

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**Grain Belt Express Clean Line LLC)
)
Application for an Order Granting Grain Belt Express)
Clean Line LLC a Certificate of Public Convenience)
and Necessity pursuant to Section 8-406.1 of the)
Public Utilities Act to Construct, Operate and Maintain)
a High Voltage Electric Service Transmission Line and)
to Conduct a Transmission Public Utility Business in)
Connection Therewith and Authorizing Grain Belt)
Express Clean Line Pursuant to Sections 8-503 and)
8-406.1(i) of the Public Utilities Act to Construct the)
High Voltage Electric Transmission Line.)**

Docket No. 15-0277

**REPLY BRIEF OF
GRAIN BELT EXPRESS CLEAN LINE LLC**

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I. Introduction

Grain Belt Express Clean Line LLC (“Grain Belt Express” or “GBX”) submits this Reply Brief in accordance with the procedural schedule established by the Administrative Law Judge (“ALJ”).

The following intervenors filed initial briefs in which they either supported issuance of a certificate of public convenience and necessity (“CPCN”) for the Grain Belt Express Project (the “Project”), or (if addressing only selected topics), recommended that the Commission make one or more specific findings in support of Grain Belt Express’s request for a CPCN (*e.g.*, that the Project will promote the development of an effectively competitive electricity market):

Citizens Utility Board

Local Unions 51 and 702, International Brotherhood of Electrical Workers, AFL-CIO

Environmental Law and Policy Center

Building Owners and Managers Association of Chicago

Infinity Wind Power (“Infinity”)

Wind on the Wires (“WOW”)

Intervenors BNSF Railway Company (“BNSF”) and Illinois Central Railroad Company (“ICRR”) filed initial briefs limited to the topic of interactions between their railroad facilities and the Project facilities at crossing points or other points of close proximity. Intervenor Rockies Express Pipeline LLC (“REX Pipeline”) filed an initial brief limited to the topic of interactions between the Project and REX Pipeline’s facilities and the parties’ stipulation and agreed resolution on that topic. Intervenors Rex Encore Farms LLC and Rex Encore Properties LLC (“Rex Encore”) and Brown Branch LLC and JAR Branch LLC (“Branch Properties”) filed initial briefs limited to the topic of proposed modifications to the Proposed Route of the Project near its western end in Illinois in the area of these parties’ properties.

Commission Staff (“Staff”) filed an initial brief in which it concluded that the Project will promote the development of an effectively competitive electricity market that operates

efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives, and that the Project will promote the public convenience and necessity, but that Grain Belt Express had not demonstrated that it is capable of efficiently managing and supervising the construction process for the Project.

Intervenors Concerned Citizens and Property Owners (“CCPO”), Illinois Agricultural Association (“IAA”), Landowners Alliance of Central Illinois, NFP (“LACI”), and Mary Ellen Zotos (“MEZ”), each filed initial briefs opposing the grant of a CPCN for the Project.

This Reply Brief uses the same, agreed outline of sections and subsections as used for the parties’ initial briefs. Grain Belt Express replies in each section/subsection, as necessary, to arguments made by CCPO, IAA, LACI, MEZ, Staff, BNSF, ICRR, and Branch Properties in that section/subsection of their respective initial briefs.

A. Overview and Summary of Party’s Position

1. Response to CCPO

CCPO complains that Grain Belt Express, “a private company,” is being allowed to request a CPCN for its proposed electric transmission line in a proceeding conducted pursuant to §8-406.1 of the Public Utilities Act (“Act”). CCPO Initial Brief (“IB”) at 3-4. The Commission has twice previously rejected this argument by CCPO and other intervenors, and should reject it again. *See* §III of GBX’s Initial Brief and §III of this Reply Brief, below.¹

CCPO also complains that Grain Belt Express has had “at least several years to prepare its case” before filing it with the Commission in April 2015. CCPO IB at 4. Grain Belt Express can assure the Commission that it has not been preparing its Application in this case for several years. Grain Belt Express has, however, spent several years in development activities for the Project, including developing the route of the Project through an extensive information gathering and public outreach process (*see* GBX IB §V.A), engaging in the necessary interconnection

¹ Being a “private company” in no way disqualifies Grain Belt Express from seeking a CPCN pursuant to §8-406.1. Commonwealth Edison (“ComEd”) and Ameren Illinois are private companies as well.

