UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Grain Belt Express LLC	**)**	**Docket No. ER24-59-000**

PROTEST OF MISSOURI LANDOWNERS ALLIANCE

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, the Missouri Landowners Alliance (the Alliance) hereby files this Protest against the Application for Amendment to Existing Negotiated Rate Authority and Request for Expedited Consideration and Shortened Comment Period of Grain Belt Express (the Application) filed in the above-captioned docket on October 6, 2023.

The Alliance is a non-profit Missouri corporation whose members consist, in part, of electric ratepayers who live in northern Missouri in the area where Grain Belt Express (Grain Belt) proposes to build the Missouri segment of a transmission line connecting proposed renewable generation in western Kansas with a terminal point in Indiana. The address of the Alliance is P.O. Box 98, 10450 NE 336th Street, Cameron, MO 64429.

I. THE APPLICATION IS NOT PROPERLY FILED AND THE SHORTENED COMMENT PERIOD IS UNWARRANTED

The Alliance objects to Grain Belt's filing of an amendment to its existing Negotiated Rate Authority in a new docket and thereby evading notification of interested parties that participated in the original proceeding in Docket No. ER14-409. The Alliance also objects to Grain Belt's request for expedited consideration and a shortened comment period.

Grain Belt's request to shorten the already short 21-day comment period fails to demonstrate how shortening the comment period by 7 days will expedite the Commission's consideration.

Grain Belt informs that Invenergy Transmission bought the Grain Belt Express project in 2020.[1] However, Invenergy Transmission apparently never bothered to inform the Commission of this change of ownership, until now. If Grain Belt is indeed in such a hurry that it needs expedited consideration, it has already had nearly 4 years to either amend its existing, or re-apply for, Negotiated Rate Authority. Grain Belt fails to explain why it didn't bother to notify the Commission of changes to the project when they occurred.

Applying to amend its existing Negotiated Rate Authority in a new docket, combined with its request to shorten the comment period, demonstrates a concerted effort to impede comments on its application due to lack of awareness combined with an artificially short comment period. This is not an auspicious beginning for an application to negotiate just and reasonable rates using a fair and impartial process.

II. THE PROJECT HAS CHANGED AND MUST BE RE-EVALUATED

Today's Grain Belt Express transmission project bears little resemblance to the one described in the Commission's Order Conditionally Authorizing Proposal and Granting Waivers.[2] This is not just a simple amendment of available capacity. The ownership of the project has changed. The interconnection points for the project have changed. The capacity of the project has changed. The cost of the project has changed. The project's investors have changed. The company's plan for generating revenue has changed. The Commission must re-evaluate the project before granting it continued Negotiated Rate Authority, including: (1) the justness and reasonableness of the rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and

[1] Application at 2.
[2] *Grain Belt Express Clean Line LLC*, 147 FERC ¶61,098 (2014).

operational efficiency requirements.[3]

While the Commission found previous owner Clean Line Energy Partners (Clean Line) and its affiliates did not own or control any barriers to market entry or have any incentive to withhold capacity on the Project,[4] new owner parent company Invenergy controls a large inventory of energy facilities, including generation facilities, within the project area and could have incentive to withhold capacity or give undue preference to its affiliate customers. The Commission should not allow Grain Belt to escape the same scrutiny given to Clean Line by treating its application as a simple amendment, instead of the new application that it so obviously is.

III. PREVIOUS CAPACITY SALES SHOULD BE VOIDED

Grain Belt admits that Clean Line conducted an Open Solicitation in 2015 which

> "…resulted in Grain Belt Express entering into two transmission service agreements (the "Initial TSAs"), together totaling no more than 225 MW, each of which remains contingent upon Commission approval of a post-solicitation compliance filing, for which approval has not yet been sought."[5]

Clean Line committed to making the required compliance filing upon completion of the solicitation process.[6] However, it did not. Clean Line never officially closed the solicitation process nor submitted the required compliance filing.[7] Clean Line simply abandoned its Open Solicitation and its Negotiated Rate Authority. Grain Belt claims it can make the required compliance filing at some time in the future, but it has been at least 7 years since the contract was signed by previous owner Clean Line and it is doubtful that needed documentation to make the filing is accessible to Grain Belt. In addition, there has been some question whether Clean

[3] *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) at P 37.
[4] *Grain Belt Express Clean Line LLC*, 147 FERC ¶61,098 at P 15.
[5] Application at 2-3.
[6] *Grain Belt Express Clean Line LLC*, 147 FERC ¶61,098 at Ordering Paragraph B.
[7] Application at 2-3.

Line's solicitation of the referenced TSAs was in compliance with its Negotiated Rate Authority. See pages 50-61 of the attached Initial Post-Hearing Brief of The Missouri Landowners Alliance,[8] and the references to the record cited therein, for a chronology of the actions Clean Line took regarding the sale of capacity to Missouri Joint Municipal Electric Utility Commission (MJMEUC). MJMEUC is the signatory on the TSAs Grain Belt references in its Application.[9] The TSAs may not be part of Clean Line's 2015 Open Solicitation, but possibly a later solicitation that was not widely noticed as required.

The Commission requires the developer to

> "…update its posting if there are any material changes to the nature of the project or the status of the capacity allocation process, in particular to ensure that interested entities are informed of remaining available capacity…".[10]

If Clean Line's 2015 Open Solicitation is still open in order to allow Grain Belt to make the required compliance filing within 30 days of its close, Grain Belt needs to explain why it did not update its posting when its project changed.

The Commission should consider any contracts signed by Clean Line, for which the company did not submit a timely compliance filing, to be null and void.

IV. SALES OF CAPACITY AND UNDIVIDED INTERESTS MUST BE SEPARATED

In its application, Grain Belt states that it will rely on some combination of capacity contracts negotiated with customers and sales/leases of undivided interests in the project to generate revenue.[11] Asset sales are subject to Section 203 of the FPA[12] and are not a normal part

[8] See Attachment A, Initial Post-Hearing Brief of The Missouri Landowners Alliance, et. al, Missouri Public Service Commission Case No. EA-2016-0358 (2017).
[9] Application at 2-3.
[10] *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038 (2013).
[11] Application at 8.
[12] 16 U.S. Code § 824b

of negotiating rates with potential customers. The sale of an interest in a facility is not a customer *rate*; it is a *sale* of an asset. Grain Belt fails to provide sufficient detail of how available capacity would be reduced by project sales made and negotiated during the Open Solicitation. Must Grain Belt post an update on available capacity each time it makes a sale of an undivided interest in order to notify other participants of how much capacity is left? What if Grain Belt sells the entire project as undivided interests and leaves no capacity available? This is an issue of first impression that is ripe for Commission determination. Grain Belt must decide whether it is offering capacity in an Open Solicitation, or sales of undivided interests in its project through a different process.

V. GRAIN BELT HAS ALREADY BEGUN NEGOTIATING CAPACITY SALES BEFORE NOTICING AN OPEN SOLICITATION

Grain Belt states that it wants to "…proceed with an open solicitation seeking to sell transmission service over the Project at negotiated rates…".[13] Grain Belt's request is framed as an action it will take in the future, once approved. However, in Grain Belt's state approval proceeding in Missouri, Grain Belt witness Shashank Sane testified that Grain Belt has already negotiated Memorandums of Understanding (MOUs) to purchase Grain Belt's capacity with a number of entities.

> "Demand for the Amended Project can be seen on several fronts. First, Grain Belt Express has entered into Memorandums of Understanding ("MOUs") with major commercial and industrial consumers, and electric utilities, each of which has expressed interest in acquiring transmission capacity from the Project."[14]

It is indisputable that these MOUs were negotiated unfairly outside a proper Open Solicitation. In addition, Mr. Sane also claims to already be in active negotiations with potential customers in a news article published today.

[13] Application at 2.
[14] Testimony of Shashank Sane, Pg. 13, Ln. 7-10, Missouri Public Service Commission Case No. EA-2023-0017, August 24, 2022, available at: https://efis.psc.mo.gov/Case/FilingDisplay/208635

> "In the case of Grain Belt Express, Invenergy is in active discussions with a number of utilities interested in buying the power it will deliver, as well as corporations looking to buy energy that's not only cleaner than what's available from the grid at large but often cheaper, given the falling costs of building new wind and solar farms, he said."[15]

Grain Belt must demonstrate to the Commission's satisfaction that such agreements and negotiations are null and void and will not give undue preference to certain participants when awarding capacity in a future Open Solicitation.

VI. GRAIN BELT IS ATTEMPTING TO LIMIT ITS COMPETITION

In its application, Grain Belt states:

> "Grain Belt Express's potential customers have available to them as an alternative the option to seek transmission service from an incumbent transmission owner in the region that would be built and paid for via cost-of-service rates. Accordingly, customers will only purchase transmission service from Grain Belt Express if doing so is cost-effective."[16]

In examining the veracity of this statement, the Commission should consider the pending complaint Invenergy Transmission has filed against Midcontinent Independent System Operator (MISO).[17] In that complaint, Grain Belt parent company Invenergy demands that MISO include Grain Belt Express in its Long Range Transmission Plan (LRTP) base case. Invenergy contends that inclusion of Grain Belt Express in the base case will make unnecessary new transmission found needed and ordered by MISO in its LRTP. Invenergy is seeking to limit alternative transmission service owned by incumbents so that customers will have no choice but to purchase Grain Belt's service, whether or not it is cost-effective.

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[15] Jeff St.John, *A $7B power line from Kansas to Indiana moves closer to reality*, Canary Media, October 20, 2023, available at https://www.canarymedia.com/articles/transmission/a-7b-power-line-from-kansas-to-indiana-moves-closer-to-reality

[16] Application at 10.

[17] *Invenergy Transmission LLC v. Midcontinent Independent System Operator, Inc.,* Docket No. EL22-83, August 8, 2022.

VII. GRAIN BELT IS NOT ASSUMING FULL MARKET RISK

In its Application, Grain Belt purports that it is assuming the full market risk for its transmission project.[18] However, in its recent Order approving Grain Belt Express, the Missouri Public Service Commission summarized Grain Belt's financing options like this:

> "Grain Belt anticipates utilizing a combination of commercial and governmental sources of financing, and, at this time, is still evaluating all potential options for financing. Options for governmental sources of financing include the Western Area Power Administration (WAPA) Transmission Infrastructure Program (TIP); and the Bipartisan Infrastructure Bill Transmission Facilitation Program; Department of Energy loans to non-federal borrowers for transmission facilities pursuant to the Inflation Reduction Act and potentially other government funding options. Additional equity capital may also be raised to help finance construction of the Project, or Grain Belt's existing investors may make additional equity investments in the Project."[19]

With the exception of the WAPA TIP Program, the sources of financing being considered by Grain Belt are new programs that use federal funds to subsidize the construction of new transmission projects through the purchase of capacity, or guaranteed loans. The U.S. Department of Energy's (DOE) Transmission Facilitation Program offers

> "Capacity contracts with eligible projects where DOE would serve as an "anchor customer" to buy up to 50% of planned line rating for up to 40 years and to sell the contract to recover cost."[20]

The Department of Energy also offers loan guarantees for eligible transmission projects.[21] A loan guarantee essentially makes the federal government a signatory on the transmission developer's loan. If the developer does not re-pay the loan, the federal government must repay

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[18] Application at 10.

[19] *Report and Order in the matter of Application of Grain Belt Express LLC for an Amendment to its Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and Associated Converter Station* at P 98, Missouri Public Service Commission, File No EA-2023-0017, October 12, 2023 available at: https://efis.psc.mo.gov/Case/FilingDisplay/576033

[20] U.S. Department of Energy Building a Better Grid Transmission Facilitation Program, available at: https://www.energy.gov/gdo/transmission-facilitation-program

[21] U.S. Department of Energy Loan Programs Office, Federal Loan Guarantees for Innovative Clean Energy, Available at: https://www.energy.gov/lpo/articles/innovative-clean-energy-loan-guarantee-solicitation-current

(or simply excuse the debt if the loan was made with federal funds). DOE states that these programs are "…designed for projects that would otherwise not be constructed without support."[22] The Transmission Facilitation Program and Loan Guarantees are designed to provide financial support to new transmission projects. These are new federal transmission financing programs that have not been available to merchant transmission developers in the past. Grain Belt's Application may be the first instance of a project that applies for Negotiated Rate Authority while receiving financial support from these programs. The Application therefore presents an issue of first impression for the Commission.

If an applicant for Negotiated Rate Authority is receiving financial support from the federal government, is it actually assuming the full market risk of its project? Before these new programs at DOE, when a merchant transmission project failed it was only the investor's money that was lost. With the addition of these new programs, captive American taxpayers will end up absorbing all the financial risk of a merchant transmission project that cannot sell enough capacity to repay its loan. Risk is shifted from the merchant developer to the captive taxpayers; therefore the merchant developer is no longer assuming the full market risk for its project. Grain Belt must demonstrate to the Commission that it is accepting full market risk for its project and not relying on government subsidies to shift risk to captive taxpayers.

The Commission's Negotiated Rate Authority relies on free market negotiation to regulate the resulting transmission rates and keep utility profit in check. Voluntary customers will pay no more for service than the market rate for that same service from alternative suppliers. Therefore, if a merchant developer's rates are too high, it won't attract any customers. The new federal transmission subsidies artificially prop up the finances of merchant developers, either

[22] U.S. Department of Energy Building a Better Grid Transmission Facilitation Program, available at: https://www.energy.gov/gdo/transmission-facilitation-program

through unneeded capacity contracts that the DOE will attempt to re-sell but never use, or through risk-free government loans.

The merchant developer has no captive customers and must assume the full market risk of development.[23] Developers relying on subsidies from the federal government are not assuming the full market risk, but shifting risk to captive taxpayers and therefore must be rate regulated like other utilities that rely on captive customers to pay for their projects. The Commission should find that subsidized merchant transmission developers like Grain Belt are not accepting the full market risk of their projects.

VII. CONCLUSION

In its application, Grain Belt assures the Commission that its hiring of an "independent evaluator" will take the place of regulatory scrutiny and guidance, and that Grain Belt should essentially be allowed to regulate itself.

> "Grain Belt Express seeks increased flexibility with respect to its future open solicitation(s) to allow bidders to submit bids with flexible bidding terms and conditions to maximize value and not unnecessarily limit the range of bids that could potentially provide greater economic value to the Project. Grain Belt Express, in conjunction with an independent evaluator, intends to determine what selection criteria to use and to determine which bids provide the greatest economic value, rather than to limit the criteria to pre-determined weighting."[24]

The Commission should not abdicate its regulatory authority to a hired third party that works not for the customers or the Commission, but for Grain Belt. While we recognize that Grain Belt will ultimately be responsible for explaining its capacity awards to the Commission's satisfaction, as that old maxim goes, "an ounce of prevention is worth a pound of cure." Grain Belt has not properly managed its current Negotiated Rate Authority to comply with the Commission's previous directions, and allowing Grain Belt to continue flouting the

[23] *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038 (2013) P 2.
[24] Application at 8-9.

Commission's policies will only exacerbate the problems that may arise during a future compliance filing. Grain Belt is admittedly focused on its own "economic value" (profit) and not on a fair and impartial process that produces just and reasonable rates.[25]

The Commission must not grant Grain Belt's Application to Amend its Negotiated Rate Authority based on lack of information, or stale information that is no longer true. The Commission must give Grain Belt the same scrutiny it would give any new applicant for Negotiated Rate Authority in order to ensure that the resulting rates are just and reasonable.

Respectfully submitted,

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October 20, 2023

[25] Application at 9.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 20th day of October, 2023.

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ATTACHMENT A

Initial Post-Hearing Brief of The Missouri Landowners Alliance, et. al,

Missouri Public Service Commission Case No. EA-2016-0358 (2017).

See Pages 50-61

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

INITIAL POST-HEARING BRIEF OF THE MISSOURI LANDOWNWERS ALLIANCE, CHARLES AND ROBYN HENKE, R. KENNETH HUTCHINSON, RANDALL AND ROSEANNE MEYER, and MATTHEW AND CHRISTINA REICHERT

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April 10, 2017

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INITIAL POST-HEARING BRIEF OF
THE MISSOURI LANDOWNWERS ALLIANCE[1]

1. Introduction.

Everyone involved in this case would no doubt agree that wind generation and other renewable forms of energy have certain desirable attributes. However, that does not mean that every proposal to add renewable energy makes sense from a societal standpoint. Each needs to be judged on its own merits, just as the Commission did in the 2014 Grain Belt case.[2]

Grain Belt alleges that the decision in that case was the product of confusion on the part of the Commission majority.[3] Obviously, if they expected a free pass simply because their proposal would produce renewable energy, they did not get one. Instead, on its own merits their project failed to meet the established criteria in Missouri for a Certificate of Convenience and Necessity (CCN).

The MLA asks only that the Grain Belt project be judged once again by those same criteria, and not be held to a lesser standard simply because it falls within the green

[1] This brief is being filed on behalf of the parties listed on the cover page. For convenience, all such parties will be referred to collectively in this brief simply as the MLA.
[2] Case No. EA-2014-0207, copy at Exh. 321
[3] See Exhibit 359.

umbrella of renewable energy. Based on the same objective approach adopted in the 2014 case, the MLA respectfully submits that the CCN should once again be denied.

2. Summary of issues being briefed by the Missouri Landowners Alliance.[4]

The MLA will not attempt here to address all five of the Tartan criteria normally applied in applications for a CCN. Instead, this brief will focus on four major points, each of which would warrant the denial of the CCN.

