouri to obtain Commission approval before issuing any form of debt obligations.

(8) Grain Belt should agree to be subject to Section 393.190 RSMo, which generally requires investor-owned utilities in Missouri to obtain Commission approval before selling or otherwise disposing of its assets.

(9) If the Western District Court of Appeals rules in Case No. WD79883 that the Commission may grant a CCN conditioned upon later receipt of county approvals pursuant to Section 229.100 RSMo, then any CCN granted in this case should be conditioned upon the following: (a) receipt by Grain Belt of the franchise from Caldwell County; (b) receipt of new franchises from the counties which rescinded their original franchises, as set forth in Schedule LDL-4 to the rebuttal testimony of Mr. Louis Donald Lowenstein; and (c) certification from Grain Belt that the Randolph and Ralls County Commissions have granted them permission to use the specific roads that are needed to build the line in those counties.

(10) In addition to proposed condition (3) above, the Commission should require that Grain Belt's Easement Agreement be modified in three respects. First, the Agreement should be clarified so that it allows only the construction of the facilities proposed in this case by Grain Belt. Second, the Agreement should include the following statement, which, reflects Grain Belt's existing policy: "Grain Belt Express will pay landowners for any agricultural-related impact ('Agricultural Impact Payment') resulting

from the construction, maintenance or operation of the Project, regardless of when they occur and without any cap on the amount of such damages."[6] And third, the Agreement should be modified so as to hold landowners liable for damages to Grain Belt's facilities only in the case of intentional misconduct.

4. If the Commission grants the CCN, should the Commission exempt Grain Belt from complying with the reporting requirements of Commission rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175, and 3.190(1), (2) and (3)(A)-(D)?

The MLA takes no position on this issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon the parties to this case by electronic mail this 13th day of March, 2017.

/s/ Paul A. Agathen
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[6] Direct testimony of Deann Lanz, page 7 lines 19-22.