studies and processes with the Regional Transmission Organizations (“RTOs”) (*see* GBX Ex. 2.0 at 24-35), identifying customer interest in the Project (*see* GBX IB §IV.B.1.b), and conducting other economic and technical studies. These activities are necessary and appropriate to support the Application. Further, in addition to its own extensive public and governmental outreach and route development activities in Illinois, which began in May 2012 (GBX Ex. 7.0 at 9), Grain Belt Express, as required by §8-406.1, held multiple public meetings about the Project and provided other public notification, in the counties in which the transmission line will be located, starting in early November 2014, approximately five months before its Application was filed. *See* GBX Ex. 7.0 at 14-17 and GBX Exs. 7.2-7.3. These extensive public meeting and notification requirements, which are *not* required for a CPCN application under §8-406 of the Act, are intended to provide notice and information about the proposed transmission line project to the public in the areas through which the proposed line will pass, prior to the filing of a §8-406.1 application for a CPCN.²

CCPO also complains that due to the fact that §8-406.1 establishes a deadline for decision, intervenors were not able to file testimony in response to Grain Belt Express’ rebuttal testimony. However, as provided in the Commission’s Rules of Practice, the applicant *always* gets to file the last round of testimony. 83 Ill. Adm. Code §200.570. Further, arguments that the schedule in a §8-406.1 proceeding is difficult are not relevant to the question of whether Grain Belt Express’ Application can be filed and considered pursuant to §8-406.1; as the Commission knows, such complaints have been voiced in §8-406.1 CPCN cases of Ameren and ComEd.

Other arguments that CCPO summarizes in §I.A of its Initial Brief are responded to in the applicable sections of this Reply Brief, below.

2. Response to MEZ

MEZ states, without citation to the record, that a substantial part of the Project route will

² No party has contended that Grain Belt Express failed to comply with any of the §8-406.1 requirements for pre-filing public meeting and dissemination of public notice about the Project.

traverse “prime” farmland. MEZ IB at 2. Grain Belt Express does not dispute that a substantial portion of the Proposed Route in Illinois crosses agricultural properties. However, once construction is completed, landowners will be able to continue farming most of the easement area (even though Grain Belt Express will have paid them the full fair market value of the entire easement area as compensation for the easement). Across Illinois, a total of only 1.7 acres of agricultural land will be taken out of production by the presence of the transmission line. GBX IB at 142-143. Further, Grain Belt Express and its contractors will have substantial processes and procedures in place to avoid or minimize impacts to agricultural lands from construction activities and to remediate, at Grain Belt Express’ expense, any impacts that occur. These include, among other things, the processes and procedures required by Grain Belt Express’ Agricultural Impact Mitigation Agreement (“AIMA”) with the Illinois Department of Agriculture (the AIMA will be incorporated into all easement agreements between Grain Belt Express and landowners, so that the landowner may enforce Grain Belt Express’ compliance with the requirements of the AIMA); and the processes and procedures the Commission, in Docket 12-0560, required Rock Island Clean Line to adopt, and which Grain Belt Express has also agreed to adopt as requirements of its CPCN order. *See* GBX IB §V.F.

MEZ states that Grain Belt Express has not submitted the Project to the PJM or MISO regional transmission planning processes for a determination of whether there is a “public need” (MEZ’s phrase) for it, and that Grain Belt Express claims it need not do so because it is a merchant transmission owner.³ MEZ IB at 2. Neither PJM, nor MISO, nor SPP has *any* process for evaluating proposed transmission projects, like the Project, that are *not* seeking to recover costs from all ratepayers through an RTO regional cost allocation mechanism. Further, because the Project is an *interregional* transmission line, which will receive electricity generated in the SPP RTO footprint and deliver it into the MISO and PJM networks, the individual RTOs do not

³ “PJM” refers to PJM Interconnection LLC. “MISO” refers to the Midcontinent Independent System Operator, Inc. “SPP” refers to the Southwest Power Pool RTO.

have processes for evaluating the Project. *See* GBX Ex. 11.0 at 67; Tr. 208, 219, 222, 280. This is not a matter of choice by Grain Belt Express as to whether to participate or not. Neither MEZ nor any other party has identified any process at PJM or MISO by which either RTO would evaluate the “public need” for the Project.⁴ For these reasons, neither PJM nor MISO would “ask” that the Project be built. MEZ IB at 3.