First, the MLA contends that despite the Transmission Service Agreement (TSA) between Grain Belt and MJMEUC, the Commission should not assume that any energy transmitted over the proposed line will actually be used to serve customers in Missouri.

Second, even if one were to speculate that four and a half years from now MJMEUC might buy up to 200 MW of service to Missouri, the savings to MJMEUC do not outweigh the burdens on Missouri landowners of constructing a huge transmission line and hundreds of supporting steel towers across 200 miles of northern Missouri.

Third, the MLA submits that because Grain Belt itself created whatever "need" there might be for the line in Missouri, the result falls short of the "public interest" criteria of the Tartan case.

And fourth, Grain Belt has failed to secure the needed approvals pursuant to Section 292.100 RSMo from all eight of the County Commissions in the counties where the proposed line would be built.

In addition to these four major issues, the MLA will address several additional matters that arguably are related to the Tartan criteria of "need" or "public interest". Finally, the MLA will suggest certain "conditions" in the event a CCN is granted.

[4] This brief is being filed on behalf of the parties listed on the cover page. For convenience all such parties will be referred to collectively in this brief simply as the MLA.

Before addressing these matters, there is one common question which should logically be addressed at the outset. In the last case, in addressing the issues of need and public interest, the MLA raised the question of whose need, and whose interest, should the Commission be concerned with?

The Commission answered that question by stating it "finds that it is more appropriate to consider aspects of the Project related to the effect on Missouri utilities and consumers rather than how it might affect Kansas wind developers or utilities and consumers from other states."[5]

Accordingly, the Commission should not be concerned here with the potential impact of its decision on utilities and customers in Illinois or the PJM footprint, or the Kansas wind developers such as Infinity Wind, or the investors in the Project such as Michael Zilkha, Bluescape, the upper management at Clean Line, and the Ziff family.[6] The only concern here should be with the citizens of Missouri.

3. <u>Grain Belt has failed to prove that any energy from the Kansas wind farms will be used by customers in Missouri, and therefore has failed to prove there is a need for the proposed project.</u>

With respect to the Tartan criteria of "need", the only difference of any consequence between this case and the 2014 Grain Belt case is the TSA signed in the interim by Grain Belt and MJMEUC. That document is included as Schedule MOL-1 to the direct testimony of Mr. Mark Lawlor, Exhibit 115.

If the testimony in this case was read in the order that it was filed, one would likely have believed from the outset that the TSA amounted to a firm commitment by

[5] Report and Order, p. 21.
[6] As indicated in the Report and Order in the prior case, Exhibit 321, ZAM ventures is an investment vehicle for ZBI Ventures, which is owned by the multi-billion dollar Ziff family investment fund. See also Exh. 100 p. 20; Exh. 104 page 13 line 13; and the rebuttal testimony of R. Kenneth Hutchinson, Exh. 825, p. 4 lines 3-5.

MJMEUC to actually purchase capacity on the proposed line. The Grain Belt direct testimony included the following descriptions of MJMEUC's obligations under that contract:

> Under the agreement, MJMEUC has agreed to purchase a minimum of 100 MW and up to 200 MW of firm transmission capacity rights on the Grain Belt Express Project ….[7]
>
> MJMEUC will procure up to 200 MW of wind power delivered to Missouri based on this contract ….[8]
>
> The most significant difference [from the 2014 case] is that Grain Belt Express has entered into a TSA with MJMEUC, pursuant to which MJMEUC has agreed to purchase 225 MW of capacity from the Project, with an option for an additional 25 MW.[9]
>
> MJMEUC has agreed to purchase 200 MW of the total transmission service to Missouri….[10]

These statements are clearly misleading. In fact, MJMEUC has not committed to buy any capacity on the Grain Belt line, much less the 200 MW consistently touted by Grain Belt.

The actual contract was very carefully drafted so as to avoid the very misinterpretations ascribed to it by Grain Belt. Under the terms of the TSA, MJMEUC must give Grain Belt a "Notice of Decision" at least 60 days before the line is completed, specifying the amount of capacity it will actually purchase. [11] Thus if the in-service date is November of 2021, as currently projected by Grain Belt, MJMEUC has approximately four and a half years from now to decide how much capacity it will buy.[12]

[7] Direct testimony of Mark Lawlor, Exh. 115, p. 2 lines 16-18.
[8] Direct testimony of David Berry, Exh. 104, page 34 lines 15-18.
[9] Direct testimony of Michael Skelly, Exh. 100, p. 8 lines 7-9.
[10] Direct testimony of Suedeen Kelly, Exh. 111, p. 14 lines 16-17.
[11] See Schedule MOL-1 of Exh. 115, p. 12 Sec. 3.4.
[12] See Tr. 985, lines 5-8.

And while they have the right to purchase up to 200 MW for the Kansas to Missouri service, and up to 50 MW for the Missouri to PJM service, MJMEUC went out of its way to make it absolutely clear that they have no obligation to buy any capacity whatsoever on the proposed line.

To that end, the Agreement first states that MJMEUC may, through its Notice of Decision, "reduce any or all of the Contract Capacities under this Agreement without limit or penalty."[13] That should be clear enough. But just to be absolutely sure that MJMEUC was not committing itself to buy any capacity on the line, the contract went on to state as follows: "For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, (i) the final KS-MO Transmission Service Contract Capacity as reflected in the Notice of Decision may be any amount between 0 and 200 MW."[14] The contract went on in subsection (iv) to include a comparable "opt out" provision for the service from Missouri to PJM.

This language was obviously inserted for a purpose: to guarantee without any question that MJMEUC was not obligated to buy a single MW of capacity from Grain Belt. It is just as accurate to say that MJMEUC has agreed to buy zero capacity as it is to say they have agreed to purchase 200 MW.

The descriptions of the TSA given by the Grain Belt witnesses might be appropriate for one of their press releases, but that testimony clearly did not provide the Commission with a fair description of what the contract says.

So, how much capacity will MJMEUC actually buy four and a half years from now? The answer, without a doubt, is that no one knows.

[13] Schedule MOL-1, page 12, section 3.4.
[14] Id.

One problem is that the in-service date of the Grain Belt line may well be delayed for a variety of reasons beyond November of 2021. If that happens, then of course the decision date for MJMEUC is extended even beyond the four and a half years which they now have in which to evaluate alternatives to the Grain Belt line. The projected in-service date has already been postponed from 2016, to 2017, to 2018, to 2019, to the current projection of November, 2021.[15] And as Mr. Jaskulski explains, there are numerous potential sources for even further delay.[16]

In the interim, for however many years that may be, Mr. Kinchloe acknowledged the obvious: that he and MJMEUC have a fiduciary duty to periodically evaluate the possible alternatives which might be used in lieu of the existing Grain Belt contract.[17]

And as Mr. Kinchloe also testified, capacity planning is a lot more difficult now than it used to be. We don't have a crystal ball, and thus as he indicated, we simply do not know at this point what might be available to MJMEUC even three years from now.[18] In fact, Mr. Kinchloe testified that conditions may change by 2021 to the point where they might even consider rejuvenating the expiring contract they now have with the Illinois Power Marketing company.[19] So while MJMEUC may well intend as of today to purchase some of the Grain Belt capacity, they cannot possibly know at this point if they will actually do so.

By way of background, the Illinois contract is for 100 MW, and expires in May of 2021. It is used to supply a portion of the load of the MOPEP group, which has a

[15] Direct testimony of Joseph Jaskulski, Exh. 302(HC) page 14 lines 273-283; for current projection by Grain Belt see also Tr. 985, lines 5-7.
[16] Id. at p. 15, line 290 – p. 16 line 332.
[17] Tr. 985, lines 13-24.
[18] Tr. 985 line 25 – Tr. 986 line 9.
[19] Tr. 998 lines 2-16.

combined peak load of over 500 MW. At some point MJMEUC realized they would need to start seriously looking to replace the Illinois contract, which led them to choose the Grain Belt option as a partial replacement for the Illinois contract.[20]

But having done so, MJMEUC cannot possibly imagine what other options might present themselves over the next four and a half years or more. One possibility might spring from the dramatic improvements of late in solar generation. According to a document cited by Mr. Berry, from the period 2009 to 2015, the cost of solar generation declined at a significantly higher rate than did the cost of wind generation.[21] Perhaps as a result, according to the latest Wind Technologies Market Report, the amount of wind generation in the sampled interconnection queues has generally declined in recent years, while natural gas and solar capacity has increased or held steady.[22]

On that same general subject, the latest report from the U.S. Energy Information Administration states that two developments will significantly improve the prospects for renewable energy. One was the "continued dramatic reductions in the capital cost of solar PV systems." There was no mention of any such cost reductions in the case of wind energy.[23]

That same report also predicts that solar capacity will pass up wind capacity by the year 2032 or 2033.[24] One reason cited for the gaining popularity of solar generation versus wind generation:

> Wind plants have increased generation during the night when demand for and value of electricity typically are low and thus provide a limited contribution to system reliability reserves. Solar PV plants produce most

[20] Tr. 1048 line 6 – 1049 line 12.
[21] Tr. 867 line 9 – 868 line 4.
[22] Exh. 374, bottom of p. 13.
[23] Tr. 869 line 24 – 871 line 11
[24] Tr. 871 line 23 – 872 line 4

of their energy during the middle of the day when higher demand increases the value of the electricity.[25]

These analyses confirm what Clean Line recently told the Georgia Public Service Commission: that the decline in cost for wind energy due to improvements in wind turbine technology has largely leveled off, and that any future cost reductions in wind technology are not expected to be enough to even offset the decline in the production tax credit.[26]

Another example of the uncertain landscape in utility planning is evidenced by the study commissioned by MJMEUC to review its options for replacing the Illinois coal supply contract.[27] ** [redacted] **

The Commission is no doubt quite familiar with the hazards of predicting the future in today's electric energy markets. For example, legitimate questions can undoubtedly be raised about numerous assumptions underlying every utility's periodic

[25] Tr. 872 lines 12-18
[26] Tr. 868 line 9 – 869 line 16.

[27] Rebuttal testimony of John Grotzinger, Exh. 476, p. 3 lines 10-17.
[28] Id. at p. 3 lines 12-17 and Schedule JG-2.
[29] Schedule JG-2, p. 2-13.

Integrated Resource Plan and Renewable Energy Standard Compliance Plan.[30] And in subsequent years, of course, the plans invariably change. If that was not the foregone expectation, there would be no need for the periodic updates.

It is inevitable that many of the significant variables which will affect MJMEUC's eventual decision are bound to change before they must decide whether to buy any capacity from Grain Belt. The dramatic advances for solar power is but one example. The point here is simply that we cannot possibly know at this point whether or not MJMEUC will find a more attractive alternative in the forthcoming years to the option it presently has with Grain Belt.

One objective view of the lack of any real commitment from MJMEUC to Grain Belt is provided by Wall Street. In order to secure construction loans for the Project, Grain Belt will need to demonstrate to potential lenders that it has TSAs which will provide a secure source of future revenues.[31] However, because of the "opt out" provision in the TSA, Grain Belt could not even use the current MJMEUC contract to back any of its construction loans.[32]

There simply is no reasonable assurance that this contract will ever produce a dollar of revenue for Grain Belt. And there is no logical reason for the Commission to put more faith in MJMEUC's commitment to buy capacity than would be afforded that contract by the financial community.

Further evidence that MJMEUC is far from being committed at this point to the Grain Belt TSA is evident from a contract between MJMEUC and the City of Kirkwood

[30] See e.g. In re: Union Electric Company's 2011 Utility Resource Filing, Case No. EO-2011-0271, Report and Order, March 28, 2012.
[31] See direct testimony of David Berry, Exh. 104 p. 13 lines 2-3; and Tr. 877 lines 18 – 22..
[32] Tr. 878 lines 2-6.

to purchase a portion of the Grain Belt capacity allocated to MJMEUC. This contract was executed less than a month ago – on March 15, 2017.[33]

The contract contains several provisions which are relevant here. First, it specifically states that MJMEUC has certain "early termination options" with respect to both the TSA with Grain Belt and the wind energy PPA with Infinity.[34] The contract with Kirkwood then goes on to describe the steps which would be taken if MJMEUC exercises any such early termination option, and prematurely terminates the Kansas wind project.[35] Furthermore, those same provisions must be included in any future contracts for the sale of any capacity from MJMEUC to other member cities.[36]

Finally, perhaps the most definitive sign that MJMEU does not view its purchase of capacity from Grain Belt as a done deal comes from MJMEUC itself. Grain Belt would no doubt have desired an immediate, binding commitment from MJMEUC to purchase capacity on the proposed line. The fact that the TSA defers that decision for at least another four and a half years is compelling evidence that MJMEUC's decision has yet to be made.

Nevertheless, MJMEUC still has one final opportunity to demonstrate to the Commission that it will in fact buy capacity on the Grain Belt line. With a few strokes of the pen, their contract could be amended so that MJMEUC is legally obligated to take the capacity for which they now have a mere option. Grain Belt would no doubt relish such a change.

[33] Tr. 991 lines 17-25.
[34] Tr. 992 line 15 – 993 line 9.
[35] Id. at lines 18-24.
[36] Tr. 993 line 10 – 994 line 2.

And while MJMEUC may still be waiting for commitments from additional member cities, there is nothing to prevent a contract amendment which binds MJMEUC to purchase the capacity to which there are firm commitments from member cities, while keeping the option to purchase up to a total of 200 MW.

So the parties could remove any doubt about MJMEU's ultimate commitment to buy capacity from Grain Belt by filing an amended contract with the Commission, removing the "opt out" protection for the amount of the capacity which member cities have already agreed to purchase.[37] If MJMEUC chooses not to make such a commitment, they are in effect confirming to the Commission that they have not yet decided to buy any capacity at all.

As something of an aside to the issue of "need", MJMEUC also has the right to purchase up to 50 MW of capacity for the Missouri to PJM service.[38] This option was certainly one of the selling points used by Grain Belt while trying to close the deal with MJMEUC.[39] However, not one of MJMEUC's member utilities has shown any interest in purchasing this service from Grain Belt.[40] It is not even mentioned in the testimony of either MJMEUC witness. In fact, it appears that the necessary engineering studies, which could affect the cost for this service, have not yet been conducted.[41] Accordingly, there is no reason why the Missouri to PJM service should be given any consideration in determining whether the Grain Belt line is needed in Missouri.

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[37] While there is no provision in the schedule for such a filing, it would be no different in substance from a filing made by Grain Belt in the last case. Just after the close of briefing, Grain Belt filed a "Notice" to inform the Commission that it had commenced its first open solicitation for bids for capacity on the proposed line. See EFIS 495, "Notice of Grain Belt Express Clean Line LLC", filed January 29, 2015, accompanied by a press release and other material regarding this initial solicitation of bids.
[38] See TSA at Mr. Lawlor's Schedule MOL-3, p. 33 and p. 12, section 3.3.
[39] See e.g. the presentation made by Grain Belt to MJMEUC at Exh. 349, p. 7.
[40] Tr. 1076 line 16 – 1078 line 5.
[41] Tr. 875 line 22 – Tr. 877 line 5.

As yet another aside, it appears that MJMEUC has contracts with its member utilities to purchase 136 MW of the total 200 MW that MJMEUC may purchase pursuant to the TSA with Grain Belt.[42] However, for purposes of this particular issue, it does not matter how much of the 200 MW are spoken for. If MJMEUC ultimately finds a more attractive option for its members, then the number of MW for which commitments were made by member cities is irrelevant.

The CCN was rejected in the last case in part at least because the Commission had no assurance from Grain Belt that any Missouri utility would ultimately purchase any capacity on the line.[43] That has not changed. Just as in the last case, Grain Belt again has no firm commitments from any utility in Missouri to buy capacity on its line. And so once again, Grain Belt is counting on the same sort of speculation here they relied on in the last case: if we build it, they will come. At this point, the MJMEUC contract does not remove that uncertainty. So once again, the supposed need for the line in Missouri is based solely on speculation.

Grain Belt certainly hopes that MJMEUC will end up purchasing capacity on the proposed line. And at this point, MJMEUC no doubt aspires to that same end. But that is not enough to prove need. "An applicant does not meet its burden of proof by mere speculation, guesswork, hopes or aspirations…." *United for Missouri v. Missouri Public Service Commission*, No. WD79550, consolidated with WD79551, Mo App December 20, 2016, p. 8, Application to transfer to MO S. Ct. filed February 8, 2017 (internal quotation marks and brackets omitted).

[42] This consists of 60 MW for MOPEP, 25 for Kirkwood, 15 for Hannibal, 35 for Columbia and 1 MW for Centralia. Tr. 981 lines 9-15 and Tr. 984 lines 21-24.
[43] Exh. 321, p. 10, par. 22; p. 22.

And the Commission will not learn until years after its decision in this case whether any of the energy from the Grain Belt line ever made its way into Missouri. But on the other hand, if the CCN is issued in this case, the burdens attendant with the line are a certainty, regardless of whether any energy is ever sold in Missouri. In other words, if the CCN is issued here by the Commission, the benefits are 100% speculative, while the damages are 100% certain.

For the foregoing reasons, the MLA respectfully submits that Grain Belt has once again failed to meet its burden of proving that the line is needed in Missouri.

4. Even if one assumes that MJMEUC will purchase energy from the Grain Belt line, the benefits to MJMEUC's customers are far outweighed by the detriments which will result from construction of the line.

This analysis involves several steps, the first being to address the likely level of capacity sales on the proposed line in Missouri. The next step is to approximate the benefits to Missouri customers from those sales. Finally, the potential benefits must be balanced against the damages which are sure to accompany the line if the CCN is issued.

