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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EA-2016-0358

DIRECT TESTIMONY OF

SUEDEEN G. KELLY

ON BEHALF OF

GRAIN BELT EXPRESS CLEAN LINE LLC

August 30, 2016

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I. INTRODUCTION AND PURPOSE OF TESTIMONY

Q. Please state your name, present position and business address.

A. My name is Suedeen G. Kelly. I am an attorney in private practice with the firm of Akin Gump Strauss Hauer & Feld LLP, where I serve as Chair of its Energy Regulation, Markets and Enforcement practice. My business address is 1333 New Hampshire Avenue, N.W., Washington, DC.

Q. Please describe your educational and professional background.

A. I graduated from the University of Rochester with a B.A. in Chemistry in 1973. I attended Cornell Law School, from which I graduated cum laude in 1976.

I served on the New Mexico Public Service Commission, which regulates electric utilities, intrastate gas pipelines and local distribution companies, among other utilities, first as a Commissioner (1983-1984) and then as Chairwoman (1984-1986). I was nominated by President Bush and President Obama to three terms as a Commissioner on the Federal Energy Regulatory Commission ("FERC") and served as a Commissioner from 2003 through 2009. During that time, we resolved approximately 7,000 disputes with published Commission decisions, and I personally authored 100 separate statements.

In addition to my experience as a regulator, I have served as regulatory counsel for the California Independent System Operator Corporation, have engaged in the private practice of energy law, and have taught courses on federal and state energy law, utility regulation, administrative law, and legislative process at the University of New Mexico School of Law, where I was a Professor of Law from 1986 until 2003. I continue to present, speak, and publish multiple times a year on topics involving energy law, most commonly enforcement and regulation.

Attached hereto as **Schedule SGK-1** is a true and correct copy of my current Curriculum Vitae.

Q. Have you previously testified before any federal or state regulatory commission?

A. I previously testified on behalf of Exelon before the Maryland Public Service Commission *In the Matter of the Merger of Exelon Corp. and Pepco Holdings, Inc.*, No. 9361 (Md. Pub. Serv. Comm'n). As described in my CV, I have also served as an expert witness in a state court proceeding.

Q. What is the purpose of your direct testimony?

A. In my testimony, I explain how the use of a participant-funded model for the Grain Belt Express Clean Line transmission project ("Grain Belt Express Project" or "Project") provides the benefits of expanded transmission without increasing transmission rates for Missouri retail customers. I describe the ongoing need for interregional projects, such as the Grain Belt Express Project, to support renewable development and improve the reliability and resiliency of the grid. Finally, I provide my opinion as a former state and federal energy regulator that the Project is needed and is economically feasible, and that its construction will advance the public interest.

In addressing these topics, I have based my testimony on my experience as a FERC Commissioner and New Mexico Commissioner, and my professional expertise with state and federal energy regulation. In the course of preparing this testimony, I have undertaken a review of relevant documents, including Grain Belt Express Clean Line LLC ("Grain Belt Express" or "Company") business documents, FERC orders relating to the Grain Belt Express Project, orders of the Missouri Public Service Commission ("Commission") and other state commissions relating to the Project, the Grain Belt Express Application, and the

direct testimony of other witnesses in this proceeding. I am an attorney, but I am providing this testimony as an expert witness, and not as counsel for Grain Belt Express.

II. GRAIN BELT EXPRESS' MARKET-DRIVEN, PARTICIPANT-FUNDED MODEL PROVIDES THE BENEFITS OF EXPANDED TRANSMISSION WITHOUT RAISING REGIONAL TRANSMISSION RATES

Q. As an initial matter, can you summarize the benefits that the Grain Belt Express Project will bring to Missouri and the Missouri public?

A. Yes. The Project will deliver a new supply of low-cost wind energy to Missouri and will interconnect three regional transmission systems between Kansas and Indiana. As described in detail by other Company witnesses in their Direct Testimony, increasing the supply of low-cost power will reduce wholesale electricity prices and the cost for Missouri utilities to serve their electric load.[1] Because this low-cost power is from a renewable resource, the Project will also allow Missouri and other states in the region to cost-effectively meet their state renewable energy standards and goals.[2]

The Project will also help meet the need for interregional transmission, as it will bridge three Regional Transmission Organizations ("RTOs"). This interregional connection will provide operational and reliability benefits, including increasing reliability during times of peak load and generator outages.[3]

By enabling the development of new sources of renewable power, the Project will facilitate reduction of emissions of carbon dioxide, nitric oxides, and sulfur dioxide.[4] The

[1] David Berry Direct Testimony at 44; Schedule JNC-2

[2] David Berry Direct Testimony at 37-44

[3] Edward Pfeiffer Direct Testimony at 5

[4] Neil Copeland Direct Testimony at 4

Project will also provide economic development in Missouri by creating property tax revenue,[5] construction jobs,[6] and manufacturing jobs.[7]

As I explain below, the development of the Grain Belt Express Project through its participant-funded business model means that the Missouri public as a whole will receive these benefits from the Project without suffering an increase in the transmission component of their retail electricity rates.

Q. How does Grain Belt Express' participant-funded business model result in public benefits without increasing transmission rates?

A. Grain Belt Express' business model is a market-based solution to the problem of transmission expansion. Participant-funded transmission projects, unlike the transmission lines owned by traditional franchised utilities, do not recover their development costs, or their operation costs, from captive retail customers through increased transmission rates. Instead, these projects recruit investors willing to invest in the project and put their capital at risk without guaranteed recovery from customers, captive or otherwise. The project company recovers its capital costs and the costs of operating the line, and earns a return for its investors, by entering into voluntary contracts with entities that want to become wholesale transmission customers of the project. The customers of a participant-funded transmission project are likely to include generation owners and developers that wish to buy transmission service across the participant-funded transmission line to get their power to market. Other customers are likely to be local utilities that wish to buy transmission service across the participant-funded line to deliver power to their retail customers, as is

[5] Richard Tregnago Direct Testimony at 3-4

[6] Thomas Shiflett Direct Testimony at 13; Mark Lawlor Direct Testimony at 15-17

[7] Wayne Galli Direct Testimony at 37-39; Mark Lawlor Direct Testimony at 15-17

the case for the Missouri Joint Municipal Electric Utility Commission ("MJMEUC"), which has entered into a Transmission Service Agreement ("TSA") with Grain Belt Express.[8]

Because the costs of the Grain Belt Express Project will be recovered from its wholesale transmission customers, its construction will not be paid for by Missouri captive customers and will not result in an increase in the transmission component of their retail rates. Instead, Missouri retail customers will only incur costs related to the Project to the extent that their local utility *voluntarily* chooses to purchase transmission capacity on the Project, or purchase power transmitted on the Project by a third-party. Meanwhile, even though the costs of the Project will not be recovered from the Missouri public, the Missouri public will benefit from its construction, receiving the economic, operational and reliability benefits I summarized above, which are discussed more fully in the Direct Testimony of the other witnesses.

Q. How does the participant-funded business model of Grain Belt Express compare to the regulatory cost-of-service business model generally used by traditional vertically integrated utilities to build and operate transmission lines?

A. The participant-funded business model of Grain Belt Express is markedly different from the regulatory cost-of-service business model traditionally used by vertically integrated utilities to build and operate transmission lines. Under the regulatory cost-of-service business model, the costs of transmission projects are spread across all the captive customers of the transmission utility through the transmission component of its regulated rates.

[8] Mark Lawlor Direct Testimony at 2-3

By contrast, participant–funded transmission companies do not have captive customers and do not recover the costs of their projects, such as the Grain Belt Express Project, from captive customers.

Q. Specifically, how do traditional vertically integrated utilities recover the costs of constructing transmission lines?

A. Under the regulatory cost-of-service model, all prudent costs of constructing a transmission line are included in the vertically integrated utility's rate base, and the utility recovers this capital, as well as the cost of this capital, from its wholesale and retail customers. Additionally, the reasonable expenses associated with the operation of the transmission line are recovered by the utility from its customers.