MEZ states that Grain Belt Express is requesting “an order authorizing and directing GBX to construct the Line pursuant to Section 8-503.” MEZ IB at 3. To be clear, both §8-503 and §8-406.1(i) provide for the Commission to issue an order “authorizing *or* directing” the construction of a proposed project (emphasis added), and Grain Belt Express has only requested an order pursuant to 8-503 and §8-406.1(i) authorizing it to construct the Project. GBX Application at 1, 49-50, 56.

MEZ contends that Grain Belt Express has not shown that the Project will “remedy any reliability, service adequacy or service reliability issues in either PJM or MISO.” MEZ IB at 3. However, the statutory criterion is whether the Project is “necessary to provide adequate, reliable, and efficient service to the public utility’s customers and is the least-cost means of satisfying the service needs of the public utility’s customers;” and Grain Belt Express has shown that the Project satisfies this criterion. *See* GBX IB §§IV.A, IV.B.1 and IV.B.2. MEZ also argues that the costs of the Project outweigh its benefits. MEZ IB at 3. The record demonstrates otherwise. The record demonstrates that the electricity the Project will deliver from wind generators in western Kansas to the MISO and PJM grids will *lower* market prices of electricity in Illinois, but that even at those lower electricity prices, Grain Belt Express and the connected wind generators can recover their costs. *See* GBX IB §IV.B.2.

⁴ Grain Belt Express is, however, fully engaged in the interconnection processes of each of the three RTOs (SPP, MISO and PJM) to which it will be connected. These processes will result in determinations as to system upgrades, if any, that must be installed in order for the Project to be safely and reliably interconnected to each RTO’s grid without adversely impacting the existing grid. GBX Ex. 2.0 at 24-35; GBX Ex. 11.0 at 66-68.

Finally, MEZ asserts that the proposed condition that would prohibit Grain Belt Express from recovering its costs from Illinois retail ratepayers through an RTO regional cost allocation process, unless Grain Belt Express first obtains the Commission’s permission to do so in a separate proceeding initiated by Grain Belt Express, cannot be enforced because it would “impermissibly invade” the Federal Energy Regulatory Commission’s (“FERC”) jurisdiction over interstate transmission rates.⁵ MEZ IB at 4. This argument ignores the fact that the cost allocation requirement will be a condition of Grain Belt Express’s CPCN that authorizes it to construct and operate the Project in Illinois. FERC’s jurisdiction over interstate transmission rates has not pre-empted the Commission’s authority to grant or deny CPCNs to construct and operate transmission lines in Illinois. *See* §IV.B.3.d, below. If Grain Belt Express violated this requirement of its CPCN, the Commission could initiate proceedings to determine whether Grain Belt Express’ CPCN should be revoked.⁶

Other arguments that MEZ summarizes in §I.A of her Initial Brief are responded to in the applicable sections of this Reply Brief, below.

3. Response to IAA

IAA erroneously contends that Grain Belt Express’ Application is “moot” because the Missouri Public Service Commission (“Missouri PSC”) recently denied Grain Belt Express’ request for a certificate of convenience and necessity for the Project in Missouri. IAA IB at 3. However, Grain Belt Express continues to have the ability to obtain approval to construct the Project in Missouri, either through a new application to and proceeding before the Missouri

⁵ This condition, which is described in Grain Belt Express’ Initial Brief, §IV.E.1, was also adopted as a requirement of the Commission’s CPCN granted to Grain Belt Express’ sister company Rock Island Clean Line LLC (“Rock Island”). *Rock Island Clean Line LLC*, Docket 12-0560 (Order issued Nov. 25, 2014), at 118-119.

⁶ *See* Tr. 1120, where Staff witness Mr. Zuraski described a scenario in which Grain Belt Express sought cost allocation without obtaining the Commission’s authorization, as required by the condition: “They’ve defied a Commission Order and done something that the Commission told them they shouldn’t do.”

PSC,⁷ or by obtaining federal siting authority in Missouri pursuant to §1222 of the Energy Policy Act of 2005. Grain Belt Express remains committed to obtaining the necessary approval for the Project in Missouri. Further, receiving approval in Missouri, or any other state, is not a precondition for receiving approval in Illinois. *See* GBX IB at 16, and §VIII of this Reply Brief.

Other arguments that IAA summarizes in §I.A of its Initial Brief are responded to in the applicable sections of this Reply Brief, below.