Grain Belt's Prospects of additional capacity sales in Missouri.

Before measuring the benefits of the Grain Belt line to Missouri, it would of course be helpful to know how much of the Kansas to Missouri service will actually be sold by Grain Belt. It appears at this point that MJMEUC has written commitments from its members to purchase 135 MW of the maximum 200 available under the TSA.[44] But even if Grain Belt ends up selling all 200 MW of the capacity allotted to MJMEUC, it is unlikely they will sell any additional capacity to any other utility in Missouri -- at least without drastically reducing the rate as they did for MJMEUC.

[44] See Tr. 991 lines 14-16, plus the 35 MW to Columbia mentioned at Tr. 995 lines 24-25.

As Mr. Jaskulski explained, without the discount given to MJMEUC under the so-called "first mover" rate, MJMEUC would have been better off by purchasing the same MWh from a Missouri wind farm, rather than buying Kansas wind transported for hundreds of miles over the Grain Belt line.[45]

The same would logically hold true for any other Missouri utility looking to purchase renewable energy. Unless they are given a drastic reduction in Grain Belt's normal rate for service from Kansas to Missouri, they should also be better off buying wind energy from Missouri, rather than from Kansas.

Moreover, Mr. Jaskulski's analysis did not even factor in the 25% premium in the RES for wind energy generated in Missouri.[46] Therefore, the Missouri wind option is even more favorable for investor-owned utilities in this state than Mr. Jaskulski's analysis would indicate.

And there are several other important items of note with respect to Mr. Jaskulski's analysis. First, when MJMEUC finally put out a request for bids for wind energy, it had already signed its TSA with Grain Belt.[47] Therefore, MJMEUC specified in its request for bids that it was looking only for wind energy which would be transported over the Grain Belt line.[48]

[45] Surrebuttal testimony of Joseph Jaskulski, Exh. 307(HC), p. 5 line 102 – p. 6 line 127.
[46] See Staff Rebuttal Report, Exh. 201, p. 18.
[47] The TSA was dated June 2, 2016. (Schedule MOL-1, p. 1) MJMEUC did not solicit requests for proposals for the wind energy until August 18, 2016. (Direct testimony of Joseph Jaskulski, Exh. 302, p. 18 lines 361-62).
[48] Id. at p. 18, lines 368-370.

Nevertheless, **

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Had MJMEUC not restricted the bidding process as it did, there is no way of determining how many additional bids they would have received from other wind projects in Missouri or other MISO states, or how low those bids might have been relative to the bid it ultimately accepted from Infinity. Thus the analysis conducted by Mr. Jaskulski may well have shown an even lower cost for Missouri wind, had MJMEUC not in effect been forced by the TSA to restrict the bids to wind developers located near the Kansas converter station.

Second, as explained elsewhere in this brief, if MJMEU reduces the rate on all 500 MW which could be delivered to Missouri, that service becomes economically unfeasible.

Accordingly, it is evident that Grain Belt cannot reduce the rate on the other 300 MW available in Missouri to the same level being offered to MJMEUC. That being the case, any chance for selling additional capacity to utilities in Missouri is further diminished.

Given that Grain Belt is unlikely to offer other Missouri utilities the same "first mover" rate given to MJMEUC, it is also unlikely that Grain Belt will be able to sell any of its remaining 300 MW to other utilities in Missouri. As indicated, utilities in this state will find it cheaper to purchase energy directly from Missouri or other MISO states,

[49] Id at p. 18, lines 370-72, modified to reflect the Infinity contract provided to Mr. Jaskulski after he filed his rebuttal testimony.

[50] Direct testimony of Joseph Jaskulski, Exh. 302, Schedule JJC-4.

rather than importing it hundreds of miles from western Kansas over the Grain Belt line. Thus as Staff has determined, "the MJMEUC contract in and of itself does not demonstrate economic feasibility."[51]

Grain Belt will no doubt fall back on Mr. Berry's LCOE study, claiming that even at Grain Belt's "normal" rate for capacity, the Kansas wind option is still the most economic.

The MLA will generally defer on this issue to Show Me witness Paul Justis. Despite some late revisions to his testimony, his ultimate conclusion still stands: just as Dr. Proctor determined in the last case, combined cycle gas generation is a cheaper alternative for Missouri utilities than energy imported from Kansas over the Grain Belt line.[52]

The MLA will not attempt to dissect all of the differences between the testimonies of Mr. Justice and Mr. Berry. However, we will point out some significant problems with Mr. Barry's calculation of the LCOE for the Kansas wind alternative. In particular, there is no support in the record with respect to perhaps the most significant factor in that analysis: his use of a 55% capacity factor for the Kansas wind generators. The use of this figure significantly understates the LCOE for Kansas wind.

The obvious first question in this regard is how and why Mr. Berry determined that the prospective Kansas wind generators could achieve an annual capacity factor as high as 55%. In discussing the results of his LCOE analysis, and the accompanying bar chart at page 30 of his direct testimony, Mr. Berry states that his Schedule DAB-05 to his

[51] Staff Rebuttal Report, Exh. 201, p. 30.
[52] See Exh. 400(P), p. 13, l. 19, 20.

direct testimony "contains a complete list of assumptions underlying this analysis, along with sources for these assumptions."[53]

The problem is, that is not true. Near the middle of page 1 of Schedule DAB-5 Mr. Berry does state that the assumed capacity factor of Kansas wind is 55%. However, despite what he said in his testimony, he fails to provide any support at all for this critical figure.

The mere use of the 55% capacity factor, without any explanation of why that figure is reasonable, should be given no credence by the Commission. Given that Mr. Berry proposed the use of that figure, it was incumbent upon him to demonstrate that it was reasonable. But the only objective evidence in the record demonstrates that the capacity factor for the Kansas wind energy will be significantly below 55%.

For example, AWS Truepower and the National Renewable Energy Laboratory (NREL) publish data on a state-by-state basis showing the potential installed capacity of wind farms in each state, as well as the potential annual generation of energy in that state.

Mr. Goggin is the Senior Director of Research for the American Wind Energy Association.[54] As he has previously testified, the NREL data can be used to estimate a capacity factor for any given state by dividing the potential wind production data by the potential wind capacity data provided by NREL.[55] Based on this simple calculation, the capacity factor for wind generation in Kansas would be only 45% (or 1 percentage point higher than for the state of Iowa, and only 4 percentage points higher than Missouri).[56]

[53] Direct testimony p. 29, lines 2-3.
[54] Direct testimony of Michael Goggin, Exh. 675, p. 1 lines 3-4.
[55] Tr. 1147 line 16 – 1148 line 10.
[56] Page 2-3 of Exhibit 342.

Perhaps the most current and most objective data on capacity factors is provided in the latest edition of the Wind Technologies Market Report, issued in August of this year.[57] Capacity factor data are depicted graphically at Figures 32 and 33 of the Report. The figures for capacity factors are based on data from the latest year available, 2015.[58]

As shown at Figure 36, and as described by Mr. Goggin, for actual wind projects constructed in 2014 (the last year for which that data is available) not a single one of the several hundred wind farms achieved a capacity factor of 55%.[59] Only one project had a capacity factor approaching even 50%.[60] The report also predicted that for projects installed in the following year (2015) the performance was not likely to change.[61]

Figure 37 at page 48 of the report shows a breakdown of capacity factors by region of the country. Based again on the latest year for which data was available, 24 wind projects were built in the region of the country which includes Kansas. Again, not one of those projects had a capacity factor at or above 55%, with the highest once again approaching only 50%.[62] So in order for Mr. Berry's LCOE analysis to be of any value, the Kansas wind farms connecting to the Grain Belt line would have to be the first on record to ever achieve capacity factors of 55%.

The Report in question goes on to state that as wholesale electricity prices have declined since 2009, the relative economic competitiveness of wind power has also declined. More recently, "the sharp drop in average wholesale electricity prices in 2015 has made it somewhat harder for wind to compete in the market."[63]

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[57] Exh. 374.
[58] Tr. 1140, lines 19-22.
[59] Tr. 1141, lines 6-15.
[60] Tr. 1142, lines 6-11.
[61] Id. at lines 18-24.
[62] Tr. 1142 line 25 – 1143 line 22.
[63] Exh. 374, p. 64-65.

Mr. Berry claims, however, that he has independently confirmed the low price of wind generation in western Kansas from the results of a Request For Information (RFI) issued by Grain Belt in November of 2013.[64] Among the questions asked in that RFI was for the wind developer's estimate of its annual capacity factor.[65] However, as a source for either the total cost of the wind generation or the underlying capacity factor of the responding developers, those RFI responses are inherently unreliable.

The potential wind developers were told up front that their responses would be used (among other things) to communicate the need for the proposed Grain Belt project to regulators.[66] This virtually ensured inherently biased responses. Grain Belt also assured the potential wind developers that the RFI did not commit them to enter into any kind of transaction, that none of their RFI responses would be binding, and that their responses would be used for informational purposes only.[67] Grain Belt did not verify or audit the data in the responses beyond saying that it looked reasonable.[68]

The potential wind developers were free to respond without fear of penalty, financial or otherwise, for providing inaccurate information,[69] and the RFI survey was independent from any later process of bidding for capacity on the proposed line. Thus none of the information provided in the RFI responses was in any way binding on the potential wind developers if they later decided to bid for capacity.[70] Nor was anything they said in the RFI responses in any way binding when they went to negotiate energy

[64] Direct testimony of David A. Berry, Exh. 104, p. 24 lines 8-15.
[65] Exh. 341, p. 8.
[66] Tr. 824, lines 28-23.
[67] Tr. 824 line 24 – 825 line 9.
[68] Tr. 829 lines 15-21.
[69] Tr. 830 lines 4-8.
[70] Id. lines 14-17.

prices with utilities.[71] In short, the wind developers were free to say whatever they thought might be helpful in gaining regulatory approval for the proposed Grain Belt project. Moreover, Grain Belt had no first-hand knowledge of how the potential wind developers even derived the capacity factors submitted in the RFI responses.[72]

Notably, in MJMEUC's own analysis of the cost of wind from western Kansas, Mr. Grotzinger utilized a capacity of only 50%, "based upon my past knowledge and experience of wind farms in Kansas."[73] But after seeing a draft of that testimony, Grain Belt asked him to add an additional sentence to the effect that his 50% figure could increase in the future.[74] Among other things, this maneuver demonstrates the importance to Grain Belt of justifying the 55% capacity factor figure in Mr. Berry's LCOE analysis.

The bottom line is that the record provides absolutely no support for Mr. Berry's 55% capacity factor for Kansas wind. Therefore, he failed to carry his burden of proof with respect to that issue.[75] Accordingly, he also failed to justify the supposed LCOE for Kansas wind, and hence its relative cost compared to the other alternatives. Accordingly, the bar chart at page 29 of Mr. Berry's direct testimony should be ignored by the Commission.

For the same reason, that is equally true for the bar chart at page 30, where Mr. Berry purports to adjust the figures from the bar chart at page 29 in order to reflect the

[71] Id. lines 18-23.
[72] Tr. 827 lines 15-21.
[73] Direct testimony of John Grotzinger, Exh. 476, p. 5 lines 13-15.
[74] Tr. 1063 lines 1-17.
[75] "The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue." *Clapper v. Lakin*, 123 S.W.2d 27, 33 (Mo 1938)

dependable capacity factors of the different generation types[76] Adjusting one set of flawed figures simply produces an equally set of flawed figures.

But that is not the only problem with the bar chart at page 30. Mr. Berry makes his adjustment for the dependability of the generation source by reducing the value of the cost of the energy by the value of the dependable capacity, thereby deriving a new set of LCOE comparisons among the competing alternatives. The basis for this methodology is never explained in any detail by Mr. Berry. However, both Mr. Pfeifer and Mr. Copeland testified that they had never see any study which compares the relative cost of various types of generation by starting with levelized costs of energy, and then adjusting the cost for each such alternative by its capacity value.[77] If nothing else, Mr. Berry's approach is certainly unique.

The MLA will address just one additional problem with Mr. Berry's LOEC analysis. In his direct testimony, speaking with regard to the cost of wind in western Kansas, Mr. Berry pointed to a recent contract with a price of $19.15 per MWh, and went on to state that recent contracts have trended downward from there.[78] In answer to a data request, the lowest priced contract he cited was for $15.80 per MWh.[79]

Yet in his LCOE analysis, Mr. Berry used a figure of only $14.00 per MWh for the energy component of the Kansas wind.[80] And nowhere in his testimony or in his Schedule DAB-5 (which supposedly supports the assumptions of his LCOE analysis) does Mr. Berry ever state that the cost of the Kansas wind in his LCOE was based on a price of only $14.00 for the energy component of that cost.

[76] Direct testimony p. 29, line 4-5.
[77] Tr. 741 lines 10 – 17; Tr. 763, lines 3-12.
[78] Exh. 104 page 23 line 20 – 24 line 2.
[79] Tr. 864, lines 9-25.
[80] Tr. 865 lines 14-20.

And in further contrast, we now have one additional data point to verify the actual market price of Kansas wind: MJMEU agreed to a price of $16.50 per MWh with Infinity Wind, or approximately 18% higher than the $14.00 figure used by Mr. Berry in his LCOE analysis.[81]

So for a number of reasons Mr. Berry's LCOE analysis is flawed, and certainly does not give the Commission any reason to believe that the cost to Missouri utilities of the Grain Belt project will be more attractive than the alternatives he discussed in his direct and surrebuttal testimonies. That being the case, there is no basis to believe that any additional capacity on the line will be sold to any load-serving utilities in this state.

The bottom line is that in reaching a final decision in this case, the Commission should assume that the maximum capacity which Grain Belt will be able to sell to utilities in Missouri is the maximum allotment of 200 MW in the TSA with MJMEUC.

Quantifying the benefits to MJMRU of the TSA with Grain Belt. The next logical step in this analysis would be to quantify what the savings will be to MJMEUC's customers from using the Grain Belt line. And the immediate problem there is to figure out what should be compared to what in quantifying any such savings.

The first mention in the testimony of any savings from the TSA came from Mr. Lawlor, who stated in his direct testimony that he was told by MJMEUC that they would save at least $10 million using the Grain Belt line, compared to the price MJMEUC was currently paying under the expiring contract for the Illinois coal-fired generation.[82]

[81] Tr. 866 lines 14-25.
[82] See Exh. 115 p. 3 lines 15-19. See also rebuttal testimony of John Grotzinger, Exh. 476, lines 3-7.

That comparison is meaningless. MJMEUC did not plan to renew the Illinois contract anyway (at least at the same price it now is paying).[83] Therefore, the price being paid under that contract says nothing at all about how much MJMEIC could save by reason of the Grain Belt line.

To illustrate, if the total annual cost for the Illinois contract was say $18 million, the cost of 100 MW on the Grain Belt line was say $8 million a year, and the cost of the next best alternative to Grain Belt was hypothetically $9 million per year, then the actual savings which can reasonably be attributable to the existence of the Grain Belt line is only $1 million per year – the difference between the cost of using the Grain Belt line and its next best alternative. The $10 figure consistently cited by Grain Belt and MJMEUC does not represent what is saved by reason of the Grain Belt line, but only the amount saved from cancelling an uneconomic supply contract which they were cancelling anyway.

The only meaningful way to calculate the savings from MJMEUC's use of the Grain Belt line is to compare MJMEUC's total cost of power from that line (including both the Grain Belt capacity and the cost of the Kansas wind energy) to MJMEUC's next best alternative to that combination. That figure and only that figure would give a meaningful answer as to how much MJMEUC might save from using the Grain Belt line.

The problem in this regard is that before MJMEUC signed the TSA with Grain Belt in June of last year, it did not bother to solicit bids from any other party to replace the expiring Illinois coal contract.[84] (One can imagine the reaction at the Commission if

[83] Tr. 997 line 23 – 998 line 16.
[84] Tr. 1050 line 8 – 1051 line 12.

a regulated utility were to buy long-term capacity on the open market without even exploring the cost of alternatives).

But in any event, the fact is that MJMEUC does not know, and never will know, what the best alternative would have been to signing the TSA with Grain Belt. Moreover, MJMEUC did not even seek bids on the energy component of the Grain Belt package until more than two months after it signed the contract with Grain Belt.[85] Thus when they signed the TSA in June of last year, MJMEUC had no alternatives bids for either transmission or energy to compare to the cost of the Grain Belt project.

Thus no one can know at this point if MJMEUC may have had a better alternative back in June, 2016 to signing the Grain Belt contract. Accordingly, one cannot possibly know what the savings would be from the MJMEUC contract with Grain Belt, compared to alternatives which were never explored. Or indeed, without the benefit of competing bids at the time the TSA was signed, for all we know the best alternative may have been even less expensive than signing with Grain Belt.

MJMEUC has tried to approximate the "savings" from the Grain Belt contract through a variety of different analyses. All are after-the-fact attempts to produce a proxy "savings" figure for the only one which would have mattered. Thus all of the MJMEUC "savings" studies rightfully deserve a healthy degree of skepticism from the outset.

The initial savings analysis relied on by MJMEUC is shown at schedule JG-3 to Mr. Grotzinger's rebuttal testimony, Exh. 476. That study compares the cost of energy from the Grain Belt line to the cost of purchasing 200 MW of wind energy from Kansas, transmitted over the existing SPP transmission system.[86]

[85] See Direct testimony of Joseph Jaskulski, Exh. 302, p. 18 lines 361-62.
[86] Rebuttal testimony of John Grotzinger, Exh. 476, p. 5 lines 1-10.