Q. Do RTOs fund transmission projects in a manner similar to traditional vertically integrated utilities?

A. Yes. RTOs, such as Midcontinent Independent System Operator, Inc. ("MISO"), Southwest Power Pool, Inc. ("SPP"), and PJM Interconnection, LLC ("PJM"), also spread the costs of transmission development to captive customers, although they do so on a regional basis through allocations of the cost of transmission development to the utilities that, in turn, serve the retail customers. These utilities are commonly referred to as load-serving entities ("LSE"). The details vary from RTO to RTO; however, the basic model works as follows. Each RTO determines through its transmission planning process which transmission projects should be built within the boundaries of the RTO. The costs of these transmission projects are then allocated among the RTO's transmission customers through the RTO's Open Access Transmission Tariff ("OATT"), which has been approved by

FERC. The RTO's transmission customers are primarily the LSEs, who, in turn, pass these transmission charges on to their captive retail customers.

Q. Can you provide an example of how RTO cost-allocated transmission is accounted for in the transmission component of retail rates?

A. Yes. I will use Ameren Missouri, a part of Ameren Corp. that serves Missouri customers, as an example of how the costs of developing and constructing cost-allocated transmission lines are passed on to retail customers. Ameren Missouri is a participant in the MISO transmission planning region and incurs MISO transmission charges for the delivery of power to its load.[9] Schedules 26 and 26-A of MISO's OATT allocate the costs of MISO's cost-allocated baseline reliability projects[10] and Multi Value Projects ("MVPs") to MISO's transmission customers, including Ameren.[11] MISO estimates that, in the Project's first full year of operation in 2022, Ameren Missouri will be allocated total charges of $15.4 million under Schedule 26 and $85.6 million under Schedule 26-A.[12]

Ameren Missouri uses the FERC Uniform System of Accounts ("USoA") to keep its utility financial records. Ameren records MISO transmission charges, including

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[9] *In the Matter of Union Elec. Co., d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Elec. Serv.*, File No. ER-2014-0258, Report and Order, at 112-13 (Mo. P.S.C. Apr. 29, 2015).

[10] Baseline reliability projects are transmission projects required to meet North American Electric Reliability Corporation ("NERC") standards. Baseline reliability projects that were included in the MISO transmission plan prior to 2013 are cost-allocated through MISO's tariff. OATT. MISO, *MTEP Project Types and Appendix Overview*, http://www.misomtep.org/mtep-project-types-and-appendix-overview/ (last visited June 16, 2016).

[11] Non-Unanimous Stipulation and Agreement, Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, Net Base Energy Costs, and Fuel Adjustment Clause Tariff Sheets, File No. ER-2014-0258 (filed Mar. 5, 2015); *In the Matter of Union Elec. Co., d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Elec. Serv.*, File No. ER-2014-0258, Order Approving Stipulation and Agreement (Mo. P.S.C. Mar. 19, 2015); *In the Matter of Union Elec. Co., d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Elec. Serv.*, File No. ER-2014-0258, Report and Order, at 114-16 (Mo. P.S.C. Apr. 29, 2015).

[12] Schedule 26 and 26-A Indicative Charges; available at https://www.misoenergy.org/_layouts/miso/ecm/redirect.aspx?id=196552 (Schedule 26) and https://www.misoenergy.org/_layouts/miso/ecm/redirect.aspx?id=124310 (Schedule 26-A)

Schedule 26 and 26-A charges, in USoA Account 565: "Transmission of Electricity by Others."[13] In accordance with a 2015 Stipulation and Agreement that was approved by this Commission,[14] Ameren Missouri includes 96.5% of charges under Account 565 in its retail electric base rates.[15] These charges correspond to the roughly 96.5% of MISO transmission charges to Ameren that arise from the transmission of power from Ameren Missouri's generation to its native load.[16] The remaining 3.5% of Account 565 charges are included in Ameren Missouri's Fuel Adjustment Clause ("FAC"), as they relate to the transportation of power purchased from third-parties and off-system sales.[17] Both Ameren's FAC and its base rates are ultimately recovered from Ameren's retail customers.

By contrast, the construction of the Grain Belt Express Project will have no impact on MISO's transmission charges and, consequently, no impact on Ameren Missouri's base rates or FAC. If Ameren Missouri decides to become a customer of Grain Belt Express in the future by voluntarily entering into a transmission service agreement with Grain Belt Express, as MJMEUC already has, then, of course, the costs of that transmission service agreement could be passed on to Ameren's captive retail customers through rates approved by the Commission. Importantly, Ameren would only be in a situation to pass such costs

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[13] *Id.* at 112-14; Non-Unanimous Stipulation and Agreement, Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, Net Base Energy Costs, and Fuel Adjustment Clause Tariff Sheets, File No. ER-2014-0258, at 4 (filed Mar. 5, 2015).

[14] *In the Matter of Union Elec. Co., d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Elec. Serv.*, Order Approving Stipulation and Agreement, File No. ER-2014-0258 (Mo. P.S.C. Mar. 19, 2015).

[15] *In the Matter of Union Elec. Co., d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Elec. Serv.*, Report and Order, File No. ER-2014-0258, at 114 (Mo. P.S.C. Apr. 29, 2015).

[16] *Id.* at 114-116.

[17] *Id.*

through to its customers if Ameren determined the benefits of Grain Belt Express' service outweighed the cost of buying it.

Q. Has the Federal Energy Regulatory Commission supported the development of participant-funded transmission lines?

A. Yes. FERC believes that participant-funded transmission projects play a "useful role in expanding competitive generation alternatives for customers,"[18] and has supported the development of participant-funded transmission lines by authorizing such projects to bilaterally negotiate rates for their transmission service with their transmission customers.[19] In January 2013, to simplify the process of authorizing participant-funded project companies to charge negotiated rates, FERC issued a policy statement (the "Merchant Transmission Policy Statement") that provides guidance to developers of participant-funded projects that seek negotiated rate authority.

FERC issued the Merchant Transmission Policy Statement to facilitate the construction of participant-funded transmission by increasing the flexibility of the open solicitation process used by the developers of participant-funded transmission to allocate capacity among potential customers and negotiate rates for that capacity with the potential customers. FERC now allows developers of participant-funded transmission projects "to select a subset of customers . . . and negotiate directly with those customers to reach agreement on the key rates, terms, and conditions for procuring up to the full amount of

[18] *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038, at P 2 (2013).

[19] *See, e.g., Southline Transmission, L.L.C.*, 152 FERC ¶ 61,211 (2015); *Lucky Corridor, LLC*, 151 FERC ¶ 61,072 (2015); *Plains & E. Clean Line LLC*, 148 FERC ¶ 61,122 (2014); *Champlain VT, LLC*, 146 FERC ¶ 61,167 (2014); *ITC Lake Erie Connector LLC*, 148 FERC ¶ 61,236 (2014).

transmission capacity."[20] Previously, FERC had required that at least a portion of the transmission line's capacity be allocated through a more rigidly structured open season process. In deciding to make the change, FERC found that because participant-funded transmission lines are paid for entirely by their customers, "developers need to be able to negotiate more freely with potential customers," since "once a transmission developer has secured customers, its business success depends on its customers' success."[21] Grain Belt Express was granted negotiated rate authority pursuant to the guidelines in the Merchant Transmission Policy Statement in 2014.[22]

Q. Are there participant-funded transmission lines currently in operation?

A. Yes, there are currently four participant-funded transmission lines in operation. The Cross-Sound Cable, an underwater high-voltage direct current ("HVDC") project connecting Connecticut and New York across Long Island Sound, went into commercial operation in 2005.[23] The Neptune Project, an underwater HVDC transmission line connecting New Jersey and Long Island, went into operation in 2007.[24] The Linden VFT Project, a transmission project in New Jersey linking the transmission systems of PJM and the New York Independent System Operator, entered commercial operation in 2009.[25] And the Hudson Project, connecting New Jersey and New York City, went into operation in 2011.[26]

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[20] Merchant Transmission Policy Statement at P 16.

[21] *Id.* at P 20.

[22] *Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098 (2014).

[23] *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230 (2000)).

[24] *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104 (2011).

[25] *Linden VFT, LLC*, 119 FERC ¶ 61,066, *order on clarification*, 120 FERC ¶ 61,242 (2007).

[26] *Neptune Reg'l Transmission Sys., LLC*, 96 FERC ¶ 61,147, *order on reh'g*, 96 FERC ¶ 61,326 (2001), *order on clarif.*, 98 FERC ¶ 61,140 (2002), *order on modification & clarif.*, 103 FERC ¶ 61,213 (2003).