B. Description of Grain Belt Express and the Project

1. Response to CCPO

CCPO states that it is “questionable” whether the Grain Belt Express Project is a merchant transmission line because it could in the future seek cost allocation for the Project.⁸ However, Grain Belt Express has made it clear that it has no plans to seek to recover its costs through RTO regional cost allocation processes.⁹ GBX Ex. 1.0 at 14-15; GBX Ex. 11.0 at 69-70. Further, currently there is no process by which Grain Belt Express could seek and obtain regional cost allocation through an RTO transmission tariff. GBX Ex. 11.0 at 67; Tr. 208, 222. Nor has Grain Belt Express *proposed* any circumstances in which it would seek to recover its cost of service from retail ratepayers through a RTO regional cost allocation process – any testimony by a Grain Belt Express witness about potentially seeking cost allocation was in response to hypothetical questions posed by intervenor attorneys. Moreover, any future effort by Grain Belt Express to obtain cost recovery from Illinois retail ratepayers through an RTO regional cost allocation process would face the considerable hurdle of having to obtain the approval of this

⁷ The Missouri PSC order denying Grain Belt Express’ request for a certificate expressly states that Grain Belt Express has the option to file a new application for a certificate at any point if it gathers information that would make a better case for the project. GBX Ex. 1.5 at 4.

⁸ Grain Belt Express’ interconnection request at PJM is being processed through the PJM merchant transmission interconnection process. GBX Ex. 2.0 at 28-31.

⁹ As FERC stated in its order granting Grain Belt Express negotiated rate authority, “the developers of merchant projects assume all of the market risk of a project and have no captive customers from which to recover the cost of the project.” *Grain Belt Express Clean Line LLC*, 147 FERC ¶61,098 (2014).

Commission to do so, in a separate docketed proceeding initiated by Grain Belt Express, as required by the cost allocation condition. This intervenor argument, which is also made by MEZ, is discussed in more detail in §IV.B.3.d, below.

2. Response to IAA

In the table on page 4 of its Initial Brief, IAA states that the “desired start of construction” for the Project is 2.6 years as of August 2015, citing Transcript p. 272. While the derivation of “2.6 years” is not explained, Mr. Skelly’s testimony at Tr. 272 was that construction is expected to start in two to two-and-a-half years.¹⁰

C. Procedural History

1. Response to LACI

LACI asserts that at the Public Forums on the Project that the Commission held on July 28-29, 2015, “While some [attendees] voiced support for the proposed Project, most attendees spoke in opposition.” LACI IB at 5. Grain Belt Express disagrees with this characterization and believes that, considering the three Public Forums in the aggregate, the split between speakers supporting the Project and speakers opposing (or expressing concerns about) the Project was much more balanced than LACI portrays; a substantial number of speakers spoke in support of the Project. Of course the Commissioners and the ALJ who attended in person can draw their own assessments. Further, Grain Belt Express submitted for the evidentiary record in this case over 1,500 letters expressing support for the Project. GBX Ex. 7.0 at 34; GBX Ex. 7.21.¹¹

¹⁰ IAA also asserts that neither Clean Line Energy Partners (“Clean Line”) or its subsidiaries have any “suppliers.” IAA IB at 6. Grain Belt Express does not know what IAA means by “suppliers.” However, the record shows that Quanta Electric Power Services, LLC, POWER Engineers, Inc., TransGrid Solutions Inc., Siemens Power Technologies International, Louis Berger Inc., and Contract Land Staff, among others, have been retained to work on the Project. In addition, four companies have been designated as preferred suppliers for various components of the Project, such as the conductor and conductor hardware. GBX Ex. 2.0 at 36-39; GBX IB at 91-92.

¹¹ In response to a direction from the ALJ, Grain Belt Express filed in this docket, as a compliance filing, a document describing how it has addressed or will address requested routing changes, and objections concerning the proposed placement of the transmission line on individual landowner properties, raised by speakers at the Public Forums. *See* GBX IB at 153.