There are a number of problems with the analysis at Schedule JG-3. The first is, why even bother to compare the cost of using the Grain Belt line with the cost of the Kansas wind imported through SPP? In the absence of any evidence that this alternative would have been the next best solution to the Grain Belt line (and there is no such evidence in the record) even an accurate comparison at Schedule JG-3 does not measure the savings which would actually be realized by using the Grain Belt line.

MJMEUC could no doubt have show an even greater level of savings by comparing the cost of the Grain Belt line to the cost of importing wind energy from say Wyoming. But neither demonstrates how much MJMEUC would be saving by using the Grain Belt line compared to the cost which may have been available when the TSA was signed.

Second, the supposed level of savings shown at Mr. Grotzinger's Schedule JG-3 is totally dependent on the level of congestion costs which one wishes to assume would be applicable to importing wind energy through the SPP system. Mr. Grotzinger suggests that the congestion costs could range from $2 per MWh to $10 per MWh, a spread of 500%.

The magnitude of that differential makes the analysis meaningless. It's like asking a contractor for a bid on a new roof, and getting an estimate of somewhere between $5,000 and $25,000. The degree of the spread provides little confidence in what the actual cost will be.

As Mr. Grotzinger conceded, "congestion pricing is difficult to predict."[87] And for the study in question to be meaningful, it would need to compare the SPP wind option

[87] Id. at p. 5, line 23.

over the same time period contemplated for use of the Grain Belt line; i.e., a period of between 15 to 25 years.[88]

But as Mr. Grotzinger also conceded, the congestion costs become harder and harder to predict, the further one ventures out into the future.[89] That probably understates the difficulty of his problem. As Mr. Goggin testified, "properly assessing the potential future costs of congestion is extremely difficult to nearly impossible."[90]

So it is fair to ask, just how much can one rely for the next 15-25 years on estimates of congestion costs with a current range between the low and high cost of 500%?

Speaking with regard to his Schedule JG-3, Mr. Grotzinger states that if MJMEUC uses the whole 200 MW from Grain Belt, the savings would amount to approximately $10 million.[91] The closest figure to the $10 million savings on Schedule JG-3 is under the column which assumes congestion costs of $6 per MWh. This would logically imply that the $6 figure is Mr. Grotzinger's best estimate of the most probably value for the congestion costs.

Using that figure, his analysis of the cost of importing 200 MW of Kansas wind from SPP includes approximately $12.7 million of congestion costs, thereby providing an estimated savings of $9.3 million per year for the Grain Belt option. [92]

The arbitrary and speculative nature of MJMEUC's estimates for congestion costs is apparent on a number of grounds. For example, in a different study supplied to the MLA, also for the cost of importing SPP wind power into Missouri, Mr. Grotzinger

[88] See Mr. Lawlor's Schedule MOL-1, p. 32.
[89] Tr. 1012, lines 10-16.
[90] Direct testimony of Michael Goggin, Exh. 675 p. 31 lines 650-51.
[91] Rebuttal testimony of John Grotzinger, Exh. 476, page 5 lines 2-4.
[92] Mr. Grotzinger's Schedule JG-3, column under $6 per MWh congestion costs.

assumed that the congestion costs would be only $2 per MWh, or only one-third the value he used in his estimated savings of $9.3 million at Schedule JG-3.[93]

In addition, the MJMEUC estimates for congestion costs are effectively refuted by Grain Belt's own calculations. **

[redacted]

[93] Tr. 1054 line 15 – 1055 line 12.
[94] See Tr. 906, lines 2-5.
[95] Id. at lines 11-15.
[96] Tr. 907, lines 3-10.
[97] See footnote 1 to the SPP analysis at both pages 4 and 6.
[98] See calculations on left side of pages 4 and 6, and Tr. 911 lines 17-20.

[redacted]

[99] See figures at the left side of both pages in the line immediately above the calculation of the total cost of the service. See also Tr. 908 line 13 – 909 line 3 and Tr. 911 line 12 – 21,
[100] Tr. page 1051 line 21 – 1052 line 12.

[101] Tr. 910 lines 6 – 911 line 7.
[102] Exh. 350, p. 6.
[103] See cost calculations on right half of pages 4 and 6 of Exh. 349 compared to Ex. 350.

[redacted] **

While it is tempting to argue that this proves the Grain Belt option was more expensive than importing wind over the SPP system, in fairness what it probably shows is that MJMEUC's projections of the congestion costs for importing SPP wind are so arbitrary and speculative as to be meaningless.

A related flaw in Mr. Grotzinger's calculation of congestion costs is made apparent from the testimony of Mr. Goggin. As Mr. Goggin explained, congestion costs can be effectively hedged by what are called "financial transmission rights."[106] While Mr. Grotzinger conceded that similar arrangements can be made with respect to SPP congestion costs, he made no attempt to determine how much of his alleged congestion costs could have been saved by exploring that option.[107]

Which points to the reason why the difference in congestion costs between Grain Belt and Mr. Grotzinger were so substantial. While Mr. Grotzinger simply ignored the cost reductions available by using financial transmission rights, the more sophisticated analysis prepared by Mr. Berry and his team did take that factor into account. As indicated at footnote 3 to page 6 of Exhibit 349, Grain Belt assumed that 80% of the

[104] ($12.7 million – $1.9 million) / $1.9 million = 5.68.
[105] ($12.7 million congestion cost used by Mr. Grotzinger minus $1.9 million figure from Grain Belt) minus Mr. Grotzinger's savings figure of $9.3 million equals a loss of $1.5 million a year.
[106] Direct testimony of Michael Goggin, Exh. 675 p. 31 lines 640-642.

[107] Tr. 1058 line 6 – 1059 line 13.

normal congestion costs would be eliminated by using SPP financial transmission rights, thus producing their annual figure for congestion costs of $1.9 million. And given that Exhibits 349 and 350 were basically intended to convince MJMEUC that it could save money by buying capacity on the Grain Belt line, it is fair to assume that Grain Belt did not go out of its way to minimize the congestion costs of importing the Kansas wind over the SPP system.

Given that Mr. Grotzinger simply ignored a recognized means of reducing congestion costs, his calculations are meaningless. Schedule JG-3 is like an income tax return which overlooked the standard deduction.

On a related matter, Mr. Grotzinger goes on to argue that his Schedule JG-3 only shows current SPP transmission charges (a separate line item from congestion costs), and that those charges are expected to increase by some unknown level over the next twenty years.[108] But what he fails to even mention is that the Grain Belt capacity rate will also increase every year, at the known level of 2% per year.[109]

Furthermore, while Mr. Grotzinger complains about both the congestion costs and the rising SPP transmission costs, he also fails to mention to the Commission that additional transmission costs are intended to bolster the existing transmission system, which in turn will reduce the level of congestion costs.[110] So again, Mr. Grotzinger presented only half of the cost equation. And he did not know if the increase in the transmission costs might be more than offset by the reduction in congestion costs.[111]

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[108] Exh. 476 p. 6 lines 3-6.
[109] Schedule MOL-1, p. 32, indicating that the rates for both the first and second 100 KW increase at the rate of 2% a year.
[110] Tr. 1065 lines 3-20.
[111] Id. at lines 13-25.

For the above reasons, Mr. Grotzinger's Schedule JG-3 is so arbitrary and speculative that it provides nothing of value to the Commission.

Mr. Grotzinger goes on to present two other analyses which supposedly demonstrate the savings to MJMEUC from using the Grain Belt line. The first is shown at his Schedule JG-6, very briefly describes by Mr. Grotzinger beginning at the bottom of page 7 of his rebuttal testimony. Purportedly, the comparisons at Schedule JG-6 show a savings from the Grain Belt line of between $8 million (compared to the SPP wind option) and $24 million (compared to the solar option).

One thing we definitely know about these cost comparisons is that they were all generated after the fact; i.e., after MJMEUC had already signed the TSA with Grain Belt.[112] And any analysis which attempts to justify a decision which had already been made should rightfully be viewed as highly suspect.

In any event, as discussed above, in attempting to justify the TSA with Grain Belt, MJMEUC has relied primarily on the supposed savings it would realize in a comparison to importing Kansas wind over the SPP system. But as demonstrated above, those savings are at best non-existent. As to the supposed after-the-fact analyses involving other MISO options, if the actual bid from one of the Missouri wind farms is included in that analysis, the MJMEUC savings amount, at best, to approximately $3 million.[113]

Finally, Schedule JG-7 presents another after-the-fact attempt to show that the Grain Belt option will produce savings for MJMEUC's customers – in this case from just the capacity which will be allocated to the MOPEP group.[114]

[112] Tr. 1066, lines 7-23.
[113] Surrebuttal testimony of Joseph Jaskulski, Exh. 301(HC), p. 3 line 67 – page 5 line 110.
[114] Exh. 476 p. 9 lines 12-16.

However, all that Schedule JG-7 purports to show is the supposed savings to MJMEUC of using the Grain Belt option as a replacement for the expiring Illinois Power Market contract.[115] Thus as explained earlier with regard to Mr. Lawlor's reference to that same study, it has no value whatsoever in quantifying the savings which will actually be produced from the Grain Belt option compared to other viable options.

In addition, as the evidence clearly establishes from a number of sources, the capacity value of wind energy cannot compete with the capacity value of traditional fossil-fired generation.[116] To reflect this fact, Schedule JG-7 must not only replace the Illinois contract with the Grain Belt contract, but must make up for the shortfall in capacity credits by adding additional generation sources so that the total is approximately equal to the 100 MW capacity of the expiring Illinois contract.[117] As shown at Schedule JG-7, this means the Illinois contract (on the far left column) must be replaced from a capacity standpoint by what are listed as three new sources of supply (one being the Grain Belt contract) and three other "existing" sources of supply.

While this may be beating a dead horse, another problem with Schedule JG-7 is that if one counts the capacity credit of <u>existing</u> generation toward replacement of the expiring Illinois contract, then common sense says that the reliability of the system is necessarily diminished. Existing capacity simply cannot be used to "replace" the capacity being lost. Yet the cost of this shortfall in capacity and reliability is not accounted for at all in Schedule JG-7.

MJMEUC's analysis there is the same as if Ameren were to retire the Meramec plant, and say it doesn't need any additional capacity because it already has the existing

[115] Rebuttal testimony of John Grotzinger, Exh. 476 p. 8 lines 13-16.
[116] See, e.g., Tr. 814 lines 3-16 and Tr. 1074-75.
[117] Tr. 1073 line 4 – Tr. 1075 line 9.

Labadie plant. If the lost capacity is not replaced, then by definition system reliability will suffer. Or as explained by Grain Belt witness Edward Pfeiffer, counting existing capacity as part of the replacement for lost capacity amounts to double counting of that existing capacity.[118]

For the reasons set forth above, there is no basis in the record for assuming that MJMEUC would save any particular amount from its contract with Grain Belt. In fact, the credible evidence does not even support a finding that their TSA would produce any savings at all for the customers of MJMEUC. At best, in a corrected version of MJMEUC's analysis at Schedule JG-6, the savings would amount to no more than $3 million. And had MJMEUC not restricted the process when soliciting bids for its wind energy, there is no way to determine what the actual savings (or loss) might actually have been from selecting the Grain Belt option.

Comparing the savings from the line to the detriments to landowners.

The MLA would suggest that the next logical step in this process is to attempt to compare the savings to MJMEUC's customers (whatever amount that is assumed to be) to the damages which will be incurred if Grain Belt is allowed it build its line across 200 miles of northern Missouri.

Some of the damages and hardships which would offset any benefits from the line are evident from just a sampling of the testimony from the local public hearings. While Grain Belt claims the opponents of the line resorted in sworn testimony at the earlier round of public hearings to "half-truths" and "total falsehoods"[119], the MLA would

[118] Tr. 744 lines 7-221.
[119] Direct testimony of Robert Wayne Wilcox, Exh. 124, p. 2 lines 4-5; Tr. 657 line 24 – Tr. 666 line 16.

suggest that the public testimony in opposition to the line was as honest and sincere as it was compelling.

For example, at the hearing in Faucett one witness testified as to how the line would be approximately 400 feet from her front door, how the nearby tower would make it impossible to sell her home, and that because the structure would not be on her property, she would recover no compensation for her damages.[120] Another witness at the same hearing testified that he has an airport on the family farm, and that the line would pose a definite health risk to crop dusters, medivac and life flight helicopters which fly out of his airport.[121]

At the hearing in Cameron, one witness also testified that he would be forced to close a private airstrip on his property because of its proximity to the line.[122] Another testified that he rents out a farm in order to supplement his income, but that he fears he will no longer be able to do so if the proposed line is built.[123]

In Hannibal, one witness testified that the line would cut diagonally over 20 acres of property which had been deeded separately to her children. She is sickened by the fact that her sons have been willing to die for their country, yet could have their property taken from them by Grain Belt.[124] Another witness there described the efforts they had made to restore native Missouri savanna habitat, and how decades of work (and large monetary investments) would be set back for decades.[125]

[120] Public hearing at Faucett, Mo., page 7 lines 20-24.
[121] Id. at page 95-96.
[122] Public hearing at Cameron, Mo, page 29-30.
[123] Id. at page 27, lines 9-14.
[124] Public hearing at Hannibal, Mo, page 21, lines 10-25.
[125] Id. at page 131-32.

In Moberly, one witness testified about his concern for the 228 Amish families near the path of the proposed line, and the impact that it could have as those families move to organic farming.[126] Another testified that as a two-time cancer survivor, her Oncologist told her that if the line is built she would need to relocate.[127]

In Monroe City, a witness testified that no compensation could equal his losses in income and soil production. His investment in years of conservation practices would be wasted.[128] The president of the Monroe County Farm Bureau also testified about the impact on the Amish community, specifically about the problems which the herbicides applied to the right-of-way will have on organic certification for the Amish farms.[129]

In Marceline, several witnesses discussed the problems that the line would cause with their farming operations.[130] Another described how their lives have been put on hold for four years, as they wait to see if they will be able to build a new home where the line is proposed to be located.[131]

In Polo, a cattleman described the difficulties which will be caused by the line in the day-today operations of his business.[132] A homebuilder has a potential client who will not even consider building a new home until the Grain Belt matter is resolved, due to the proximity of the proposed line to the site of the new home.[133]

At the last hearing, in Carrollton, a family turned down an offer at one point to buy some buildings on their airport. The prospective purchaser said they could get them

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[126] Hearing in Moberly, MO, page 52 lines 1-6.
[127] Id. at pages 59-60.
[128] Hearing in Monroe City, Mo, page 23 line 18-25.
[129] Id. at page 86, lines 22-25.
[130] Hearings in Marceline, Mo, page 8 lines 24-24; page 25 lines 4-5; pages 29-30.
[131] Id. at page 70, lines 7-11.
[132] Hearings in Polo, MO page 41 line 9 – page 43 line 16.
[133] Id. at page 145, line 25 – page 149 line 8.

for half that price in a few years after the line goes up.[134] Another witness testified about the problems the line will have with modern farming equipment, and the significant difficulties they encountered earlier with construction of a pipeline on their property.[135]

The negative side of the Grain Belt ledger was also addressed by a number of witnesses who filed testimony at the evidentiary hearings.