Q. Are there examples of participant-funded infrastructure projects in operation other than electric transmission projects?

A. Yes. Participant-funding is common among other kinds of transportation infrastructure. For example, participant-funding is the predominant model used for the construction of oil and natural gas pipelines. Pipeline developers raise private capital to construct pipelines for which they believe there is a market need. During the development process, they hold "open seasons" for capacity on the new pipeline. These open seasons are essentially auctions in which potential shippers (customers) bid for the amount of capacity they want to reserve on the pipeline, the length of time for which they would like to reserve it, and the price and terms they are willing to pay for it. Shippers with winning bids in the open season then sign "precedent agreements" with the pipeline that obligate them to enter into agreements with the pipeline developer for transmission service on the pipeline once it is constructed. The open season process used for pipeline development is similar to the open solicitation process used by many participant-funded transmission projects, including the Grain Belt Express Project, to negotiate terms and conditions with potential transmission customers.

When reviewing interstate natural gas pipeline projects to determine whether to issue a Certificate of Public Convenience and Necessity ("CPCN") for the project, FERC considers the existence of precedent agreements to be important evidence of market demand for the project, and thus, the "need" for the project. I will discuss FERC's certificate policy for natural gas pipelines, and the relationship between market demand and need, in Section IV of my testimony.

Q. How do participant-funded transmission lines affect the transmission component of rates paid by end-users of electricity served by traditional regulated electric utilities?

A. The construction of participant-funded transmission lines does not result in an increase in the transmission component of retail rates charged to captive customers, because the cost of these transmission facilities is not factored into regional RTO transmission rates or included in a traditional utility's rate base. In fact, the development of participant-funded lines can slow the growth of the transmission component of retail rates, because they provide an alternative to cost-allocated or rate-based transmission lines that are otherwise included in wholesale or retail rates.

A participant-funded transmission line will only affect the rates paid by retail customers if the retail customer's local utility (i.e., the LSE): (1) contracts with the transmission line owner to use the line to deliver power it has purchased, and (2) passes its delivery costs on to its customers.[27] Therefore, retail customers will only be charged to the extent that they, through their LSE, have received service from the participant-funded line.

Q. How will the Grain Belt Express Project affect the need for new, cost-allocated transmission lines?

A. The Grain Belt Express Project is likely to reduce the need for future cost-allocated transmission lines (such as lines approved in the MISO and SPP transmission planning processes) that would otherwise be built to achieve transmission benefits provided by the Project. Because the Grain Belt Express Project increases access to low-cost, high capacity factor wind energy, less cost-allocated transmission capacity will be needed within the

[27] Alternatively, the participant-funded line may affect the rates paid by retail customers if the local utility: (1) contracts with a third-party to purchase power that was delivered on the line, and (2) the third-party includes delivery costs in its wholesale power rates

MISO or SPP regions to achieve the same objective. Similarly, because Grain Belt Express will connect MISO, SPP and PJM, a cost-allocated transmission line will not have to be built to improve transfer capability between these three RTOs.

Q. If the Grain Belt Express Project reduces the need for other, cost-allocated transmission lines, how will this affect the transmission component of rates paid by end-users of electricity?

A. Participant-funded transmission lines are paid for by their wholesale transmission customers, and not cost-allocated through RTO transmission tariffs to LSEs and, in turn, to captive retail customers. Therefore, participant-funded transmission lines result in a lower transmission rate component in retail rates than if the same amount of transmission capacity were to be constructed under the RTO cost-allocation model.

At a minimum, this means that the Grain Belt Express Project will not result in an increase in the rates charged to Ameren's retail customers. The Grain Belt Express Project will only result in transmission charges to Ameren's retail customers to the extent that Ameren voluntarily purchases transmission service on the line.[28] Ameren has not yet contracted for such service, and would only do so if it perceived that it was in its economic interest to so. Ameren would also require Commission approval to recover the costs of entering into such a contract.

Q. What will be the effect of the Grain Belt Express transmission service agreement with MJMEUC on end-user rates?

[28] If Ameren Missouri were to voluntarily purchase transmission service on the Grain Belt Express Project, or to purchase power from a third-party that had purchased such service, the cost of transmission service would also ultimately be passed on to retail customers.

A. MJMEUC has contracted with Grain Belt Express for transmission capacity to import wind power to serve its customers. MJMEUC is a state-wide joint agency with 67 members, all of which are municipally owned utilities. MJMEUC's members collectively serve approximately 347,000 retail customers with a peak load of about 2,600 MW. MJMEUC has entered into a transmission service agreement with Grain Belt Express to deliver 200 MW of wind power to Missouri. This contract also gives MJMEUC the right to export 25 MW of Missouri power to Illinois to sell in PJM, with the option to export another 25 MW. The details of this contract are discussed in the Direct Testimony of Company witness Mark Lawlor.[29] According to MJMEUC's estimates, the agreement with Grain Belt Express and Kansas wind developers to deliver wind power to Missouri will have a positive effect on end-user rates, saving members $10 million annually compared to an existing contract for fossil fuel generation.[30]

Q. Will future transmission service agreements or power purchase agreements utilizing the Grain Belt Express Project convey similar benefits?

A. Yes, they should. Other Missouri utilities will have similar opportunities to purchase low-cost wind power delivered by the Project. MJMEUC has agreed to purchase 200 MW of the total transmission service to Missouri, so another 300 MW remains available for other utilities to purchase.

III. PARTICIPANT-FUNDED TRANSMISSION CAN PROVIDE THE EXTRAORDINARY BENEFITS OF INTERREGIONAL TRANSMISSION WITHOUT RELYING ON REGIONAL COST ALLOCATION TO PAY FOR IT

Q. Can you explain how the transmission grid is organized?

[29] Mark Lawlor Direct Testimony at 2-3

[30] Mark Lawlor Direct Testimony at 3; David Berry Direct Testimony at 44

A. The American transmission grid is divided into regional transmission systems for operational and rate-making purposes. Generally speaking, each region corresponds to the footprint of a utility or RTO that operates the regional transmission system. Electricity is transmitted at the same flat rate, called a "postage stamp rate," between all locations within a regional transmission system, regardless of how far the electrons have actually traveled.

Within each transmission region, the transmission system operator is responsible for maintaining a balance between power and load by dispatching resources to meet demand. Reliability planning also occurs on a regional basis. For example, contingency planning in the event of transmission or generation outages is conducted on the regional level. Reserve margins are also set regionally to ensure an adequate supply of power within the region.

Missouri is located at the juncture of three regional systems: SPP, AECI, and MISO. SPP and MISO are RTOs.[31] AECI is a generation and transmission cooperative.

Q. What happens at the boundaries between regions?

A. When the boundary of one regional transmission system abuts the boundary of another regional transmission system, this is called a "seam." Because there are usually a limited number of transmission connections across a seam boundary, regional seams can create congestion, limit the efficient use of electric infrastructure near the seam boundary, and cut off LSEs from cost-effective generation resources, even those located geographically nearby, but on the other side of the seam. Additionally, transmitting energy across seams usually results in additive transmission costs, i.e. rate pancaking, where the transmission

[31] For the purposes of this testimony, I am including the Southwestern Power Administration ("SWPA"), a federal power marketing agency, as part of SPP, because SPP operates SWPA's transmission system.

customer pays the postage stamp rate for both regions. As the Commission is aware, the presence of multiple transmission seams within Missouri has resulted in increased costs to consumers.[32]

Q. Is there a term commonly used for transmission lines that cross regional seams?

A. Transmission lines that extend across the seam(s) between two or more regions are "interregional" transmission lines. The Grain Belt Express Project, which will extend from Kansas to Indiana and link three regions (SPP, MISO and PJM), is an example of an interregional transmission line.

Q. What are the benefits of interregional transmission lines to the public?

A. An interregional transmission line can provide extraordinary benefits to customers served by each of the regional transmission systems that it interconnects. An interregional transmission line allows for the efficient transmission of power from one region to another region, which provides economic and reliability benefits to each of the regions interconnected by the line.