D. Legal Standards

1. Response to MEZ

In discussing the case of *Wabash, Chester & Western R.R. Co. v. ICC*, 309 Ill. 412 (1923), MEZ asserts that the decision does not “weigh in favor” of Grain Belt Express’ Application because the Court in that case observed that “no constitutional right of the [objecting party] or others was invaded.”¹² MEZ IB at 5. MEZ then asserts that the Grain Belt Express Project “does invade constitutional rights, namely those of MEZ, the other landowner-intervenors in this Docket, and still others whose properties may yet be affected by the Line.” *Id.* MEZ is wrong. As the Appellate Court has recently reaffirmed, based on long-standing case law, a CPCN proceeding before the Commission does not deprive landowners of their protected property interests, and therefore, they are not entitled to constitutional due process protections in a CPCN proceeding. *Adams County Property Owners & Tenant Famers v. ICC*, 2015 IL App (4th) 130907, ¶44-51. Further, Grain Belt Express has not requested eminent domain authority pursuant to §8-509 of the Act (220 ILCS 5/8-509). In order to obtain eminent domain authority, Grain Belt Express would need to file a separate proceeding under §8-509 and show, in that proceeding, that the Commission’s criteria for granting eminent domain authority were satisfied. *See* GBX IB at 157-159.

Grain Belt Express does not dispute that the Commission must find that the proposed Project will promote the public convenience and necessity, not just the convenience of the “promoters.” MEZ IB at 5. However, the record shows that the Project will provide broad

¹² Grain Belt Express and other parties have cited the *Wabash* decision as defining “necessary” and “necessity” as used in the certificate provisions of the Act, and holding that the Commission has great discretion to determine what constitutes the “public convenience and necessity” based on consideration of all the particular facts and circumstances applicable to each case. GBX IB at 21. In recent CPCN orders, the Commission has also relied on this decision as supporting its broad discretion to determine public convenience and necessity. *See Rock Island Clean Line LLC*, Docket 12-0560 (Nov. 25, 2014), at 113; *Commonwealth Edison Company* Docket 13-0657 (Oct. 22, 2014), at 20-21.

benefits for the public and will promote the public convenience and necessity. *See* GBX IB §§IV.A and IV.B.

II. Grain Belt Express' Compliance with §8-406.1 Pre-Filing Meeting and Notice, Application Content, and Other §8-406.1 Requirements

Staff concludes that Grain Belt Express has complied with the pre-filing and post-filing public meeting and public notice requirements, application content requirements, and fee payment requirements, of §8-406.1. Staff IB at 6-7. No other party has contended, in its initial brief, that Grain Belt Express failed to comply with any of these requirements.

III. Grain Belt Express' Right to Utilize §8-406.1 as an Entity that is not a Public Utility

Grain Belt Express has thoroughly addressed this issue in its previous pleadings in response to certain intervenors' motions to dismiss the Application and subsequent motions for reconsideration, and in §III of its Initial Brief. Nothing stated in the initial briefs of CCPO, IAA and LACI warrants any different decision by the Commission on this issue.

In §III of their respective initial briefs, IAA, CCPO and LACI state that they have filed a motion with the Illinois Supreme Court for leave to file a complaint for a writ of prohibition against the Commission continuing with this proceeding.¹³ Grain Belt Express notes that the Commission has filed with the Supreme Court objections to the motion of IAA, CCPO, LACI and MEZ ("Movants") to file a complaint for a writ of prohibition. In any event, at this point the argument before the Supreme Court is about whether the Court should allow Movants to file their complaint for writ of prohibition, not about the merits of Movants' arguments as to the availability of §8-406.1.¹⁴

¹³ LACI has included, as an Appendix to its Initial Brief, copies of all the pleadings filed as of September 11, 2015, in the Supreme Court on the motion.

¹⁴ This question involves, among other issues, whether Movants have adequate opportunities for judicial review of their §8-406.1 argument through the regular appellate processes provided by §10-201 of the Act (220 ILCS 5/10-201) and Supreme Court Rule 335. The Objections to Movants' motion for leave to file a complaint for writ of prohibition filed by the Commission and by Grain Belt Express (included in LACI's Appendix) show that the normal appellate remedies are adequate and that there is no basis for allowing Movants to file and prosecute a complaint for writ of prohibition in the Supreme Court.

A. Response to CCPO

CCPO states that it is at a disadvantage due to the fact that this case is proceeding under the procedural schedule required to meet the statutory deadline of §8-406.1.¹⁵ CCPO IB at 6-7. As stated earlier, the difficulty of the procedural schedule has no bearing on the legal issue of whether Grain Belt Express can file its Application for a CPCN, and have it processed and decided, pursuant to §8-406.1.