Mr. Wiley Hibbard is the presiding Commissioner of the Ralls County Commission.[136] Among other matters, he described the problems which transmission poles cause to farming operations, and how others generally share that same view;[137] the poor communications they have had with Grain Belt;[138] the impact on property values;[139] that an "overwhelming majority" of people in his county oppose the line;[140] how he informed Grain Belt that all three members of the county commission are opposed to allowing Grain Belt to use their county roads, and how he was advised "that they would use them anyway;"[141] and that people in his county have had to live in turmoil and tension as their lives have been put on hold for nearly the past five years.[142]

Mrs. Meyer is a fourth generation cattle farmer, and intervened in this case so that she could personally tell the Commission how the line would reduce the value of their property far more than any compensation they would receive; how it would spoil their rural landscape; create obstacles for raising their cattle; limit the future use of their land;

[134] Hearing in Carrollton, Mo, p. 7 line 10 – page 10 line 8.
[135] Id. page 45 line 3 – page 49 line 6.
[136] Rebuttal Testimony of Wiley Hibbard, Exh. 304, page 2 line 7-8.
[137] Id. p. 3 lines 3-12.
[138] Id. p. 4 1-11 and p. 5 lines 5-8.
[139] Id. p. 5 line 19 – page 6 line 15.
[140] Id. p. 7 lines 9-10.
[141] Id. p. 8 lines 20-22.
[142] Id. at p. 9 lines 9-

and reduce the productivity of their pasture land.[143] Despite these problems, however, the primary basis for her opposition is that the line will effectively prevent her daughter and family from being able to build a new home on the only suitable parcel which is available on the Meyer's property: on land which would now be draped by the Grain Belt line.[144]

Christina Reichert is another individual intervener who has devoted countless hours in her attempt to give the Commission a personal viewpoint of the problems which the proposed line will bring. This summary totally fails to do her story justice, but as indicated at the outset of her testimony, she provides her personal viewpoint and insights on the following topics: how the line violates private property rights; how it violates landowners "bundle of legal rights"; how it violates the landowners' rights to safety; how it diminishes home and land values; how it exploits the original intent of just compensation; and how it compromises the economic viability of her family's Bed and Breakfast (B & B) business. She concludes with a discussion of Grain Belt's offer to reroute the line onto a neighbors property after the impact on her B & B business was mentioned by the Commission in the 2014 case, only to have the line routed back again when the Reicherts said they were not willing to profit at the expense of their neighbors.[145]

Mr. Jack Garvin testified on the Reichert's behalf, discussing the impacts that the line would have on property which has been in the family since 1897.[146] He compared the threat of eminent domain by Grain Belt to the plague of locusts from biblical times,

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[143] Rebuttal Testimony of Roseanne Meyer, Exh. 575, p. 3 lines 2-6
[144] Id. at p. 3 line 7 – p. 4 line 5.
[145] Rebuttal Testimony of Christina Reichert, Exh. 550, p. 2 (Table of Contents) and p. 25 line 16 – p. 28 line 5.
[146] Rebuttal Testimony of Jack Garvin, Exh. 552, p. 2 lines 7-16.

describing also how the Project would forever devalue their property, destroy the views and vistas permanently marred by the steel structures, scatter wildlife which will be displaced by habitat destruction, and forever alter or strip away their choices for farming their land.[147] Further, his property was not on the line as proposed in the 2014 Grain Belt case. They are neighbors of the Reicherts, and found that after that case had ended, the line was rerouted onto his property as well. He was not notified of this reroute by anyone from Grain Belt, and learned about it only from his son-in-law, who happened to overhear a conversation between a Grain Belt land agent and the son-in-law's father.[148] When he was finally able to discuss the reroute at a public meeting with Grain Belt, there were a number of discrepancies between what they were actually told in person and what was being said in the printed Grain Belt display material.[149] Moreover, the route over their property was again changed at a later date. This time he learned of the new reroute from his neighbor, Mrs. Reichert.[150]

Another individual intervener in this case is Mr. R. Kenneth Hutchinson. His family has owned a farm in Chariton County since 1958. In addition farming the land, Mr. Hutchinson owns his own management consulting business, and is retired from the University of Missouri.[151] Mr. Hutchinson strongly opposes private venture capitalists being allowed to flip the agricultural value of easements into an entirely new and more valuable asset – one which will allow for the construction of the Grain Belt project.[152] In addition, Mr. Hutchinson addresses the following concerns: the negative impacts which

[147] Id. p. 3.
[148] Id. p. 4 line 15 – p. 5.
[149] Id. p. 5 lines 6-20.
[150] Id. p. 6 line 22 – p. 7 line 12.
[151] Rebuttal Testimony of R. Kenneth Hutchinson, Exh. 825, p. 2 line 17; p. 3 lines 1-2.
[152] Id. p. 3, line7 – p. 4, line 8.

the line would have on his farming operations;[153] the negative impact the line will have on property on or near the proposed right-of-way;[154] the fact that the line would preclude him and his son from building a home on a site which will be crossed by the proposed line;[155] and the fact that landowners will not be fully reimbursed by Grain Belt for all of the damages actually caused by the line.[156]

Mr. Dale Pence owns a crop dusting business, and described in detail how the proposed line would negatively impact the productivity of farm land crossed or near the proposed Grain Belt line.[157] In addition, he discussed the negative impact the line would have on his own business, in particular the hazards of flying near the line. As Mr. Pence testified, "Every year pilots are killed or injured making contact with power lines. We lost a pilot in Missouri this year contacting a cross country power line. It only takes an instant to misjudge distance and placement of power lines."[158]

Mr. John Cauthorn also testified on behalf of the MLA. The primary purpose of his testimony was to describe why the line is so strongly opposed by two other groups for which he was also testifying: the Missouri Cattlemen's Association and the Missouri Dairy Association.[159]

Mr. Louis Donald Lowenstein testified in some detail about the negative, permanent financial impact that the line would have on the growing agri-tourism business in the vicinity of the line.[160]. Affected business would include wineries, bed and

[153] Id. at p. 5 line 19 – p. 7 line 1.
[154] Id. at p. 7 line 15 – page 8 line 1.
[155] Id. at p. 8 lines 5-11.
[156] Id. at p. 8 lines 12 – 21.
[157] Rebuttal testimony of Dale Edward Pence, Exh. 306, p. 2 line 5 – page 4 line 14; p. 4 line 23 – page 5 line 3.
[158] Id at p. 4 lines 4-9.
[159] Rebuttal testimony of John Cauthorn, Exh. 303.
[160] Rebuttal testimony of Louis Donald Lowenstein, Exh. 300 p. 27-30.

breakfast facilities, wedding and banquet operations, sale of farm raised produce and livestock, and many other growing enterprises.[161] New business of this nature would likely shy away from building near the project "because the presence of that Line would go against the very essence of what agri-tourism is all about."[162]

Another MLA witness was Mr. Jim Edwards. Mr. Edwards has lived on a farm all his life, and has been in farming full time since his graduation in 1976 from the University of Missouri with a B.S. in Agriculture.[163] Mr. Edwards' farming operation consists of approximately 2,500 acres, located in Chariton County, a portion of which is crossed by an existing high-voltage transmission line, erected in about 1952.[164] So Mr. Edwards is obviously quite knowledgeable about the problems of operating today's large farm machinery around transmission line poles. As such, he took exception to the testimony of two Grain Belt witnesses who implied that working around such poles is no more than a slight nuisance.[165] As Mr. Edwards described in detail, when the job is done properly the use of today's farm machinery does in fact make the job of working around transmission poles not only more time consuming, but more hazardous as well.[166] Others in the business share his views. As Mr. Edwards testified: "Just ask custom applicators of fertilizer and chemicals about working around electric poles, or machinery dealerships about how much equipment they repair that has been damaged by hitting electric poles."[167] Then multiply Mr. Edwards's problems by some 200 miles of right-of-way which will be similarly affected if the proposed line is built.

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[161] Id. at p. 27, lines 14.
[162] Id. at lines 15-21.
[163] Rebuttal testimony of Jim Edwards, Exh. 305, p. 3 lines 8-9.
[164] Id. at page 2 lines 10-11; page 3 lines 19-23.
[165] Id. at page 4, lines 1 – 21.
[166] Id. at p. 5 line 5 – p. 6 line 15.
[167] Id. at p. 6 lines 16-20.

Charles Henke and his wife Robyn also felt the need to intervene individually, in order to let the Commission know what impact the Grain Belt line would have on their lives. The Henkes own a farm of approximately 467 acres near Salisbury, Missouri.[168] The proposed line would pass directly over their farm for a distance of over one mile, bringing with it seven pole structures on his property.[169] Scientists may have their own views on the safety of HV transmission lines, and the MLA is not here to challenge the construction of the line of the basis of health risks. However, it is widely known that many people do believe that the health risk is real. Mr. Henke is one of them, and testified that if the line is built he will not subject his 4 and 6 year old sons to living in close proximity to the Grain Belt line. In his words, we "will be forced to move if this line is built."[170] If he did not uproot his family, the line would have a negative impact on the beautiful open view they now enjoy from their yard, as well as on the value of their property.[171] Mr. Henke also described a number of problems which the line would cause with his farming operations – problems no doubt common to all farmers unfortunate enough to be caught in the sights of the Grain Belt line.[172]

In addition, the line would touch the Henkes in a very unique, personal way. It would eliminate their dream of building a new home on a portion of their farm which is not only ideal from the standpoint of its scenic view, but is the very spot where Charles proposed to Robyn.[173] Mr. Henke discussed the possibility of rerouting the line with a

[168] Rebuttal testimony of Charles Henke, Exh. 600, p. 2 lines 8-10.
[169] Id. at p. 2, lines 13-15.
[170] Id. at p. 3, lines 11-12.
[171] Id. at p. 3 line 19 – p. 4 line 11.
[172] Id. at p. 4 line 12 – p. 5 line 6.
[173] Id. at p. 5, lines 9-17.

representative of Grain Belt. He was told they would work on it, but he has yet to hear back from them.[174]

The Henkes present home is old, small, and needs more work than is feasible. If it were not for the prospect of the proposed line, they would already have built a home on the new site. And they have no alternative site on their farm on which to build.[175] As Mr. Henke testified: "We have made many improvements on the land thinking we would be there forever. If this line is built, that would all have been for nothing."[176] The Henkes unfortunately have no Plan B, other than to hope that the Commission does not approve the CCN.

One problem cited by many of the witnesses at the public hearings and in the evidentiary testimony was the negative impact the line would have on property values, both within and outside the immediate right-of-way. Their fear is well justified, as is evident from the testimony of the MLA's expert witness Mr. Kurt Kielisch.

Mr. Kielisch is an experienced, licensed appraiser, whose credentials clearly qualify him to render expert testimony on the issue of the impact which the Grain Belt line will have on nearby property values.[177] In fact, Mr. Kielisch testified for the Show Me landowners group in the 2014 Grain Belt case.[178]

The basic premise of Mr. Kielisch's analysis is based on common sense: that the value of real property in an open market is essentially determined by the perception of the buyer.[179] Thus if buyers would prefer not to live near a high-voltage transmission line

[174] Id. at p. 6 lines 7-10.
[175] Id. at p. 5 lines 16-22.
[176] Id. at p. 5, lines 20-22
[177] See Rebuttal testimony of Kurt C. Kielisch, Exh. 301, pages 2-4 and Schedule KCK-1.
[178] Id. at p. 4 lines 5-6.
[179] Id at p. 5, lines 8-11.

and large steel support structures, whatever the reason may be, then property near high-voltage transmission lines will have a lower value than similar property not near a high-voltage transmission line.

And the buyer's perception is obviously based on what they hear, see and read.[180] So whether justified or not from a scientific standpoint, because a large portion of the general population believes that high voltage transmission lines pose a serious health risk, then that perception will have a negative impact on the value of the property near the transmission line.[181] The same would obviously hold true with respect to potential interference with GPS equipment, or stray voltage problems or any other undesirable impact which the general public associates with high-voltage transmission lines.

And perhaps most significant of all, it is simply a fact that most people would prefer not to have the view from their property obstructed by unsightly electric cables supported by steel lattice structures well over 100 feet high. The testimony at the public hearings, as well as at the evidentiary hearings, bears testament to that fact. As the Commission itself has noted:

> It is undisputed that if given a choice, the average citizen would prefer the same piece of property without a transmission line to the property with the transmission line. It is also undisputed that the aesthetic value of the property will be diminished.[182]

This common sense conclusion is fully supported by actual studies conducted by Mr. Kielisch and his company. As he testified, there are two common study methods for appraising real property, and his eight studies incorporated both.[183] The details of Mr.

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[180] Id at p. 6, line 4.
[181] Id. at p. 12, lines 5-9.
[182] In the Matter of the Application of Union Electric Company, Case No. EO-2002-351, August 21, 2003, Report and Order p. 13.
[183] Rebuttal testimony of Mr. Kielisch, Exh. 301, p. 26 lines 10-14; p. 27 line 3-5.

Kielisch's studies are described in his attached schedules, but the results show that the presence of even a smaller 345 kV line had negative impact ranging from a low of 11% to a high of 34%.[184]

Based on the results of these studies, and the other materials cited by Mr. Kielisch in his testimony, he was able to conclude with a reasonable degree of certainty that the much larger Grain Belt line would indeed have a negative impact on the overall land values of property encumbered by the Grain Belt right-of-way.[185]

Similarly, he concluded that the same would hold true for property near but not on the actual right-of-way.[186] Given that these results are based on studies involving 345 kV lines, one can only guess how much greater the actual impact will be in this case from the line which Grain Belt proposes to build.

Grain Belt of course brought in its own appraiser, who generally concluded that high-voltage transmission lines have little or no impact on nearby property values.[187] Whatever his statistics might supposedly show, it is simply not credible to believe that a transmission project of the type being proposed by Grain Belt will not have a very significant and detrimental impact on nearby property values. Based on the testimony in this case, many people obviously do not want to live anywhere near the proposed Grain Belt line. But we did not hear from a single witness who was anxious for the line to finally be built, so that he or she might move to a home as close to the line as possible.

The fundamental laws of supply and demand (as well as simply common sense) lead to the inevitable conclusion that the proposed line will have a very significant,

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[184] Id. at page 33 lines 16-19. And See results of study number 4 (negative 15-34 %, page 28 lines 10-11) and study number 7 (negative 11-24%, page 29 line 7).
[185] Id. at p. 33, lines 12-21.
[186] Id. at p. 33 line 22- p. 34 line 4.
[187] Surrebuttal testimony of Richard J. Roddewig, Exh. 120, page 9 lines 14-16.

negative effect on property values not only on the right-of-way, but for those in the nearby vicinity as well. The average negative impact on property values from Mr. Kielisch's eight studies was just over 20%.[188] Over a 200 mile stretch of right-of-way, the impact will be enormous.

And it is worth noting that Grain Belt's witness Richard Roddewig was not able to even address Mr. Kielisch's studies 2, 3 and 8, in large part at least because of a four day delay in receiving the files from Grain Belt's representatives.[189] These three studies showed negative impacts on property values of 16.2%, 24% and 26% respectively.[190] They stand as competent, unrebutted evidence of the extent of the negative impact on property values from high-voltage transmission lines.

In analyzing the impact of the proposed line on property values, the MLA would urge the Commission to take one final look at the depiction of the line at Schedule SN-3 to the rebuttal testimony of Mr. Scott Nordstrom, Exh. 551. As is evident from that picture, the massive towers and cables which comprise the proposed line will totally dominate 200 miles of Missouri landscape, dwarfing everything in its path. That picture is, as they say, worth a thousand words.

One other item which the MLA submits should be added to the "detriment" side of this analysis is the huge tax subsidies which will be made available to the Kansas wind farms such as Infinity if the Grain Belt line is built. Based on Mr. Berry's calculations, over the initial ten year period the Kansas wind farms will be able to utilize

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[188] Using the middle of the ranges from study numbers 4, 5 and 7, and the single value derived from the other five studies.

[189] See footnote 29, page 20 to Schedule RJR-1 of Mr. Roddewig's surrebuttal testimony, Exh. 120. The studies not reviewed can be determined by process of elimination, based on the studies which Mr. Roddewig does address in his Schedule RJR-1.

[190] See Mr. Kielisch's rebuttal testimony, Exhibit 301, at page 27 line 20; page 28 line 4; and page 29 line 21.

approximately $4 billion in federal tax credits, having a present value of approximately $2.6 billion. In other words, the tax credits generated by reason of the Grain Belt line are nearly equal to the entire cost of the Project itself.[191]

MJMEUC has noted that their projected savings from the Grain Belt TSA would continue on an annual basis. However, the same can be said for the negative impacts which would be caused by the line. Most will be recurring day in and day out. And so in comparing the benefits to the detriment, from that standpoint they are on an equal footing

Grain Belt has the burden of proving, by a preponderance of the substantial and competent evidence, that its proposed line is necessary or convenient for the public service.[192] And as the Commission noted in the 2014 Grain Belt case:

> It is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served. Determining what is in the interest of the public is a balancing process. (footnotes omitted)[193]

Every dollar in a family budget counts. But the question here is, do the potential and unproved savings of several dollars per month on MJMEUC's retail electric bills outweigh the definite human and monetary damage which will follow in the wake of the Grain Belt Project.[194] On balance, the known detriments outweigh any potential benefits, and on that basis alone the CCN should be denied.

5. <u>The Grain Belt/MJMEUC/Infinity Wind arrangements are contrary to the Public Interest criteria of the Tartan Case.</u>

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[191] Tr. 879, lines 1-18.
[192] Report and Order at Exh. 321, pp. 26-27.
[193] Report and Order at Exh. 321, p. 24.
[194] Even based on Mr. Grotzinger's flawed analysis at his Schedule JG-3, the mid-point savings for the MOPEP cities would be $2.75 million in transmission charges by using the Grain Belt line. Rebuttal testimony, Exh. 476 p. 7 line 10-11. With 35 cities in the MOPEP group (Tr. 995 lines 1-2), that amounts to about $6,500 per city per month. Correcting for the inaccurate congestion charges in Schedule JG-3, even those savings disappear.

The MLA respectfully submits that any "need" for the proposed line in Missouri was in effect created by Grain Belt, where no such need had existed or would exist under normal circumstances. Accordingly, even if the Commission finds that Grain Belt has managed to create a need for the line in the sense of the first Tartan criteria, the manner in which it did so runs counter to the public interest and should therefore be rejected on that basis alone.

Even before the conclusion of the 2014 Grain Belt decision, Grain Belt had been unsuccessful in selling any capacity on its line to utilities in Missouri.[195] When the CCN was rejected in that case, Grain Belt clearly recognized that in order to have any chance of success in a second round with the Commission, they would need to persuade a Missouri utility – any Missouri utility – to buy capacity on its line.

And they certainly made an all-out effort to do so. Mr. Skelly personally made a pitch to the top officials at Ameren.[196] They approached Associated Electric Cooperative.[197] They knocked on the doors of individual municipal systems.[198] All of these efforts were obviously unsuccessful.