Q. What are the economic benefits of interregional transmission?

A. An interregional transmission line allows for low cost energy to be imported from a region with an excess of generation resources to a region with higher demand. The Grain Belt Express Project provides this benefit by moving wind power from Kansas (where there is an abundance of wind) into Missouri, MISO, and PJM, which will increase the supply of low-cost power in those markets. An increase in the supply of low-cost power will, in turn,

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[32] *See e.g., In the Matter of an Investigation Into the Possible Methods Mitigating Identified Harmful Effects of Entergy Joining MISO on non-MISO Missouri Utilities and Their Ratepayers and Maximizing the Benefits For Missouri Utilities and Ratepayers Along RTO and Cooperative Seams*, File No. EW-2014-0156, Order Opening a Case to Investigate Methods of Eliminating or Mitigating the Negative Effects of the MISO/SPP Seam (Mo. P.S.C. Nov. 26, 2013).

reduce the need to build new generation, and reduce wholesale electricity prices and the cost for Missouri utilities to serve their electric load.[33]

Interregional transmission can also promote the construction of generation to produce low-cost power in the first place. The development of wind generation in Kansas has been stymied by limited transmission export capacity. Generation development is often dependent on available transmission capacity to deliver power to electric markets. The Department of Energy ("DOE") has recognized this problem, noting that "[n]ew generation sometimes requires new transmission, especially remotely sited renewables."[34] By providing a transmission path from western Kansas to the east, the Grain Belt Express Project will help to promote the production of low-cost wind power. Grain Belt Express has received Transmission Service Requests ("TSRs") from fourteen wind generation companies in western Kansas.[35] The construction of these companies' generation projects is contingent on the construction of the Grain Belt Express Project or another interregional line to export their power to higher load areas.

Interregional lines can also provide economic benefits by allowing a region to import resources from another region where those resources are temporarily more abundant. For example, the output of intermittent generation, such as wind and solar, is dependent on weather conditions and the time of day. Interregional transmission can

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[33] Schedule JNC-2

[34] DEP'T OF ENERGY, QUADRENNIAL ENERGY REVIEW: ENERGY TRANSMISSION, STORAGE, AND DISTRIBUTION INFRASTRUCTURE 3-24 (2015), http://energy.gov/sites/prod/files/2015/07/f24/QER%20Full%20Report_TS%26D%20April%202015_0.pdf.

[35] Michael Skelly Direct Testimony at 13-14; David Berry Direct Testimony at 24-25

reduce this "short-term uncertainty of intermittent wind and solar resources."[36] For example, an interregional transmission line can transmit wind power from one region, where the wind is blowing and energy prices are low, to another where the wind is not currently blowing and prices are higher. Interregional transmission can thus offset the intermittent nature of many renewable resources, which can reduce the overall cost to utilities of serving load.

Moreover, the interregional transmission line itself produces consumer benefits by providing an alternate pathway for electricity between and within regions. This additional path can reduce transmission congestion, which leads to lower congestion costs for utilities and reduces these utilities' cost to serve their load.

Q. What are the reliability benefits of interregional transmission?

A. The ability of interregional transmission to import power from outside of a region also provides reliability benefits. In times of generation scarcity within a region,[37] excess resources from another region can be imported using the interregional line. The availability of resources from outside a given region can also reduce the reserve margin necessary to ensure reliability for the region. Lowered reserve margins decrease consumer costs in the region, as ratepayers no longer have to support extra resources within the region.

The presence of additional transmission capacity can also improve reliability when there is a transmission outage within the region. This is doubly true in the case of the Grain Belt Express Project because it is a direct current line. Direct current lines are particularly

[36] BRATTLE GROUP, TOWARD MORE EFFECTIVE TRANSMISSION PLANNING: ADDRESSING THE COSTS AND RISKS OF AN INSUFFICIENTLY FLEXIBLE ELECTRICITY GRID 31 (2015) ("2015 WIRES Report"), http://www.wiresgroup.com/docs/reports/WIRES%20Brattle%20Rpt_TransPlanning_042315.pdf.

[37] Generation scarcity can result from high demand or diminished supply within the region.

valuable during transmission outages, as converters control the flow of power over the line. Because they are electrically isolated from the rest of the transmission grid, direct current lines are less likely to be affected by a "cascading outage," where the failure of one transmission line causes other transmission lines to overload and fail.

Q. Are there other benefits for consumers to constructing an interregional transmission line like the Grain Belt Express Project?

A. Yes. Transmission customers can import or export power on Project without incurring a "pancaked" transmission rate. Rate pancaking happens when power is transmitted across a regional seam using ordinary transmission. In that case, the customer has to pay the transmission charge in region one (region one's postage stamp rate), and the transmission charge in region two (region two's postage stamp rate.)[38] With a dedicated interregional line, however, the customer simply pays the transmission rate for that line, rather than each region's postage stamp rates. Avoiding pancaked rates decreases the costs of importing and exporting power, which enables more, and more economically efficient, import and export of electricity between regions.

Q. Has FERC attempted to promote the construction of interregional transmission projects?

A. Yes. In Order No. 1000, among other things, FERC attempted to facilitate the construction of interregional transmission projects by requiring that regional transmission owners develop interregional cost-allocation processes that require that RTO customers pay for

[38] Regional through-and-out rates are a variant on a postage stamp rate that applies to the transmission of power that originates in one region to a destination in another region.

interregional transmission projects that benefit them.[39] FERC was concerned that the "lack of coordinated transmission planning processes across the seams" could be "needlessly increasing costs" for customers, by, among other things, preventing the resolution of seams issues and preventing the efficient transmission of resources to where they were most needed to decrease costs and increase reliability.[40]

Q. What is the benefit to the public of using a participant-funded model for an interregional transmission line rather than using the cost allocation processes provided by FERC?

A. Participant-funded lines do not do not recover their development costs, or their operation costs, from captive retail customers through increased transmission rates.[41] Instead, participant-funded lines rely on voluntary contracts with transmission customers to recover their costs and earn a profit. Therefore, the public receives the benefits of interregional transmission without suffering a general increase in transmission rates. By contrast, the use of interregional cost allocation processes results in increased transmission costs to ratepayers, in the same way as the construction of cost-allocated lines (such as MVP lines) ultimately raise consumer rates.[42]

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[39] *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011) ("Order No. 1000"), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012) , *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC*, 762 F.3d 41 (D.C. Cir. 2014).

[40] Order No. 1000 at P 350

[41] See supra at 4

[42] See supra at 7-9

IV. THE GRAIN BELT EXPRESS PROJECT MEETS THE TARTAN CRITERIA FOR ISSUING A CERTIFICATE OF CONVENIENCE AND NECESSITY

Q. Please summarize the Tartan criteria that the Commission has used in prior cases for considering requests for a certificate of convenience and necessity ("CCN").

A. Under *Tartan*,[43] an applicant for a CCN must demonstrate that:

1. there is a need for the Project;
2. the applicant is qualified to undertake the Project;
3. the applicant has the financial ability to undertake the Project;
4. the Project is economically feasible; and
5. the Project is in the public interest.

Since the Commission found in its prior Report and Order concerning the Project that Grain Belt Express is qualified to undertake the Project and has the financial ability to do so,[44] I will discuss why the Project meets the remaining three criteria: need, economic feasibility, and public interest.

Q. How does a participant-funded project, such as the Grain Belt Express Project, demonstrate that it is "needed"?

A. What makes a participant-funded project, like the Grain Belt Express Project, "needed" is different from what makes a transmission project "needed" when it is developed by a traditional, franchised, regulated utility, and funded through cost-of-service ratemaking. When a regulator is asked to grant a CCN to a transmission project proposed by its local, regulated utility, he or she knows that, if the project is approved, its cost is going to be

[43] *In re Tartan Energy Co.*, No. GA-94-127, 1994 WL 762882 (Mo. P.S.C. Sept. 16, 1994) ("*Tartan*").

[44] *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*, File No. EA-2014-0207, Report and Order at 21 (Mo. P.S.C. July 1, 2015).

included in the rates charged to the captive customers of the utility—the customers that the regulator is charged by law with protecting from unjust and unreasonable rates. So, the regulator will expect to see facts showing that the project will serve important transmission needs of the utility's captive customers (such as additional transmission capacity necessary to provide reliable service or less expensive power) and that the cost of the project will be in proportion to the value of the needs being met. This is the only way that a regulator can justify imposing the cost of the transmission project on the utility's captive customers and protect them from unjust and unreasonable rates.