B. Response to IAA

IAA asserts that “GBX admits that it is not a public utility under the PUA.” IAA IB at 12; *see also* IAA IB at 24 (making the same assertion). This is an incorrect characterization. Grain Belt Express has not “admitted” that it is not a public utility.¹⁶ Grain Belt Express has stated that it is not representing itself to be a public utility at this time because it has not yet been granted a CPCN by the Commission. Indeed, to do otherwise would potentially place Grain Belt Express in violation of §8-406(a).¹⁷

Grain Belt Express will consider itself to be a public utility in Illinois when it is granted a CPCN for the Project. A CPCN is “[a] franchise, license, permit or right to engage in . . . the . . . transmission . . . of . . . electricity.” 220 ILCS 5/3-105. However, in terms of the literal application of the definition of “public utility” in §3-105 of the Act, Grain Belt Express does “own[or] control[] . . . within this State . . . for public use, . . . property . . . to be used for or in connection with . . . the . . . transmission . . . of . . . electricity.” *See Grain Belt Express Clean*

¹⁵ LACI makes a similar argument at p. 11 of its Initial Brief, as does IAA at pp. 22-23 of its Initial Brief. IAA cites a discussion at an August 2013 Commission meeting about the propriety of using §8-406.1 for large transmission CPCN cases (specifically, the Illinois Rivers Project case, Docket 12-0598), but this Commission twice in 2015 has decided that this case can proceed under §8-406.1.

¹⁶ The provision of the Application, ¶97, cited by IAA is taken out of context. Paragraph 97 states that, “based on the nature of its operations, Grain Belt Express will be a ‘public utility’ but not an ‘electric utility’ as defined in the PUA.” The statement was intended to distinguish status as a “public utility” from status as an “electric utility” based on the statutory definitions of the two terms.

¹⁷ “No public utility . . . not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission . . . shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.” 220 ILCS 5/8-406(a).

Line LLC's Reply to Responses of Branch Properties, Mary Ellen Zotos and Rockies Express Pipeline LLC to Motions to Reconsider, filed July 20, 2015, in this docket, at 2, note 2; GBX IB at 30-31; GBX Ex. 7.0 at 27 (Grain Belt Express holds option on the converter station site in Clark County); GBX Ex. 11.10 (dollar amounts of property, plant and equipment and other assets owned by Grain Belt Express as of February 28, 2015); Tr. 249-250. IAA states at page 14 of its Initial Brief, "Unless and until GBX invests in some property or equipment in Illinois that it intends to utilize to provide transmission to Illinois customers, it is not a public utility;" but Grain Belt Express has in fact invested in property in Illinois that "it intends to utilize to provide transmission to Illinois customers," e.g., by acquiring an option on property in Clark County, Illinois, on which it intends to build a DC-to-AC converter station as part of the Project (thereby giving it "control" over this property).¹⁸

The argument at pages 12-24 of IAA's Initial Brief (§III.B.2 and III.B.3), is essentially the same argument that IAA made in Docket 12-0560 in contending that Rock Island could not apply for or be granted a CPCN under §8-406 of the Act because Rock Island was not yet a public utility in Illinois. The Commission rejected that argument in Docket 12-0560 (*see* the Order in Docket 12-0560 at 5-8), and the Commission is now defending that conclusion in the Appellate Court in response to IAA's appeal. The IAA is here rearguing an issue that it lost in Docket 12-0560. More importantly, the question of whether or not Grain Belt Express is currently a public utility as defined in the Act begs the real question under §8-406.1, which is: did the General Assembly, in enacting §8-406.1 in 2010, intend to preclude an entity that is not currently a "public utility" from filing an application pursuant to §8-406.1 for a CPCN to construct a new high voltage electric service line and related facilities, and to have its case processed, considered and decided pursuant to that Section. For the reasons stated in Grain Belt

¹⁸ The record facts, therefore, show that IAA is incorrect in asserting that Grain Belt Express "admits . . . that it does not currently, in Illinois, own, control, operate, or manage, directly or indirectly, for public use, any plant, equipment, or property used or to be used for or in connection with electric transmission service." IAA IB at 24.

Express' previous pleadings on the motions to dismiss and motions to reconsider, and in §III of Grain Belt Express' Initial Brief, the answer to that question is "no."