And of course Grain Belt continued to court MJMEUC. In early January, 2015, Grain Belt opened up its first round of what it termed an open solicitation of bids for capacity on its proposed line. It asked for separate bids for the Kansas to Missouri service, and for the Kansas to PJM service. Although Grain Belt announced that it had

[195] See Id., p. 10 par. 22.
[196] Tr. 201 lines 11-17.
[197] Tr. 200, line 23 – 201 line 6.
[198] Tr. 200, lines 14-16; Tr. 1042 lines 2-5.

received bids for 6 times the capacity it had available for the Kansas to Missouri service, not one of those bids came from a utility in Missouri.[199]

And Grain Belt made it a point to make MJMEUC aware of this open bidding process.[200] However, MJMEUC was not even interested enough to submit a cost-free, risk-free bid for capacity on the proposed line.[201] At that point, as Mr. Kinchloe testified, they saw no need for the Grain Belt line.[202]

But Grain Belt was persistent. Despite the rebuke by MJMEUC in the first open solicitation, within about two months after the Commission decision in the 2014 case MJMEUC was once again approached by Grain Belt.[203] And at the same approximate time, Grain Belt was also contacting individual municipal systems, attempting to persuade those systems to buy capacity on their own, and to support Grain Belt through MJMEUC.[204]

Even in the closing months of 2015, MJMEUC still had no need for the Grain Belt line. They did recognize, though, that after the PSC's decision in July of 2015, Grain Belt would be trying to line up support for a second try.[205] Despite the obvious leverage this could provide to MJMEUC, they had no need for what Grain Belt had to offer. Speaking about Grain Belt, in an email of October, 2015 to other MJMEUC officials Mr. Grotzinger stated as follows:

> They don't really add value for Missouri since most get value on east and skips Missouri. They are not willing to share that value of transmission on east. (I asked). Not that it would justify commitment, but that is academic since they are not willing to include. They are not fixing transmission

[199] Tr. 846 lines 18-22; Tr. 848 line 17 – 849 line 11.
[200] Tr. 989 lines 20-25.
[201] Tr. 990 lines 1-6; Tr. 1041, lines 6-19.
[202] Tr. 990 lines 9-12.
[203] Tr. 988 line 17 – 989 line 2; Tr. 1041 line 23 – 1042 line 1.
[204] Tr. 1042 lines 2-12.
[205] Tr. 1044 lines 8-16; lines 22-25.

issues, only trying to bypass responsibility and leave others with the cost of underlying transmission systems.[206]

Thus as Mr. Grotzinger confirmed at the hearing, as late as November of 2015, based on the information being provided by Grain Belt, MJMEUC had no need for the Grain Belt capacity.[207]

We don't know exactly what happened after that. Grain Belt and MJMEUC entered into a formal "Joint Prosecution and Defense Agreement" which effectively shielded much of the communication between them from the normal discovery process.[208] However, as discussed above, we do know that in January of 2016, Grain Belt made another presentation to MJMEUC, as shown at Exhibit 349.[209] At that point,

** [redacted] **

And so, finally, Grain Belt convinced MJMEU that they really did need the line after all. Having reached at least preliminary agreement on major terms of the contract,

[206] Tr. 1044 line 17 – 1045 line 11.
[207] Tr. 1046 line 20 – 1047 line 5.
[208] See "Order Denying Motion to Compel Regarding Joint Prosecution and Defense Agreement", issued February 17, 2017.
[209] See Tr. 906, lines 2-5.

[210] Exh. 349 page 5 footnote 2.
[211] Exh. 350 p. 3 footnote 2.
[212] See Mr. Lawlor's Schedule MOL-1 p. 32.

Grain Belt then announced a second formal solicitation of bids – to which MJMEUC promptly submitted their first and only offer.

By that point, Grain Belt was obviously in desperate need to find a Missouri buyer for their capacity. And so they did what any seller does who cannot find a buyer for its product: they reduced the price for the Kansas to Missouri service. And by that point the reduction was so drastic that MJMEUC understandably felt it finally did "need" what Grain Belt had to offer. However, this sweetheart deal was offered only to MJMEUC. Apparently, Grain Belt assumed that one Missouri customer was all it would need this time in order to secure the CCN.

MJMEUC's official "bid" for Grain Belt capacity came in the form of a Transmission Service Request submitted on March 14, 2016.[213] The bids submitted by MJMEUC for both the first 100 MW and the second 100 MW of capacity were identical to the prices eventually included in the actual TSA.[214] And in the last page of the Transmission Service Request, when asked to provide any other information they felt was relevant, MJMEUC simply said "generally looking to follow terms proposed and discussed between Clean Line and MJMEUC."[215]

What the MLA finds most noteworthy about the information supplied in the Transmission Request Form from MJMEUC to Grain Belt concerns MJMEUC's qualification for the discounted "first mover" rate. The section at page 2 of the form solicits information regarding "First Mover Status & Early Development Support".

[213] Tr. 1084, lines 5-10.
[214] Tr. 1090, lines 15-19; Tr. 1092 lines 8-11.
[215] Tr. 1092, lines 6-12.

** [redacted] **

As Mr. Skelly discussed, Grain Belt is authorized to offer transmission service customers a reduced "first mover rate."[217] However, according to the FERC Order authorizing Grain Belt to charge market rates for its service, the reduced "first mover" rate is intended to compensate customers who incur additional risk by signing up early for the capacity.[218]

Here, the MLA would submit that MJMEUC was offered a drastically reduced "first mover" rate without incurring any risk whatsoever. Instead, under the guise of a first mover rate, MJMEUC essentially was offered whatever it took for Grain Belt to get its foot into the door to Missouri. Grain Belt's objective clearly was to gain access to the PJM market, where both the volume and the value of its capacity were significantly higher than for the service into Missouri.[219]

In this regard, Mr. Berry's immediate answer to a question from Commissioner Rupp is insightful:

> Q. So did Grain Belt just drop the 500 megawatts into Missouri and offer just a sweetheart deal to MJMEUC to get a customer to say, hey, we got it, knowing that they can get more and make it up on the back end in the PJM market?
>
> A. I'd say there's some truth to that.[220]

And notably, it was Grain Belt which first suggested to MJMEUC that they should look into qualifying for the first mover rate – not the other way around.[221] In fact,

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[216] Exhibit 367, p. 2.
[217] Tr. 203 line 15-20; Exh. 322 p. 9 par. 20.
[218] Tr. 206 lines 2-15.

[219] See, e.g., Tr. 1165 line 12 – 1166 line 8.
[220] Tr. 944 lines 4-9.

no other bidder even filled out the section of the Transmission Service Request form which asked for information about first mover status. (Tr. 853, l. 10-17) MJMEUC obviously was coaxed into doing so.

It is somewhat amazing to see how low a rate Grain Belt was willing to offer in order to create a need for its line. The rate for the first 100 MW to MJMEUC will be only about 20% of the "normal" rate for the same physical service into Missouri. (Tr. 853 line 18 – 853 line 3.) Even combining the first 200 MW, the MJMEUC rate amounts to only $.35 per kwh – just over one third of a cent.[222]

In contrast, Grain Belt's actual cost of moving the power from Kansas to Missouri is between 1.5 and 2.0 cents per kwh.[223] Thus using the mid-point of that range (1.75 cents), Grain Belt is willing to sell 200 MW of capacity to MJMEUC at a price amounting to only 20% of its cost for delivering that power!

And the significance of what Grain Belt calls its "normal" rate for Kansas to Missouri service is certainly debatable. For the service from Kansas to PJM, Grain Belt set a minimum bid in its open solicitation process. But it set no minimum bid at all for the service from Kansas to Missouri.[224]

So at this point, the so-called normal rate of $5.60 per kw per month appears to be just an arbitrary figure adopted by Grain Belt. For example, one bid submitted to Grain Belt for the Kansas to Missouri service was for only ** [redacted] **[225] The lack of any objective evidence as to the real value of the Kansas to Missouri service

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[221] Tr. 1085 line 19 – 1086 line 3.

[222] Tr. 853, lines 9-19.

[223] Tr. 855 line 15 – Tr. 856 line 23.

[224] Compare, e.g., page 2 of HC Exhibit 364 to page 4 of that same Exhibit; Tr. 846 lines 3-5.

[225] HC Exhibit 364, page 4.

certainly brings into question the viability of that portion of the line – other than its obvious value as a means of getting to the more lucrative PJM market.

Regardless, even using Mr. Grotzinger's flawed numbers in his Schedule JG-3, if Grain Belt's normal rate had been applied to the 200 MW purchased by MJMEUC, the cost of using the Grain Belt line would be nearly $1 million higher than his estimate of importing the wind over the SPP system.[226] Obviously, Grain Belt's normal charge for service from Kansas to Missouri is not close to being cost-competitive with importing the wind energy over the SPP system. That may well explain why Mr. Berry did not include the SPP wind option in his LCOE analyses.[227]

From a different perspective, if all the capacity on the line was sold at the rate offered to MJMEUC for the first 100 MW, the total annual revenue could barely cover just the annual payment on the debt incurred in building the Project – much less leave anything for repayment of the debt, operations expenses or payments to equity owners. (Tr. 857 line 16 – 859 line 13)

Or from yet another perspective, if Grain Belt is unable to sell any capacity in Missouri beyond the 200 MW committed to MJMEUC, the total annual revenue from capacity sales in Missouri would not come close to even covering the interest charges on the debt for the $100 million Missouri converter station.[228]

The MLA is not suggesting that Grain Belt could or would offer the special MJMEUC rate to others. But what these calculations demonstrate is that the MJMEUC contract is not a financially feasible means of sustaining the operation of the Grain Belt line.

[226] Tr. 1061 lines 8-12.
[227] See Exh. 104 pages 29 and 30.
[228] Tr. 860 line 14 – 862 line 2

Aside from the discounted rate offered to MJMEUC, even the normal rate for service to Missouri has had to be significantly reduced in comparison to the rate for service into PJM: ** [redacted] ** In contrast to this very substantial difference, in the last case Mr. Berry said that the rate into PJM might be priced only "slightly higher" than the rate to Missouri.[230] Clearly, Grain Belt has been forced to significantly reduce its rate into Missouri in a generally unsuccessful effort to find utilities in this state which are willing to buy any of the Grain Belt capacity.

The reduced rates which have been gifted to MJMEUC will produce perhaps unforeseen results which also deserve Commission consideration. First, as Mr. Kinchloe testified, the cities which will have access to the discounted rates will enjoy an advantage in attracting new investment and new jobs to their cities, and in retaining economic activity already there.[231] To the same effect, see also the testimony of officials from the city of Hannibal at the local public hearings.[232]

However, MJMEUC cannot have it both ways. Thus it necessarily follows that MJMEU cities which cannot take advantage of the discounted rate, by reason for example of the 200 MW limit, will be at a competitive disadvantage for those same economic opportunities vis-à-vis the cities getting the discounted rate.[233]

And of course this disadvantage does not end with just the left-out MJMEUC cities. To the extent that the discounted rate provides an economic advantage to the

[229] See Tr. 846 lines 7-12 and Tr. 894 lines 9 - 15.
[230] Tr. 851 line 16 – 852 line 3
[231] Tr. 987 lines 1-11.

[232] Local Public Hearings Vol. 3, pp. 23-25, 38-41 and 45-46. EFIS 131.
[233] Tr. 987 line 12 – Tr. 988 line 16.

fortunate few, every other city in Missouri is put at a competitive disadvantage. That would of course include all of the cities served by the investor-owned utilities, as well as the REA cooperatives. Such is just one of the predictable results of discriminatory electric rates.

On a different aspect of this issue, **

[redacted]

[234] Tr. 1204 lines 19-23.

[235] Tr. 1202 line 17 – Tr. 1203 line 11.
[236] Tr. 1203 line 20 – Tr. 1204 line 18.
[237] Tr. 1204 lines 1-18.
[238] Tr. 1206 lines 15-24.

[redacted] **

One final matter ought also to be considered regarding the balancing of the public interest. ** [redacted]

[redacted] **

Although these accretion calculations were included as part of the 2014 Grain Belt case, it is noteworthy that Mr. Berry says that he cannot say whether the market value of the Grain Belt line has declined or not since that time. (Tr. 889 lines 11-14). Thus the analyses discussed above should provide at least reasonable approximations of how much the Grain Belt investors will profit at the expense of the rural Missouri landowners.

It is no wonder that Grain Belt is willing to spend whatever it takes to win this case. In fact, the $200,000 they paid to just one of their 16 witnesses is this case was probably more than the total amount which the MLA has managed to raise for all of its expenses in both Grain Belt cases combined .[239] It would be nothing short of tragic if the outcome of such an important case turns on which side has the deeper pockets.

Until Grain Belt so drastically reduced its rate to MJMEUC, there clearly was no evidence of any need for its line in Missouri. It has failed to show, for example, that the line would assist any of the investor-owned utilities in meeting their RES requirements. It has failed to show anything other than apathy by any utility other than MJMEUC.

Grain Belt was able to induce MJMEUC to sign only by creating a supposed need for the line where none had previously existed, by offering them a discriminatory rate which does not even begin to cover Grain Belt's own cost of providing the service. This certainly is not the type of "need" for a new transmission line on which CCNs are traditionally issued in this state. .

For the foregoing reasons, the MLA respectfully submits that the lengths which Grain Belt has gone to in using Missouri as a stepping stone into the PJM markets, and

[239] See Tr. 527 lines 4-12. The MLA figure assumes it has not spent significantly more in this second round than the $85,000 it spent in round 1. Exh. 300, p. 6 lines 20-21.

the potential implications of that strategy for the people of Missouri, are just grounds for finding that the grant of a CCN to Grain Belt would be contrary to the Public Interest criteria of the Tartan case.

6. <u>Tangential Issues related to Need and Public Interest</u>.

Grain Belt has raised two issues that arguably relate to the Tartan criteria of Need, and perhaps Public Interest: their claim that the line will improve the reliability of the bulk power system in Missouri; and their claim that the project will produce additional jobs and tax revenue in Missouri.

<u>Grain Belt's claims regarding reliability.</u>

Based on a LOLE (loss of load expectation) analysis, Grain Belt witness Edward Pfeiffer testified that the proposed Project will increase the reliability of electric service in Missouri.[240] However, as Mr. Pfeiffer acknowledged, the addition of capacity to a system will always increase its reliability.[241] In fact, as he indicated, he could have told us without any kind of LOLE study that the line will add to reliability.[242] It's like saying 1 plus 1 will equal 2.

In any event, beyond that obvious truism, for two reasons Mr. Pfeifer's analysis provides no useful information to the Commission.

First, as Staff witness Daniel Beck explained in great detail, Mr. Pfeifer's loss of load analysis is flawed for a wide variety of reasons.[243] Accordingly, "This study does not provide any results that the Commission should consider…."[244]

[240] Direct testimony of Edward C. Pfeiffer, Exh. 117, p. 5 lines 4-9.
[241] Tr. 732 lines 16-17.
[242] Id. at lines 19-22.
[243] Staff Rebuttal Report, Exh. 201, pp. 10-16
[244] Id. at p. 10

And second, the added "reliability" supposedly provided by the Grain Belt line is so miniscule as to be meaningless, and so costly as to be irrelevant. In fact, his study actually does Grain Belt's position here more harm than good.

As Mr. Pfeiffer acknowledged, the standard generally accepted by the industry (including MISO) is that a system should have enough reserve capacity so that demand would be expected to exceed available supply on only one day every ten years.[245] Or stated another way, in terms used by Mr. Pfeiffer, the industry standard provides that demand could exceed supply on .1 days per year.[246]

So without the Grain Belt line, how does Missouri fare compared to the accepted industry standard? According to Mr. Pfeiffer, the first year that the proposed line would go into service (in 2022) Missouri's loss of load expectancy will stand at only .013 days per year.[247] In other words, and no doubt to Mr. Pfeifer's disappointment, he found that even without the addition of the Grain Belt line, the loss of load expectancy in Missouri will already be 7.7 times lower than the accepted industry norm.[248]

Mr. Pfeiffer says that the addition of the Grain Belt would lower this exceedingly low figure even further: to .004 days per year.[249] So with the addition of the Grain Belt line, reliability in this state would "improve" from being 7.7 times lower than the industry standard, to being 25 times lower than the industry standard.[250] And this, according to Mr. Pfeiffer, demonstrates that the Grain Belt line improves reliability by almost 70%![251]

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[245] Tr. 733 lines 9-13.
[246] Id. at lines 18-21.
[247] Exh. 117, chart at bottom of p. 4.
[248] .1/.013 = 7.69
[249] Exh. 117, chart near top of p. 5.
[250] .1/.004 = 25.
[251] Exh. 117, page 5, chart below line 2 and lines 8-9. Mr. Pfeiffer also calculated the impact of the line using two similar matrices, which showed "improvements" of 65%. See charts at p. 4 and 5 of Exh. 117.

While his math may be correct, his claim of a 70% improvement totally distorts the almost meaningless contribution to reliability from the Grain Belt project. It's like the lottery announcing they just doubled your chances of winning the big jackpot when all they did was increase your odds of winning from 1 in a billion to 2 in a billion.

As Mr. Pfeiffer conceded, to the best of his knowledge resource adequacy for the aggregate demand in the State of Missouri has always met or exceeded minimum target levels.[252] In fact, he couldn't say that any utility in Missouri has ever had to curtail load due to an inadequate supply.[253]

Similarly, Grain Belt's chief engineering witness Dr. Galli testified that he is not aware of any studies which conclude that the bulk power system in Missouri is below some level of accepted reliability standards.[254] Nor is he aware of any study showing any shortfall in the future, other than some problems in the MISO footprint which are already being corrected.[255]

On the issue of reliability, the Grain Belt line is a cure in search of a disease.

The added reliability is not only unneeded, but if for some reason one did set that as an objective then the Grain Belt line would be a costly means of doing so. As Dr. Galli testified, Grain Belt has not conducted any studies which would indicate that the Project is the least cost method of improving the reliability of the bulk power system in Missouri.[256] Mr. Pfeifer has conducted no such analysis either.[257]

[252] Tr. 740 lines 15-20.
[253] Tr. 741 lines 1-4.
[254] Tr. 493 lines 20-25.
[255] Tr. 494 lines 2-15.
[256] Tr. 494 lines 16-21.
[257] Tr. 739 lines 6-11.