However, when a regulator is asked to approve a CCN for a participant-funded transmission company, there is no concern about protecting captive customers. Unlike captive customers of a traditional utility that the regulator is charged with protecting, the customers of a participant-funded transmission company do not need to be protected from the imposition of the cost of the new transmission. They have freely chosen to contract for service on the transmission lines; they have become customers because they themselves have determined that they "need" the transmission service. They have decided that the benefit of buying the service outweighs the contractual cost.

In short, regulators can safely rely on the presence of voluntary customers and investors, i.e., "the market," to determine that a participant-funded project is needed. This is what FERC does when deciding whether to issue CPCNs for interstate natural gas pipelines; it examines the "market-based need for a pipeline project."[45] FERC explained this reasoning in its 1999 Certificate Policy Statement, which required that project

[45] Certificate Policy Statement at 61,747

developers seeking a CPCN show that the project is financially viable *without any revenues from existing (captive) customers.*[46] Such a showing is the "first indicator of public benefit"[47] because, as FERC explained, "[c]ompanies [that are] willing to invest in a project without financial subsidies" from captive customers, are "an important indicator of market-based need for a project."[48] Similarly, the willingness of customers to enter into "contracts or precedent agreements [for natural gas transmission service] always will be important evidence of demand for a project."[49] For FERC, this showing of market-based demand for the project is the "threshold requirement for establishing that a project will satisfy the public convenience and necessity standard."[50]

FERC does not, however, rely exclusively on a showing of market demand to demonstrate the need for a pipeline project, and does not require that the "applicant to present contracts for any specific percentage of the new capacity."[51] Instead, FERC "will consider all relevant factors reflecting on the need for the project. These might include, but would not be limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market." Ultimately, FERC will determine whether a project meets the statutory requirement that it be "necessary or desirable in the public interest,"[52] based on

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[46] *Id.*

[47] *Id.* ("In sum, if an applicant can show that the project is financially viable without subsidies, then it will have established the first indicator of public benefit.")

[48] *Id.*.

[49] *Id.* at 61,748.

[50] *Id.*

[51] *Id.*

[52] Natural Gas Act § 7, 15 U.S.C. § 717f(a).

whether the applicant can demonstrate that "the public benefits from the project" -- which prominently include satisfying market need -- "outweigh any adverse effects."[53]

Q. What facts has Grain Belt Express presented in this case that the Project is needed?

A. Grain Belt Express has presented substantial facts showing that the Project is needed through the results of its open solicitation process. Through this open process, conducted in accord with the guidance set forth in FERC's Merchant Transmission Policy Statement, Grain Belt Express has received requests for transmission service that greatly exceed the total capacity of the Project, indicating that there are many customers that demand, or "need," the service being offered.

On January 20, 2015, Grain Belt Express commenced an "open solicitation" in accord with FERC's May 8, 2014 order authorizing Grain Belt Express to negotiate bilateral agreements for 100% of the Project's capacity.[54] In response to this initial solicitation, fourteen wind generators seeking to move low-cost wind power into MISO and PJM responded, requesting service on the line by submitting TSRs" to Grain Belt Express. Grain Belt Express provided a second opportunity for customers to submit TSRs in February 2016. During this time period, MJMEUC submitted two TSRs, one for 200 MW for transmission from Kansas to Missouri, and the other for 50 MW from Missouri to PJM. MJMEUC intends to meet a portion of its demand for "low-cost renewable energy" using the Grain Belt Express Project to import wind power from Kansas.[55]

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[53] Certificate Policy Statement at 61,750.

[54] *Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098 (2014).

[55] David Berry Direct Testimony at 10

As reported in Mr. Berry's Direct Testimony, Grain Belt Express has received TSRs from fifteen different entities, which ask to reserve a total of 3,524 MW of capacity on its transmission line from Kansas into Missouri, or more than 6.5 times the Project's available Kansas-to-Missouri capacity.[56] The total capacity requested to move power to delivery points in MISO and PJM is 20,825 MW, or more than 4.5 times the Project's available capacity.[57] This level of response, which is far in excess of the amount of capacity actually available on Grain Belt Express, is dramatic evidence of the need for transmission service from western Kansas to the Missouri, MISO and PJM markets. On the basis of these strong market facts, Grain Belt Express and its investors are continuing to invest the substantial funds necessary to develop the Project.[58]

Q. Is the process that Grain Belt Express has undertaken to demonstrate the need for the Project similar to the process that participant-funded natural gas pipelines use at FERC to show need?

A. Yes. The procedures for allocating capacity through an open solicitation process outlined in FERC's Merchant Transmission Policy Statement are similar to, and conceptually the same as, those used for natural gas pipeline open seasons. In both cases the open solicitation processes are designed to gauge demand for the capacity offered by the project and ensure that the capacity is allocated on a basis that is not unduly discriminatory or preferential. The open solicitation process held by Grain Belt Express was approved by FERC as consistent with the Merchant Transmission Policy Statement.[59]

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[56] David Berry Direct Testimony at 24-25

[57] *Id.*

[58] David Berry Direct Testimony at 11-14

[59] *Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098 at PP 23, 29, Ordering Paragraph (B).

The TSRs that resulted from Grain Belt Express' open solicitation process are evidence of market need for the transmission project in the same way that precedent agreements are evidence of need for a pipeline project. In the case of Grain Belt Express, the amount of transmission capacity being sought through the transmission service requests received by Grain Belt Express indicates that there is an enormous demand for the transmission service offered by the Project, i.e., there is great "need" for the Grain Belt Express Project.

Q. Have other state regulatory commissions that have approved Grain Belt Express' applications determined a need for the Project?

A. Yes. Illinois, Indiana and Kansas have all issued the requested approvals and permits for the Grain Belt Express Project. Each of these state commissions found that the Project fulfills a need and provides benefits to the public. For example, the Illinois Commerce Commission ("ICC") found that "the Project will be needful and useful to the public."[60] Specifically, the ICC concluded that the Project will allow transmission of large amounts of wind energy from Kansas, at costs significantly lower than that for equivalent power generated in-state.[61] The ICC further concluded that the transmission of low-cost wind energy to Illinois would "reduce wholesale and retail electricity prices," put "downward pressure on the prices of RECs" and help "Illinois and other PJM and MISO states . . . meet their RPS objectives."[62] Furthermore, this potential to "unlock wind resources . . . and place downward pressure on the price of RECs and wholesale energy prices" will promote

[60] *Application for an Order Granting Grain Belt Express Clean Line LLC a Certificate of Public Convenience and Necessity*, No. 15-0277, at 128 (I.C.C. Nov. 12, 2015).

[61] *Id.* at 124.

[62] *Id.* at 125.

the development of a competitive electricity market.[63] In light of these benefits, "the record supports the conclusion that there are considerable economic benefits associated with bringing Kansas wind power to market and that there are no viable alternatives to the Project as the means to accomplish that task in a less expensive manner."[64]

The Kansas Corporation Commission ("KCC") found a "need" for long-distance, multi-state transmission projects such as the Grain Belt Express Project to promote the development and export of wind power from Kansas, and that such development is vital for the economic growth of the state.[65] In its Siting Order, the KCC stated that "[w]ithout this project, hundreds of millions of economic development dollars would not be spent in Kansas, and the potential for large scale wind farm development would be lost. The Commission finds that this project will have significant short- and long-term economic development benefits for the state of Kansas."[66]

The Indiana Utility Regulatory Commission ("IURC") was not required to find that the Project serves a "need" in order to approve it—but it nevertheless concluded that it would. In granting Grain Belt Express the authority to operate as a public utility, IURC found that "the Project will provide benefits to the state of Indiana and the region."[67] The IURC concluded that the Project would provide cost-effective renewable power to meet

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[63] *Id.* at 126.

[64] *Id.* at 127.

[65] *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Limited Certificate of Public Convenience to Transact the Business of a Public Utility in the State of Kansas*, No. 11-GBEE-624-COC, at 21-22 (KCC Dec. 7, 2011).