In the last case Grain Belt sponsored testimony regarding reliability from Mr. Robert Zavadil.[258] His presentation at least brought something to the table of practical value. As Mr. Zavadil testified in the 2014 case, the 500 MW of power delivered to Missouri by the Grain Belt line would have a capacity credit equivalent to a gas-fired plant of approximately 165 MW.[259]

Mr. Pfeifer made no similar calculation for this case.[260] However, according to Mr. Berry's Schedule DAV-5, the Energy Information Administration estimates that the capital cost for a combined-cycle unit is approximately $1 million per MW, meaning the cost of the unit equivalent for capacity purposes to the Grain Belt line would cost about $165 million.[261] Moreover, if one were simply looking to build a gas plant for its capacity, the obvious choice would be a simple combustion turbine. According to Mr. Pfeiffer, the cost of that option would be about half the cost of the $165 million combined cycle unit.[262] So for reliability purposes, in Missouri the Grain Belt line could be replaced for roughly $82 million.

In the last case the Commission made two findings on this issue which still hold true today:

> While the injection of wind energy via the Project would improve the reliability of the Missouri bulk electric system, that system is not currently unreliable and Missouri utilities are not now violating any reliability standards. It would be cheaper and take less time to build a medium-size natural gas plant in Missouri to achieve the same capacity benefit as the Project.[263]

[258] Tr. 735 line 23 – 736 line 3.
[259] Tr. 736 line 15 – 23.
[260] Tr. 736 line 24 – 737 line 8.
[261] See Tr. 738 lines 9-24.
[262] Tr. 738 line 25 – 739 line 6.
[263] Report and Order par. 29, p. 12.

> The project is not needed for grid reliability because GBE did not submit the Project to the regional planning process, has not identified any existing deficiency or inadequacy in the grid that the project addresses, and has not show that the project is the best or least-cost way to achieve more reliability.[264]

For the foregoing reasons, Grain Belt's claims regarding the Project's potential contribution to the reliability of the bulk power system in Missouri should be given no weight by the Commission.

Grain Belt's claims regarding jobs and tax revenue.

Grain Belt also supports its Application on the grounds that its proposed line would produce additional jobs and tax revenues for Missouri, based on the economic analysis performed by Mr. Alan Spell.[265] The MLA submits that this analysis should be given no weight by the Commission for two separate reasons.

First, the MLA submits that as a matter of policy, the impact on jobs and property taxes should not even be considered in deciding whether to issue a CCN for a transmission line or generation plant. Normally, CCN cases are determined on the basis of a two-step process: deciding whether there is a reliability issue that must be addressed, and if so, choosing the most practicable means of resolving that problem.[266]

If the Commission decides as a matter of policy that job creation is a legitimate factor in such an analysis, one obvious question is how that factor would be applied in resolving the outcome of CCN cases. Actually implementing such a policy is fraught with subjectivity and imprecision.

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[264] Report and Order, p. 22.
[265] See generally the direct testimony of Mr. Alan Spell, Exh. 526.
[266] See, e.g., *Union Electric Company*, Case No. EO-2002-351, Report and Order pp. 9 and 18 (August 21, 2003)

A comparable issue surfaced in Ameren Missouri's first IRP filing, which was docketed as File No. EO-2011-0271. Ameren presented a final list of alternatives for meeting its resource needs, and suggested that the choice among the alternatives should not be based solely on the lowest cost to ratepayers (referred to as the PVRR). Instead, Ameren suggested that a number of other factors should also be considered, including the relative number of jobs created by each alternative.[267]

Staff, Public Counsel and interveners apparently argued that the preferred resource plan should be based solely on the lowest PVRR.[268] The Commission determined for procedural reasons that it need not decide the issue in that particular case.[269] But if the Commission factors job growth into the decision in this case, it is basically rejecting the position apparently taken by Staff, Public Counsel and the interveners in the earlier Ameren IRP filing.

The MLA is not aware of any CCN case where the impact on jobs and/or property taxes played a role in the Commission's decision. One example is the recent decision where a CCN was granted to ATXI for the Mark Twain project in Case No. EA-2015-0146. The Commission went through an extensive analysis in that case of the economic and efficiency benefits of the line itself.[270] However, it made no mention at all of any potential impact of the line in terms of jobs and/or property taxes. The line was left to fail or prevail on the basis of its own inherent costs and benefits.

Staff agrees with the MLA: "Staff recommends that the Commission determine if the Project's service is an improvement that justifies its cost. If the Commission

[267] Id. at p. 7.
[268] Report and Order, EO-2011-0271, p. 8.
[269] Id. p. 10.
[270] See, e.g., Report and Order at pp. 9 and 14-16.

determines that the Project is an improvement justifying its cost, then it is unnecessary to review the impacts of increased employment and tax revenues as they are incidental to the Project's construction." [271]

If the Commission nevertheless decides that job impacts are relevant considerations in a CCN case, in this instance the record would not allow it to come to any kind of logical conclusion on the matter. The problem is, Grain Belt has once again presented only half the story regarding the economic impact of its proposed line. For example, ** [redacted] ** Whether that is "good" or "bad" is beyond the point when evaluating the overall economic impact of the line. But the fact is that these reductions in output will necessarily have a ripple effect not only in terms of revenues and jobs at the plants themselves, but also at coal suppliers such as Peabody and Arch Mineral in St. Louis, rail lines which carry the coal, and the mines and miners who supply the coal to the plants.

The impacts from reduced plant generation are just the beginning in a long series of the negative economic impacts which would be produced by the Grain Belt line. For example, Mr. Spell's model does not consider any of the myriad of impacts which would result from the fact that, according to Grain Belt, its Project will result in the construction

[271] Exh. 201 page 42.
[272] Testimony of Mr. J. Neil Copeland, Tr. 766 lines 15-18.

of fewer generating plants and fewer transmission lines[273] Those loss of jobs are just as real as the jobs which would be created by building the Grain Belt line.

Nor does Mr. Spell's model take into account the fact that to the extent the line is actually used in Missouri, the retail customers of this state would end up paying their proportionate share of the very benefits which the model attributes to the line.[274] Or in Staff's words, "wages and taxes are part of the Project's costs, not benefits."[275]

In short, the model used by Mr. Spell attempts only to capture the positive economic impacts of the line, while making no attempt to quantify any of the negative impacts. It presents just one half of a two-sided picture.

A more complete list of just some of the potential negative impacts ignored by Mr. Spell's model can be found at pages 1272-1281 of the transcript.

Mr. Spell's consistent response for not including the negative impacts of the line was that he did not have the information which would enable him to do so.[276] While that me be a legitimate excuse on a personal level, it does not transform a flawed study into something of any value.

Using Mr. Spell's model, any capital expenditure program, even the proverbial "bridge to nowhere", would likewise show economic benefits.[277] In fact, using his model, as the cost estimates of the Grain Belt project increase over time, the more and more "benefits" it produces.[278] The results of such a methodology are inherently worthless in the context of this case.

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[273] See Tr. 1275 line 19 – 1277 line 5, and testimony of Suedeen Kelly, Exh. 111, page 16 line 20 – page 17 line 1, and p. 12 lines 17-20.
[274] Tr. 1279 line 18 – 1280 line 15.
[275] Exh. 201 p. 42
[276] See, e.g., Tr. 1272 lines 11-19.
[277] Tr. 1281 lines 14-19.
[278] Id. at lines 20-22.

Accordingly, even if the Commission wished to analyze the net impact of the proposed line on jobs in Missouri, it has no rational basis for doing so. In fact, the Commission reached that conclusion in the 2014 case, finding as follows: "GBE alleges that the Project would result in economic benefits, but its studies are not reliable, as they fail to consider any negative economic impacts resulting from job displacement and energy production."[279] The same is true with the model used in this case by Mr. Spell.

As to increases in property tax revenues, the MLA would suggest that for the same reasons discussed above with regard to jobs, as a matter of policy this issue is not appropriate for consideration in CCN cases.

If the Commission feels otherwise, then the MLA would first point out that the property tax figures touted by Grain Belt include the same flaw as their analysis of jobs. As Mr. Spell conceded, his model does not capture the potential losses in income and property taxes in other sectors which could result from construction of the line.[280]

Perhaps most importantly, his model does not reflect any negative impact on land values in the vicinity of the line, which would ultimately impact the level of property taxes.[281] In fact, as explained by MLA's witness Louis Donald Lowenstein, the line could produce negative impacts on property taxes from a wide variety of different sources.[282] So once again, the Commission has been given only half of a two-sided story.

In addition, the Commission should note that if the Missouri portion of the line is built in approximately 22 months, as projected by Grain Belt,[283] then the line will be

[279] Report and Order, p. 25.
[280] Tr. 1273 lines 12-21; Tr. 1276 lines 11-14; Tr. 1277 lines 2-5.
[281] Tr. 1280, lines 19-22.
[282] Rebuttal testimony of Louis Donald Lowenstein, Exh. 300 page 24 line 5 – page 27 line 22.
[283] Tr. 388 lines 5-15.

assessed by the county at the level assumed in Grain Belt's calculations for one year only.[284]

And in any event, as Mr. Tregnago acknowledged, once the line is energized it would be assessed by the Missouri State Tax Commission (MSTC), and not by the county.[285] At that point, as Mr. Lowenstein explained, the rules of the game all change.

Before the line is energized, it is assessed by the county solely on the basis of its cost. However, after the process is turned over to the state, the assessment becomes much more complex.[286] It is no longer based simply on the cost of the line, but on the value of the company which owns it.

In making this determination, the MSTC "looks at the overall company's financial performance and the marketplace environment in which they operate. MSTC will review GBE's financial and operational data. Components of this review might include income from operations, their capitalization structure, industry strength, industry trends and other external factors based upon all data that is available to MSTC."[287] As Mr. Lowenstein further concluded, "it's hard to speculate what trends exactly will affect GBE's value in the future.[288] And of course even before the line is energized, it may no longer be owned by Grain Belt or Clean Line.

Mr. Tregnago obviously agrees with Mr. Lowenstein about the unpredictability of the tax assessment once it ceases to be based simply on the cost of the line. When asked for his best estimate or even an approximation of the property taxes attributable to the

[284] Tr. 619, lines 9-18; Tr. 626 line 19 – 627 line 3.
[285] Tr. 618 line 18 – 619 line 1; Tr. 619 lines 15-21.
[286] Rebuttal testimony of Louis Donald Lowenstein, Exh. 300, page 12 lines 5-9.
[287] Id. at p. 13 lines 1-5.
[288] Id. at line 12.

line just three years into the future, Mr. Tregnago could provide no answer. In fact, he said, "no one can."[289]

For the foregoing reasons, the MLA suggests that the Commission should give no weight in this case to the impact that the line might have on property taxes, particularly to the numbers relied on by Grain Belt.

7. <u>Grain Belt lacks the necessary consents from the County Commissions.</u>

Section 229.100 RSMo clearly requires that at some point Grain Belt must receive the consent to build its line from the County Commission in each of the eight counties where the line would be built.

In the recent case of *Neighbors United Against Ameren's Power Line v. PSC*, No. WD79883 (March 28, 2017) (*Neighbors United)*, [290] the Western District of the Missouri Court of Appeals clarified a related issue which had been raised in the Commission Case from which the *Neighbors United* decision arose: the application for a CCN by ATXI in Commission Case Number EA-2015-0146. Over the objection of Neighbors United, the Commission granted ATXI the CCN it had requested in that case, conditioned on ATXI subsequently obtaining the necessary county commission consents pursuant to Section 229.100.

The Court of Appeals ruled that the consents required under Section 229.100 must be obtained and submitted to the Commission before a CCN may be issued. As the Court stated: "Accordingly, county commission assents required by section 229.100 and 4 CSR 240-3.105(1)(D)(1) must be submitted to the PSC *before* the PSC grants a CCN." (Opinion p. 8; emphasis by the Court).

[289] Tr. 628 line 22 – 629 line 5.
[290] A copy of the *Neighbors United* opinion was attached to the MLA's March 28, 2017 Motion to Dismiss. EFIS 354.

While several parties have correctly pointed out that this decision is not yet final, it nevertheless provides authoritative guidance to the Commission. Given the unanimous, unambiguous ruling on the matter, it would certainly seem more prudent to follow the Court's dictates until the appeal is finalized, rather than simply ignoring the court's views on the matter of a conditional CCN. And it would certainly seem more appropriate to follow the opinion of the Court of Appeals, whether final yet or not, as opposed to adopting the arguments of Grain Belt and the others which support them on this issue.

Grain Belt contends that *Neighbors United* is inapplicable to this case, in that the Opinion only analyzed the language of the second subsection of Section 393.170, whereas Grain Belt applied here for a line certificate based on the first subsection of that statute.[291] However, ATXI applied for a line certificate under the same subsection relied on by Grain Belt, and ATXI went to great lengths on appeal to raise the same argument raised now by Grain Belt about the supposed distinction between the two subsections of Section 393.170.[292]

The Court of Appeals was obviously not persuaded in *Neighbors United* by the distinction being drawn by Grain Belt. So while the *Neighbors United* case may not yet be final, it clearly was presented with and rejected the same argument raised by Grain Belt in its Opposition to the MLA's Motion to Dismiss.

Grain Belt concedes that it does not now have the consent under Section 229.100 from the Caldwell County Commission.[293] Therefore, based upon the statutes and Commission Rules relied upon in the *Neighbors United* decision, as well as that decision

[291] See Opposition of Grain Belt to the MLA's Motion to Dismiss, filed March 31, 2017, page 2.
[292] Brief of Respondent ATXI, filed January 6, 2017, pages 18-25. Available on Case.Net.
[293] See Exhibit 320. See also Staff Exh. 200 p. 3 lines 19-21.

itself, the MLA submits that the Commission may not at this point issue any form of CCN to Grain Belt.

For the record, the MLA has two other arguments with respect to the required consents under Section 229.100: that several of those consents granted in 2012 have since been rescinded; and that Grain Belt still does not have the needed approval from the County Commissions in Ralls and Randolph Counties to use any particular roads for its line in those counties. However, in light of the lack of consent in Caldwell County, it would appear that there is no reason at this point to rule on either of these other two arguments

For the foregoing reasons, Grain Belt does not have the requisite authorizations from all of the eight County Commissions under Section 229.100, and thus the CCN must be denied on that ground alone. The issuance of a conditional CCN at this point simply invites reversal and vacation of the Commission Order.

Accordingly, the MLA recommends that this case immediately be held in abeyance until the *Neighbors United* opinion is finalized in the appellate courts. Assuming that decision is not reversed, six months after it is final the Grain Belt application should be dismissed unless by that point Grain Belt has obtained all of the needed assents. For the reasons stated in MLA's Motion to Dismiss, Grain Belt should not be given an indefinite period of time in which to secure the county consents which it has been trying to obtain for the past 5 years.

8. <u>Recommended Conditions</u>

Unlike Grain Belt, the MLA won't take for granted that the Commission will decide this case in its favor. Therefore, in the event that the Commission does grant

Grain Belt the CCN, the MLA suggests that a number of conditions be imposed before that CCN may be exercised.

First, the MLA supports the conditions to which Staff and Grain Belt have agreed, as set forth in Exhibit 206. Further, the MLA supports the Staff with respect to its recommended conditions to which Grain Belt has not agreed.[294]

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

Condition 1: The Ralls County Converter Station. The MLA will begin by responding to the question which the parties were asked to address by one of the Commissioners: if the Commission wanted to condition the effectiveness of the CCN on the actual construction of the proposed converter station and the actual delivery of 500 MW of wind to the converter station, how would it do so?

The MLA suggests that this objective could be accomplished by adding the following condition to the CCN:

> 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 in this case, including the ability to accept approximately 500 MW of power from the Kansas converter station. In addition, before the line may be energized in Missouri, Grain Belt must file copies with the Commission of contracts which bind one or more load-serving utilities in Missouri to purchase a total of approximately 500 MW of capacity on the Grain Belt line, and separate contracts which also bind said utilities to purchase energy to be transmitted over the Grain Belt line of approximately 500 MW in total, with all contracts for the purchase of capacity and energy to be effective for a period of at least 15 years.

The MLA's position on this issue is premised on the assumption that the service on the proposed line from Kansas to Missouri may prove to be so unprofitable to Grain

[294] See summary of conditions at Schedule DAB-9 to Mr. David Berry's Surrebuttal testimony, Exh. 105.

Belt that, if given the choice, it would decide not to build the $100 million Ralls County converter station at all.

And legally, as matters now stand that apparently would be an option for Grain Belt. In its Application of August 30, 2016, Grain Belt is only asking that the Commission authorize it to build the facilities comprising the proposed Project, which includes the Ralls County converter station.[295] Therefore, if the Commission does grant the CCN as requested in the Application, Grain Belt would seemingly have the authority, but not the obligation, to build the Missouri converter station.

The MLA is not suggesting that Grain Belt decided from the outset that the Missouri Converter station would not be part of the final project. Nor is it suggesting any kind of bad faith on the part of Grain Belt. What it is suggesting, however, is that from a purely economic standpoint, there is a distinct possibility that Grain Belt could be better off financially by simply not spending the $100 million to build the Missouri converter station.

As discussed earlier, at this point there is no evidence whatsoever that Grain Belt has any customers in Missouri which will buy any of the power in excess of the 200 MW allotted to MJMEUC. So in that respect, with regard to the other 300 MWs Grain Belt is in exactly the same position they were in during the 2014 case. Thus just like in the earlier case, there is no reason to assume that any utility in Missouri will buy energy from the Grain Belt line, other than perhaps the 200 MW to MJMEUC.