[66] *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Siting Permit for the Construction of a High Voltage Direct Current Transmission Line in Ford, Hodgeman, Edwards, Pawnee, Barton, Russell, Osborne, Mitchell, Cloud, Washington, Marshall, Nemaha, Brown, and Doniphan Counties Pursuant to K.S.A. 66-1,177, et seq.*, No. 13-GBEE-803-MIS, at 14 (Ks. S.C.C. Nov. 7, 2013).

[67] *Petition of Grain Belt Express Clean Line LLC For: (1) A Determination of its Status as a "Public Utility" Under Indiana Law, et seq.*, No. 44264, at 20 (IURC May 22, 2013).

growing demand, and exert downward pressure on wholesale prices in MISO and PJM. The IURC also found that geographic diversity in wind power supply (i.e., wind power produced in different regions) for PJM and MISO will facilitate the promotion of wind power into the grid, reducing the regional variability associated with electricity produced by wind power and improving reliability. In addition, the IURC found that the Project will have a positive impact on the environment, reducing both pollution and water use, and will promote economic development in Indiana.

Q. Will RTOs such as MISO examine the Project and determine that there is a need for it?

A. No. There is currently no requirement that MISO examine participant-funded transmission projects; indeed, there is not even a system in place that would allow MISO to do so. Finally, no reason exists for MISO to establish such a process for participant-funded projects like the Grain Belt Express Project. The RTO transmission planning processes, including the interregional coordination processes, are designed only to identify projects to be paid for through the imposition of regional cost allocation on RTO transmission customers.[68] Because the Grain Belt Express Project is not being paid for by mandatory allocation of its costs to the region, it is not, and cannot be, selected in an RTO transmission planning process.

Q. Will the RTOs evaluate the reliability impact of the Project?

A. Yes. The Project will go through the relevant interconnection study processes to determine whether it can be reliably interconnected to the transmission grid. As Company Dr. Wayne

[68] *See generally* Order No. 1000.

Galli explains in detail in his Direct Testimony,[69] the RTOs have extensive study processes to ensure that a new transmission line can safely and reliably connect to the grid.

Q. What does "economic feasibility" mean with respect to a participant-funded transmission line like the Grain Belt Express Project?

A. There are two ways to determine that a participant-funded transmission line like Grain Belt Express, is "economically feasible." One way is to affirm that because the developer of the project is assuming the full financial risk of failure, the project meets the requirement that it be economically feasible. This is the approach the Commission took in *Tartan*.[70] As the explained in a 1999 Commission order applying *Tartan*:

> The *Tartan Energy Company* case requires the Commission to analyze the economic feasibility of a proposal by asking whether the risk of the failure of the development lies with the investors or the ratepayers. The proposal in this case directly shifts the burden to Osage's investors . . . If Osage has underestimated the economic feasibility of the project, the loss will be borne by Osage and the project developer (i.e. the investors) and not by Osage's ratepayers.[71]

In other words, if the project developer assumes the economic risks of a project, then the *project developer*, and not the public, will suffer a loss if it has underestimated the costs of the project, or failed to earn a sufficient return. The project is thus economically

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[69] Wayne Galli Direct Testimony at 18

[70] *In Re Tartan Energy Co., L.C.*, No. GA-94-127, 3 Mo. P.S.C. 3d 173 (Mo. P.S.C. Sept. 16, 1994) ("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.")

[71] *In the Matter of the Application of Osage Water Company*, No. SA-99-268, 8 MO P.S.C. 3d 366 (Mo. P.S.C. October 14, 1999)

feasible from the perspective of the Missouri public, which will receive the benefits of the project, without assuming the risk that it will cost more to construct or earn a lower profit than expected.

The other way to approach the question of "economic feasibility" is to determine whether or not a project is a viable business venture. From a regulator's perspective, in the case of a participant-funded project, this is not a relevant question, because the public is not footing the bill, and the project developers have voluntarily assumed the risk of failure. That said, Grain Belt Express has presented substantial facts showing that the Project is economically feasible as an independent business venture. Fifteen potential transmission customers submitted TSRs that are collectively seeking transmission capacity several times what the Grain Belt Express has available. These TSRs indicate that transmission customers have a strong interest in purchasing transmission capacity from Grain Belt Express, which will lead to the Project's successful financing and construction.

Q. Will Grain Belt Express take the risk of the Project's success and profitability?

A. Yes. As a participant-funded project, all costs of the Grain Belt Express Project are borne by Grain Belt Express and its investors. As I explained above, in Section II of my testimony, these costs will not be recovered from Missouri's captive ratepayers. In addition to using a participant-funded model, Grain Belt Express has made an independent commitment not to seek regional cost allocation—if it were to become available—without express authorization from the Commission. This commitment is discussed in Company witness David Berry's Direct Testimony.[72] Under the Commission's approach in *Tartan*, which is to determine whether the public or the developer assumes the risk of an

[72] David Berry Direct Testimony at 9

uneconomic project, the Grain Belt Express would clearly be economically feasible because the public faces no such risk.

Q. What facts show that the Project is likely to be a successful investment for Grain Belt Express' investors?

A. Whether the Project is likely to be a successful investment for Grain Belt Express' investors should not be of any concern to the Commission, which has no responsibility for protecting the voluntary investors in Grain Belt Express, and which is not in a better position to evaluate the success of the investment than the voluntary investors themselves. In other words, the Commission has no reason for, or basis for, "second-guessing" the investors, who believe that investment in the Grain Belt Express will be successful—or they wouldn't be investing.

Nevertheless, there is additional evidence that the Project is likely to be a successful investment for Grain Belt Express' investors. As I discussed above, the results of the open solicitation demonstrate that there is demand for the Project's capacity far in excess of the actual capacity available. This demand provides important evidence that the project is economically feasible. Not only is there sufficient demand to account for all of the capacity on the Project, but there are more customers that have requested to purchase service on the Project than Grain Belt Express has service to sell. One reason for this excess demand is that the Grain Belt Express Project offers access to large amounts of low-cost, desirable wind power. As shown in Mr. Berry's Levelized Cost of Energy ("LCOE") analysis, Kansas wind power is less expensive than the new solar and natural gas plants, and is also less expensive than wind power generated in Missouri or elsewhere in MISO.[73] Taken

[73] David Berry Direct Testimony at 28

together, the MJMEUC contract, the successful open solicitation, and the cost-competitiveness of wind power delivered by the Project, provide additional strong evidence that Grain Belt Express is financially viable.

Q. In what ways does the Grain Belt Express Project serve the public interest?

A. The Grain Belt Express Project will serve the public interest in numerous ways. Most fundamentally, the Project is a substantial investment being made in Missouri to supply low-cost, clean energy to the state and region without imposing costs or risks on electric customers that do not directly benefit from this aspect of the Project. The Project also serves the public interest in the various ways discussed in my testimony and the testimony of other Grain Belt Express witnesses. To summarize:

- The Project will reduce wholesale electricity prices and the cost for Missouri utilities to serve their electric load;[74]
- The Project will reduce the emissions of carbon dioxide, nitric oxides, and sulfur dioxides;[75]
- The Project provides Missouri utilities access to lower-cost power supplies than would otherwise be available, including an estimated savings to MJMEUC of $10 million per year and additional savings possible for other Missouri utilities;[76]
- The Project allows Missouri and other states in the region to cost effectively meet their state renewable energy standards and goals;[77]
- The Project's participant-funded business model protects Missouri's captive electric customers from the costs and risks inherent in traditional, rate-based transmission;
- The Project meets the clear need for interregional transmission—and provides the multiple benefits of interregional transmission--while avoiding the contentious and problematic cost allocation processes across multiple RTOs;

[74] Schedule JNC-2

[75] Neil Copeland Direct Testimony at 4

[76] Mark Lawlor Direct Testimony at 3; David Berry Direct Testimony at 44

[77] David Berry Direct Testimony at 37-44

- The Project provides a major new source of electric generation and links four regions and three RTOs, which increases reliability during times of peak load or generator outages;[78] and

- The Project will be a source of economic development to Missouri through increased property taxes,[79] construction jobs,[80] and manufacturing jobs.[81]

Together, these benefits support the finding that the Grain Belt Express Project advances the public interest in Missouri.

Q. Is there a federal process available to permit the Grain Belt Express Project in Missouri?

A. Yes. Under Section 1222 of the Energy Policy Act of 2005, DOE has the authority to develop, in collaboration with private entities, new electric power transmission facilities and related facilities located within any state in which the SWPA or the Western Area Power Administration operate. This provision allows the project undertaken jointly by the DOE and the private entity to take advantage of the authority of federal power administrations to construct transmission without state regulatory approval. The DOE recently authorized such a joint project for the Plains & Eastern Clean Line Project ("Plains & Eastern"), which is under development by Grain Belt Express' parent company, Clean Line Energy Partners LLC. The Plains & Eastern will be located in SWPA and crosses Oklahoma and Arkansas. SWPA also operates in the state of Missouri, so this approach is available to Grain Belt Express.

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[78] Edward Pfeiffer Direct Testimony at 5

[79] Richard Tregnago Direct Testimony at 3-4

[80] Thomas Shiflett Direct Testimony at 13; Mark Lawlor Direct Testimony at 15-17

[81] Wayne Galli Direct Testimony at 37-39; Mark Lawlor Direct Testimony at 15-17

Q. What benefits are there to Missouri if the Commission approves and regulates the Grain Belt Express Project rather than if Grain Belt Express pursues federal siting authority?

A. It is preferable for the Commission to approve and regulate the Grain Belt Express Project rather than to have Grain Belt Express partner with the DOE to do business in Missouri. The Commission understands the needs of Missouri and Missouri landowners, and can ensure that those interests are represented and protected. In particular, the Commission can exercise its authority to impose conditions on the Project, many of which Grain Belt Express has already agreed to in its 2014 Case.[82] Moreover, in approving the Project, the Commission will have authority over routing, agricultural mitigation requirements, and the siting of the converter station in Missouri.

In the case of the Plains & Eastern Line, DOE's intervention was necessary in part because the Arkansas Public Service Commission concluded that the law did not clearly grant it the right to permit the project.[83] In Missouri, however, the Commission clearly has the authority to approve the Project, and Missouri is the only state that the Grain Belt Express Project will pass through that has not yet given its approval. The Commission should exercise its authority for the benefit of the Missouri public and approve the Project subject to appropriate conditions.

[82] David Berry Direct Testimony at 45

[83] *In the Matter of the Application of Plains and Eastern Clean Line LLC For a Certificate of Public Convenience and Necessity to Construct, Own and Operate as an Electric Transmission Public Utility in the State of Arkansas*, Docket No. 10-041-U, at 9-12 (Ar. P.S.C. Jan. 11, 2011).

Q. How can the Commission balance the public benefits of the Grain Belt Express Project with concerns about landowner interests and property rights?

A. First, the Commission can rely on the commitments made by Grain Belt Express. As detailed in the Direct Testimony of Ms. Deann Lanz, Grain Belt Express has taken a number of steps to recognize and respect the interests of landowners. For example, Grain Belt Express intends to pay a premium for easements, compensating landowners for use of their property by paying 110% of the average per acre value of recent sales for similar land types in the county.[84] In other words, although Grain Belt Express is only seeking to purchase an easement, it will propose an easement payment to landowners that at a minimum equals the fair market fee value of the land.[85] Even if Grain Belt Express requires a very small parcel of land, each landowner will receive a minimum payment of $2,000.[86] In addition, Grain Belt Express will pay landowners, at their option, either a one-time payment or a recurring annual payment for each structure located on their property. If a landowner elects to receive annual payments, such annual payments will increase by 2% per year.[87] If Grain Belt Express and a landowner have reached an agreement on the form of easement but are unable to reach agreement as to the appropriate compensation, Grain Belt Express, at the landowner's request, will submit the dispute to binding arbitration

[84] Deann Lanz Direct Testimony at 6

[85] By contrast, most natural gas pipeline projects offer only 100% of fair market value. *See generally* FERC Docket Nos. CP16-17, CP16-13, CP16-12, CP15-91, and CP14-529 (certificate applications stating that easements would be purchased at "fair market value").

[86] Deann Lanz Direct Testimony at 6

[87] Deann Lanz Direct Testimony at 7

administered by the American Arbitration Association.[88] Grain Belt Express will use eminent domain only as a last resort.[89]

Second, the Commission can require Grain Belt Express to live up to its commitments to landowners by imposing relevant conditions in Grain Belt Express' certificate related to compensation, arbitration and other potential landowner concerns.

Q. Have the benefits described by Grain Belt Express shown that the public convenience and necessity is served by the Project and that it is in the public interest?

A. Yes. In light of the numerous benefits that will be conferred on Missouri and the region, I conclude that the Project offers service that is both convenient and necessary for the public and that it is in the public interest. This is particularly true because Grain Belt Express will assume all financial and market risk for the Project, and the costs of the Project will not be recovered from captive Missouri ratepayers.

Q. Does this conclude your Direct Testimony?

A. Yes.

[88] Deann Lanz Direct Testimony at 11

[89] Deann Lanz Direct Testimony at 16

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, Control, Manage, Operate 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

AFFIDAVIT OF SUEDEEN G. KELLY

STATE OF District of)
) ss
COUNTY OF Columbia)

Suedeen G. Kelly, being first duly sworn on his oath, states:

1. My name is Suedeen G. Kelly. I am the Chair of the Energy Regulation, Markets and Enforcement Practice at Akin Gump Strauss Hauer & Feld LLP.

2. Attached hereto and made a part hereof for all purposes is my Direct Testimony on behalf of Grain Belt Express Clean Line LLC consisting of 38 pages, having been prepared in written form for introduction into evidence in the above-captioned docket.

3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.

Suedeen G. Kelly

Subscribed and sworn before me this 29 day of August, 2016.

Notary Public

My commission expires: GAIL V. SMITH Notary Public of District of Columbia My Commission Expires November 14, 2017

GAIL V. SMITH NOTARY PUBLIC DISTRICT OF COLUMBIA EXPIRES NOV 14 2017

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Akin Gump Strauss Hauer & Feld LLP, Washington, DC
Partner, 2012 – Present
Chair of Energy Regulation, Markets and Enforcement Practice

Chosen by *Metropolitan Corporate Counsel* as its cover story for January 2016; Chambers Global Ranked (2012-2016), energy electricity, regulatory and litigation; Recognized by *The National Law Journal* as 2015 Top 50 Regulatory & Compliance Trailblazers in environment, energy and law; Top Author, JD Supra Readers' Choice Award (2015).

Member, Board of Directors, UIL Holdings, New Haven, CT (2011 – 2015)

Member, Board of Directors, Access Midstream Partners, Oklahoma City, OK (2010 – 2015)

Member, Board of Directors, Tendril, Boulder, CO (2010-2012)

Patton Boggs LLP, Washington, DC
Partner, 2010 – 2012
Co-Chair of Energy Industry Practice

Federal Energy Regulatory Commission, Washington, DC
Commissioner, 2003 – 2009
Responsibilities included (1) making decisions in approximately 1300 cases each year involving electric and natural gas wholesale markets and interstate transmission, hydroelectric licensees and gas pipeline certificates, oil pipeline rates, electricity reliability, and enforcement; (2) maintaining relations with the U.S. Senate Energy and Natural Resources Committee and the U.S. House Commerce and Energy Committee, including testifying before the committees as required and following legislative developments; (3) maintaining relations with industry and market participants; (4) speaking publicly on energy industry developments and maintaining relations with the press; (5) co-chairing the Smart Grid Collaborative between FERC and the National Association of Regulatory Utility Commissioners; (6) managing the budget and staff of the Office of the Commissioner.

University of New Mexico School of Law, Albuquerque, NM
Professor of Law, 1986 - 2003
Responsibilities included teaching, research, publication, and service.

Teaching: Taught Energy Law, Public Utility Regulation, Legislative Process and Administrative Law, and Administrative Practice. Served as Editor-in-Chief, Natural Resources Journal (1995-2000) (responsibilities included managing all aspects of the publication of four volumes of the Journal each year, its budget and administrative staff, and supervising the student editorial staff). Was the Lewis & Clark Law School Distinguished Visitor (1998) and was awarded the Susan and Ronald Friedman Faculty Excellence in Teaching Award (1995-96) and the Keleher & McLeod Professor of Law Award (1997-99).

Research and Publication: Summary of publications available.