If that is the case, then as discussed earlier, the revenue recovered from the sale of capacity into Missouri does not justify the construction of a $100 million converter

[295] See Application, p. 1-2; see also p. 30-31.

station here. Thus from a purely economic standpoint, if given the option Grain Belt might well choose not to build the converter station.

If that were to happen, it is a virtual certainty that none of the energy from the proposed line could ever reach any customer in Missouri, including the MJMEUC cities. To do so would require that a utility in Missouri buy the power from the converter station in Indiana, and then somehow arrange and pay for that power to be transmitted from the PJM system back into MISO. That is simply not a plausible scenario.

In addition, without the Missouri converter station, MJMEUC would not have the ability to ship up to 50 MW of off system sales into PJM, as promised by Grain Belt as part of their TSA.[296] Although not covered by the Commission question posed at the outset of this discussion, the MLA would suggest that this possibility be addressed by adding the following language to the end of the first sentence of its proposed condition set forth above: "… and to deliver at least 50 MW of power from the Missouri converter station to the PJM Sullivan substation."

In summary, if the Missouri converter station is not built, there is virtually no chance that any customers in Missouri could ever see any benefit from the proposed line. The people of Missouri would be left with the burdens of the line, and nothing more. Accordingly, the condition suggested here by the MLA is definitely warranted. In fact, it would be difficult to imagine why Grain Belt would even object to the basic concepts of this proposal.

Condition 2: Decommissioning Fund. Staff is proposing that some form of decommissioning fund should be established, in order to insure that the Project facilities

[296] See TSA at Mr. Lawlor's Schedule MOL-3, p. 33 and p. 12, section 3.3.

are removed from the Missouri right-of-way when they are no longer being utilized. Staff and Grain Belt apparently disagree as to when Grain Belt should begin contributing to such a fund.[297]

The problem with both proposals, however, is that they result in virtually no funds being available to remove the cables and towers if for some reason the project is abandoned during construction, or within several years after construction is completed.

Those scenarios may be unlikely, but as Staff notes, they are certainly a possibility.[298] Grain Belt itself has raised a red flag in this regard, with the insertion of the following note in its most recent financial statements:

> The Company's activities are subject to significant risks and uncertainties, including failing to secure additional funding to operationalize the company's current transmission projects. Failure to generate sufficient revenues, raise additional capital, or reduce certain discretionary spending could have an adverse effect on the company's ability to continue as a going concern.[299]

So the question then becomes, who should bear the risk that the project facilities must be removed from the landowners' property at some early stage in the process: Grain Belt (or some unknown successor), or the landowners?

Even if the risk of decommissioning in the early years is low, there is no reason why that risk should be borne by the landowners. And the consequences for them could be devastating. According to Grain Belt's study, **

[297] See comparison at page 12 of Schedule DAB-9 to Mr. David Berry's Surrebuttal testimony, Exh. 105
[298] Exh. 201, Staff Rebuttal Report, p. 45.
[299] Exh. 332; Tr. 248 line 15 – 249 line 15.
[300] The study was based on the Plains and Eastern Line, but Dr. Galli confirmed that the numbers would be comparable for the Grain Belt line. Tr. Vol. 13, page 497 line 14 – page 498 line 18.

[redacted].**

Grain Belt argues that no decommissioning fund has ever been required for a transmission line. However, as they are fond of pointing out, their Project is unique in many ways. In particular, it appears that no single-asset merchant transmission line has ever been built in this state. Thus in all previous cases involving the construction of a new transmission line, the landowners and the Commission could rely on the incumbent utility to remove any decommissioned transmission facilities, in the unlikely event that was needed.

Here, the surviving owner of the Grain Belt project will apparently have no assets of any consequence, other than the line itself. So if the Grain Belt facilities are no longer needed, for whatever reason, there will be no entity left with the resources to remove the unwanted facilities from the right-of-way. In short, the Grain Belt project is not like other transmission lines in this state, and there is a legitimate reason to recognize that difference with regard to the decommissioning fund.

Therefore, the MLA believes it is essential that the decommissioning fund in this case be capable of paying for the removal of the Project facilities from the beginning of construction. Neither the Grain Belt nor the Staff proposal would cover that possibility.

Accordingly, in order to protect the landowners from the responsibility of dealing with abandoned lines and towers, the MLA proposes that the Commission condition any CCN on Grain Belt providing from the outset of construction for the funds necessary to fully decommission the Project facilities.

Grain Belt would seemingly have at least two options for doing so. It could establish a decommissioning trust fund before construction begins in an amount which would fully decommission the Project facilities, and on which Grain Belt would be entitled to all interest payments while the Project remained in operation. Grain Belt would thus recover the time value of the money contributed at the outset to the decommissioning fund.

Or alternatively, as Staff notes, Grain Belt could be directed to secure insurance, a letter of credit, escrowed funds, or a bond in an amount sufficient to cover the full cost of the decommissioning.[301]

Finally, the MLA also suggests that the document which establishes the decommissioning fund, in whatever form that may take, be incorporated into the easement agreements with landowners.

Grain Belt seems to think that if the terms of the decommissioning fund are made part of the Commission's Order in this case, that the Commission and individual landowners would then have the ability to enforce the terms of that document.[302] The problem is, Grain Belt has yet to produce a cohesive document encompassing all of the terms of a proposed decommissioning fund. Thus there will be no such document for the Commission to make part of its final Order in this case.

Therefore, the MLA suggests that as a further condition to the CCN, the Commission require that the final decommissioning document be incorporated by reference into the easement agreements. That course would seemingly afford the landowners the best opportunity, if needed, to enforce or challenge the terms of the final

[301] Exh. 201, Staff Rebuttal Report, p. 45.
[302] Tr. 422 line 8 – 423 line 2.

decommissioning fund. Significantly, Grain Belt has apparently agreed to do so with respect to their easements for the Illinois segment of the line.[303]

In summary, all the MLA is seeking here is to protect the landowners from having to either absorb the very significant costs of removing the unneeded project facilities from the right-of-way, or to accept a liability, a nuisance and an eyesore on their property on a permanent basis. The risk of decommissioning the project in the early years may indeed be small. But it is a risk that should not be borne by the property owners.

Condition 3: Incorporation of documents into the Easement Agreements. Ms. Deann Lanz has agreed that 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.[304] In order to formalize that commitment, the MLA suggests that it be made a condition of the CCN.

Condition 4: Construction of the Mark Twain Project by ATXI. In case number EA-2015-0146, the Commission authorized ATXI (a subsidiary of Ameren) to build what they called the Mark Twain 345-kV transmission line in northeast Missouri.[305] However, on March 28, 2017, the Court of Appeals vacated the Commission's Order, on the ground that the Commission was not authorized by law to grant the CCN on the condition that ATXI later obtain the necessary consents from the five County Commissions where the line was to be located.[306] And as the Court also noted in that decision, the subject of the

[303] Tr. 396 line 19 – 397 line 9.
[304] Surrebuttal of Ms. Lanz, Exh. 114, p. 5 lines12-18.
[305] Report and Order, p. 6 par. 3; p. 22 par. 66.
[306] See *Neighbors United v. Public Service Commission*, (Mo App March 28, 2017), Case No. WD79883. A copy of the Court's decision was attached to the MLA's Motion filed that same date at EFIS No. 354.

County Commission consents is now being litigated in five circuit court cases.[307] So obviously, the ultimate fate of the ATXI proposed transmission line will not likely be resolved for quite some time.

And the fate of that line is definitely significant here. As Staff indicates, the Grain Belt line is intended to connect to the Ameren system near the Audrain Power Station. However, that station is currently limited by what Staff termed a "special protection scheme".[308]

The preliminary studies regarding the proposed Grain Belt line assumed (which was no doubt logical at the time) that the ATXI line in northeast Missouri would be in operation when the Grain Belt line went into service. However, that assumption is now questionable to say the least. And thus Staff is now rightfully concerned about the Grain Belt line due to "the uncertainties surrounding the ATXI Mark Twain transmission line and its effects on the Missouri converter station and corresponding congestion."[309]

Under the heading of "Safety Issues", Staff discussed in some detail the problems which could be caused if the ATXI line is not in operation when the Grain Belt line is energized.[310] Staff's bottom line on that issue: "Without the Mark Twain Project or something comparable, Grain Belt will induce thermal overloads in the MISO system without additional upgrades or changes to the Grain Belt Project."[311]

At this point there seemingly is no evidence of any contingency plans for the possibility that the Mark Twain line will not be operating when the Grain Belt line is ready to be energized. Accordingly, due to the safety concerns voiced by Staff, the MLA

[307] Id. at footnote 2, p. 8.
[308] Exh. 201, p. 24.
[309] Exh. 200, p. 4.
[310] Exhibit 201, p. 56-58.
[311] Id. p. 58.

proposes that the following condition be added if a CCN is issued: that if ATXI's Mark Twain line is not operating as authorized by the Commission in Case No. EA-2015-0146 at the time the Grain Belt line is completed, then the Grain Belt line may not be energized in Missouri until Grain Belt has submitted studies satisfactory to Staff that the concerns voiced by Staff at Exhibit 201 pages 56-58 have been adequately resolved.

Condition 5: No reduction to highest and best offer. Grain Belt is making much of the fact that it is offering to pay landowners 110% of the value of the underlying property when acquiring easements for the line's right-of-way.[312] However, in answer to a data request, Grain Belt said it has made no commitment not to reduce the amount of an easement offer if the matter later goes to arbitration or to court.[313]

Ms. Lanz seemed to believe that is no longer Grain Belt's position, and that they have now agreed with Staff not to reduce their offer if the matter goes to arbitration or to court.[314] However, that does not appear to be the case. Based on Exhibit 206, the closest agreement on point seems to be item VII.7. That provision simply says that Grain Belt will not change its policies and practices regarding right-of-way acquisition after it obtains a CCN. But if Grain Belt currently has no practice against reducing an offer to a landowner, and we have no reason to believe they do, then the agreement at Section VII.7 affords no protection at all from what the MLA is seeking to guard against.

Given that Grain Belt is touting the standard 110% price to the Commission as one inducement to securing the CCN, it is only fair that Grain Belt should not be allowed to ultimately pay a lower amount if the matter of compensation goes to arbitration or to court.

[312] See e.g. Direct Testimony of Deann K. Lanz, Exh. 113, p. 6 lines 19-21.
[313] Tr. 417, lines 2 – 12.
[314] Tr. 417 line 13 – 418 line 21.

Accordingly, the MLA proposes the following condition on any CCN which is issued in this case: that Grain Belt agrees to pay landowners at least the amount of its highest and best offer for a right-of-way easement if the matter of compensation is later taken to arbitration or to court. This provision would have the added advantage of eliminating Grain Belt's obvious leverage if it should attempt to steer the landowner away from taking the matter to arbitration or to court.

Condition 6: Commission approval of sale of assets. As a condition to receipt of a CCN, the Commission should require that Grain Belt 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.

In the context of regulated utilities, the "obvious purpose" of Section 393.190 is to ensure the continuation of adequate service to the public served by the utility in question. *State ex rel. Fee Fee Trunk Sewer v. Litz*, 596 S.W.2d 466, 468 (Mo App 1980). The Commission may withhold its approval of the disposition of the assets if the disposition is detrimental to the public interest. *Id.*

The case of *Environmental Utilities v. Public Service Commission*, 219 S.W. 3d 256 (Mo App 2007) provides one example of how this statute has been applied by the Commission. There, the court upheld a Commission decision which refused to approve the sale of a part of a utility's system to a "distressed utility", with dire implications for the service that it would be able to provide to its remaining customers. 219 S.W.3d at 263.

Arguably, Grain Belt is already subject to the provisions of Section 393.190. However, given the unique character of Grain Belt's service and of its assets, they could

well argue that the statute is not applicable, and thereby seek to sell all or part of its assets without Commission approval. If Grain Belt does take that position, and is successful in doing so, it could sell all or a portion of its proposed line, or even sell or otherwise dispose of its TSA with MJMEUC, to any entity of its choosing, regardless of that entities financial situation.

** [redacted] **

If Grain Belt does end up serving customers in Missouri, those customers deserve the same protections in this regard which are afforded the customers of all other utilities regulated by the Commission. A buyer of some or all of the Grain Belt assets may be fully reliable and financially solvent, or it might not be. That obviously is a question which would be decided by the Commission if Grain Belt is subject to the terms of the statute in question. Grain Belt's customers should not be left to fend for themselves with whatever entity Grain Belt leaves behind if decides to sell part or all of its business in Missouri.

Therefore, to eliminate any doubt about Grain Belt's ability to dispose of its assets without the Commission's permission, this proposed condition is a reasonable means of protesting the public from dealing with what may turn out to be another "distressed utility." From the standpoint of the Commission, and the people of Missouri, there is no down-side to incorporating this suggestion as a reasonable condition to the grant of the CCN.

Condition 7: Commission approval of indebtedness. The Commission also should require that Grain Belt agree to be subject to Section 393.200 RSMo, which generally requires investor-owned utilities in Missouri to obtain Commission approval before issuing any form of indebtedness.

This statute, like the one discussed under Condition 6 above, obviously is intended to provide Commission oversight over regulated utilities in this state in order to protect the customers of the utility. However, Section 393.200 applies only to utilities "organized or existing or hereafter incorporated under or by virtue of the laws of this state…." Thus Grain Belt, and its successors, could seemingly avoid any kind of Commission involvement in proposed debt obligations of the type routinely brought before the Commission by other regulated utilities in Missouri.

There is no logical reason why Grain Belt should be not be subject to the same oversight and scrutiny as other regulated utilities in this regard. This is particularly true in that the debt obligations in Grain Belt's case will be novel in many respects, and could very well determine the fate of a project which will have a profound impact on so many people in Missouri.

While Grain Belt would seemingly be beyond the scope of the statute in question, the Commission could certainly impose as a condition to the CCN that Grain Belt voluntarily agrees to seek Commission approval for the issuance of any kind of indebtedness covered by the terms of Section 393,200.

Condition 8: Modifications to Grain Belt's standard form Easement Agreement. In addition to proposed Condition 3, discussed above, the MLA suggests that the

Commission condition the CCN on Grain Belt's agreement to make two additional modifications to its standard form Easement Agreement with landowners.

The standard form Easement Agreement which Grain Belt proposes to use as a starting point in negotiations with landowners is set forth at Schedule DKL-4 to the direct testimony of Ms. Lanz.[315]

The MLA suggests that the following statement be added to the Easement, perhaps at the conclusion of existing paragraph 3: "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." This provision already reflects Grain Belt's existing policy.[316] However, to insure that the policy is not later revised to the detriment of the landowners, its addition to the easement should be made a condition to the CCN.

Second, the standard easement presently includes the following provision: "Grain Belt agrees that it shall not pursue, and hereby waives, any Claims against Landowner, except to the extent caused by Landowner's breach of this Agreement, gross negligence or intentional misconduct …." [317]

Under the terms of this provision, landowners would be liable, with no monetary limits, if for example the landowner damaged a pole with farming equipment, and his conduct was deemed to be "gross negligence", as opposed to ordinary negligence.

Grain Belt (or its successors) would of course be the party in the first instance to decide if they considered the actions of the landowner to be "gross negligence", and not

[315] Exhibit 113.
[316] Direct testimony of Deann Lanz, Exhibit 113, page 7 lines 19-22.
Schedule DKL-4, p. 4, Section 11.c to Direct Testimony of Deann K. Lanz, Exh. 113.

mere negligence. If the landowner disagrees with Grain Belt's determination of this complex legal question, then his or her only recourse apparently would be to take the matter to court.

The MLA does not disagree with the easement provision making the landowner liable for intentional wrongdoing. However, the distinction created in the easement between gross negligence and mere negligence simply invites allegations of "gross negligence" by Grain Belt (or its successors) which could ultimately be reversed by the landowner only through litigation.

Many of the landowners obviously do not want the Grain Belt poles on their property in the first place. They should not be subject to the unlimited liability for damages to the Project facilities which Grain Belt seeks to impose with this provision. Accordingly, the MLA proposes that as a condition to the CCN, the Commission require that Grain Belt remove the words "gross negligence" from Section 11.c of the Easement Agreement appearing at Schedule DKL-4.

9. <u>Waivers of reporting requirements</u>.

The MLA takes no position on Grain Belt's request for waivers of the specified Commission reporting requirements.

10. <u>Conclusion and Prayer for Relief</u>.

Despite the positive aspects of wind generation, and despite the fact that the Grain Belt project might be beneficial in markets east of Missouri, and despite the extensive resources devoted to this case by Grain Belt, in the end they failed to prove what they had the burden of proving: that the line is actually needed in Missouri, and that the granting of a CCN would be in the public interest. Accordingly, the MLA respectfully asks the

Commission to deny the CCN being sought here by Grain Belt on the ground that it fails to meet two of the Tartan criteria.

Alternatively, the CCN should be denied on the ground that Grain Belt does not have the necessary approvals of the eight county commissions where the proposed line is to be built, and the case should be held in abeyance as argued in Section 7 above.

Finally, if the CCN is granted, the MLA respectfully asks the commission to include the conditions recommended and discussed in Section 8 above, and for such additional relief as the Commission deems just and reasonable.

Respectfully submitted,

Missouri Landowners Alliance, et al.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 10th day of April, 2017.

/s/ Paul A. Agathen
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