Service: Served as UNM "Beyond the Headlines" Current Events Lecturer (1992); Organized a Conference on Campaigns, Redistricting and Elections (2001); a Symposium on the Electric Industry (1996) (with Reddy Corp. International); and a Symposium on Oil and Gas Law (with support from Rocky Mountain Mineral Law Foundation) (1996). Other professional activities summarized at the end.

Staff of U.S. Senator Jeff Bingaman, Washington, DC
Detail to the U.S. Senate Energy and Natural Resources Committee, 1999 (on leave from U. of NM)
Contributed to development of energy and hydroelectric licensing legislation.

California Independent System Operator, Folsom, CA
Regulatory Counsel, 2000 (on leave from U. of NM)
CAISO operates much of California's transmission grid and dispatches interconnected generation, which was coordinated with the California Power Exchange until 2001. Responsible for learning and understanding the ISO's protocols and tariff provisions so as to be able to answer day-to-day legal questions. Worked on the regulatory proceeding involving the 70 unresolved issues remaining from the FERC's conditional certification of the ISO.

Modrall, Sperling, Roehl, Harris & Sisk, Albuquerque, NM
Attorney, 2001 - 2003 (on leave from U. of NM)
Responsibilities included creating and heading up the firm's public utility practice. Clients included independent power producers, water utilities, a local gas distribution company, and NM State University in its capacity as a large electricity customer.

Suedeen G. Kelly, Attorney-at-Law, Albuquerque, NM
Attorney, 1986 - 2001
Managed a part-time practice in federal and state energy and public utility law, representing private and publicly-owned clients in transactions, legislation, rulemakings and litigation concerning electric, gas and water utility certification, rates and service; electricity assets siting, financing, acquisitions and mergers; electric and gas industry restructuring; and doing business with electric and gas utilities.

New Mexico Public Service Commission, Santa Fe, NM
Chairwoman, 1984 - 1986.
Commissioner, 1983 - 1984.
Responsibilities included regulation of the state's electric, gas and water utilities; management of the agency, its budget and staff; and maintaining relations with the State Legislature, the Governor's Office, the industry, and the public.

New Mexico Office of the Attorney General, Santa Fe, NM

Attorney, Public Utilities Division, 1982 - 1983
Managed cases being litigated in New Mexico state courts and cases before the NM Public Service Commission.

Luebben, Hughes & Kelly, Albuquerque, NM
Partner, 1978-1982
Managed a private law practice, representing clients in state and federal litigation and regulatory agency practice in utility, natural resources, energy and Indian law.

University of New Mexico Graduate School of Public Administration, Albuquerque, NM
Adjunct Faculty, 1979 - 1982
Taught Administrative Law.

Natural Resources Defense Council, Inc., Washington, DC
Attorney, 1977 - 1978
Law Clerk, 1975
Managed a case load involving environmental litigation in the federal courts, federal agency proceedings and federal legislative developments.

Ruckelshaus, Beveridge, Fairbanks & Diamond, Washington, DC
Associate Attorney, 1976 - 1977
Worked on cases in federal litigation, federal and state agency proceedings, and helped to advise clients regarding legislation. Matters involved environmental, commercial and constitutional law.

U.S. Environmental Protection Agency, Washington, DC
Law Clerk, 1974
Provided research regarding the Federal Water Pollution Control Amendments of 1972 and federal clean water policy.

EDUCATION

Cornell Law School, J.D., *cum laude*, 1976.
Cornell Law Scholarship; Delaware School Foundation Scholarship; International Law Journal Staff; Director, Cornell Legal Aid (responsible for managing the case load of the Family Division and supervising its student attorneys).

University of Rochester, B.A. in Chemistry, *With Distinction*, 1973.
Bausch & Lomb Science Award and Scholarship; President, University Women's Residence Assistants (responsible for managing women's residential assistance program and supervising the residence assistants).

PUBLICATIONS SINCE 2005

CREATING A REGULATORY FRAMEWORK FOR DEMAND-SIDE INVESTMENT EQUIVALENT TO GENERATION & GRID INVESTMENTS (Akin Gump 2014), http://cdn.akingump.com/images/content/3/0/v2/30870/ADSM-Regulatory-Equivalent-White-Paper-July-2014-FINAL.pdf (co-authored with J. Porter Wiseman).

Navigating the FERC Enforcement Process, in INSIDE THE MINDS: COMPLYING WITH ENERGY AND NATURAL RESOURCES REGULATIONS 7 (Thomson Reuters 2014) (co-authored with Julia E. Sullivan).

Regulatory Uncertainty Remains in Energy Markets, 250 N.Y. L.J. 9 (2013) (co-authored with Julia E. Sullivan and Steven F. Reich).

Getting Gas to the People: Federal Energy Regulatory Commission's Permitting Process for Pipeline Infrastructure, in BEYOND THE FRACKING WARS: A GUIDE FOR LAWYERS, PUBLIC OFFICIALS, PLANNERS, AND CITIZENS 81 (Erica L. Powers & Beth E. Kinne, eds., 2013) (co-authored with Vera C. Neinast).

Key Legal Issues Facing the Administration in 2013: Environment, Energy and Natural Resources, 43 ENV'T L. REP. 10395 (2013) (co-authored with John Cruden, Scott Fulton, and William H. Meadows).

Integrating LNG into the U.S. Energy Supply, 2 TEX. J. OIL, GAS & ENERGY L. 1 (2007).

Subdelegation Doctrine and the Application of Reference Prices in Mitigating Market Power, 26 ENERGY L.J. 297 (2005) (co-authored with Maria F. Vouras and Jennifer S.Amerkhail).

Address to the Environmental Regulation, Energy, and Market Entry Symposium, 15 DUKE ENVTL. L. & POL'Y F. 251 (2005).

SWORN TESTIMONY

BP Pipelines (Alaska) Inc. v. State of Alaska, No. 3AN-06-08446 CI (Alaska Super. Ct. 3d Jud. Dist. 2011)

In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc., No. 9361 (Public Service Commission of the State of Maryland 2015).

PROFESSIONAL ACTIVITIES

Rocky Mountain Mineral Law Foundation, Trustee (1988 – 1993, 2015 - Present).

Member, Environmental Law Institute Leadership Council (2015 – Present).

Member, Dean's Advisory Council, Hajim School of Engineering, University of Rochester, Rochester, NY (2012 – Present).

Member, Advisory Board, The Perfect Power Institute, Chicago, IL (2011 – 2015).

Board Member, Charitable Foundation of the Energy Bar Association (2010 - 2013).

Member, Advisory Board, Gridquant, Columbus, OH (2013).

Member, Smart Grid Advisory Committee, National Institute of Standards and Technology (2010 - 2013).

Council Member, American Bar Association, Section of Administrative Law and Regulatory Practice (2010 - 2012).

Advisory Council, Women's Council on Energy and Environment, Washington, DC (2008 – 2012; Chair 2010 - 2012).

Council Member, American Bar Association, Section of Environment, Energy and Resources (2000 - 2003).

New Mexico Women's Bar Association (1991 - 2003).

Barrister, H. Vearle Payne American Inn of Court (1995 - 2003).

Board Member, Santa Fe Diocese Foundation (1999 - 2003).

Founding Board Member, Albuquerque Open Space Alliance (1996 - 1999).

N.M. Legislative Task Force on Management of the Middle Rio Grande Bosque (1993 - 1994).

American Association of Law Schools, Chair of the Executive Committee of the Legislation Section (1994 - 1995).

Border Research Institute of New Mexico State University, Member of the Advisory Committee on its studies (1992 - 1993).

The National Regulatory Research Institute, Ohio State University, Member of the Research Advisory Committee to the Board (1988 - 1992).

Board Member, New Mexico Bar Association, Natural Resources Section (1987 - 1992)

U.S. Consumer Product Safety Commission, Chair of its Advisory Council (1980 - 1981); Member (1979-1981).

U.S. National Air Quality Commission-Four Corners Region Study, Member of Advisory Committee (1979 - 1981).

N.M. Legislative Task Force, Federal Lands Action Group, (1979 - 1981).

Washington D.C. Council of Lawyers, Executive Board Member (1977 - 1978).

Member of the Bars of New Mexico and the District of Columbia; of the U.S. Courts of Appeal for the District of Columbia, 9th and 10th Circuits; and of the U.S. District Courts for the District of Columbia and New Mexico.