Although IAA's attempt to reargue the Commission's ruling in Docket 12-0560 is, as noted immediately above, somewhat beside the point, Grain Belt Express wishes to briefly address several of the arguments at pages 12-24 of IAA's Initial Brief. First, IAA contends that in a 1967 amendment to the Act, the General Assembly intended to limit the scope of the term "public utility." However, as the Commission has pointed out in its brief in the appeal of Docket 12-0560, a review of the 1967 amendatory language reveals that the primary purpose of the amendment was to define the term "telephone cooperative" and to divest the Commission of authority to inquire into the financial affairs of telephone cooperatives. The amendment revised the definition of the term "public utility" to exclude telephone cooperatives. The amendment moved the enumeration of activities that public utilities engage in to the beginning of the definition; the statute prior to amendment had placed the numerous exclusions at the beginning of the definition and the definition itself at the end, so the reorganization of the section provided better clarity. The amendment also removed some archaic language, replacing "ten-per-centum" with "10%", "such" with "those", "said" with "that", "shall have the power to" and "shall have the authority to" with "may", and "shall not be in excess of" with "does not exceed." One of the outdated terms removed is the term that IAA's argument is premised on, "now or hereafter," which (again, as the Commission has pointed out to the Appellate Court) is a textual relic of the original adoption of the Act in 1913. In short, there is nothing in the specific change to the definition that IAA points to in the 1967 amendment that evidences a legislative intent to change the meaning of "public utility" in the manner IAA contends.¹⁹

Further, over the ensuing 48 years since the 1967 amendment cited by IAA, this

¹⁹ The foregoing paragraph is a paraphrase of the Commission's argument at page 11 of its brief as appellee in Case Nos. 3-15-099, 3-15-0103 and 3-15-0104 (consolidated) in the Third District Appellate Court, and is here adopted by Grain Belt Express as part of its argument on this point.

Commission has not construed the Act as IAA argues it should be, but rather has granted CPCNs (and certificates of telecommunications service authority under the comparable certificate provision of the Telecommunications article (Art. XIII)) to applicants that owned no utility or telecommunications property, plant and equipment in Illinois at the time they applied for and received a certificate.²⁰ IAA has not cited any Commission order in which an application for a CPCN was denied because the applicant, at the time of the application (or time of the order), did not yet own, control, manage or operate any plant, equipment or property in Illinois used or to be used to provide the proposed utility service and therefore did not yet fall within the definition of “public utility.” Moreover, despite the 1967 amendment cited by IAA, the Commission has consistently applied the definition of “public utility” and the certificate sections of the Act in a manner contrary to IAA’s construction. Although the General Assembly has enacted many amendments to the Act since 1967, it has enacted none that indicate disagreement with or intent to change the Commission’s construction and application of the sections of the Act relevant to this issue. This legislative inaction indicates legislative acquiescence in the Commission’s interpretation and application of the statute.²¹

Second, IAA argues (as it did in Docket 12-0560 and continues to do on appeal of that order) that “Under a Similar Statutory Definition of Public Utility in Another State, Rock Island’s Sister Company was Denied Approval Utilizing the Same Considerations Urged Here.”²² This argument refers to a previous decision of the Arkansas Public Service Commission (“Arkansas PSC”) denying, without prejudice, the request of another Clean Line

²⁰ See, e.g., *New Landing Utility, Inc. v. ICC*, 58 Ill. App. 3d 868 (2d Dist. 1977); *Illinois Power Co. d/b/a AmerenIP and Ameren Ill. Trans. Co.*, Docket 06-0179 (ICC May 16, 2007); *Explorer Pipeline Co.*, Docket 56052 (ICC Dec. 23, 1970); *NewPath Holdings, Inc.*, Docket 00-0038 (ICC Mar. 29, 2000), in each of which the ICC granted a certificate to construct new facilities and to operate to an applicant that had no property or facilities in Illinois.

²¹ *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 53 (2002); *People ex rel. Spiegel v. Lyons*, 1 Ill. 2d 409, 414 (1953); *DuPage Cnty. Election Comm’n v. State Bd. of Elections*, 345 Ill. App. 3d 200, 214-15 (2d Dist. 2003).

²² Grain Belt Express assumes that “Rock Island” in the quoted sentence should be “Grain Belt Express.”

subsidiary, Plains and Eastern Clean Line LLC (“P&E”), for a certificate as a public utility. IAA IB at 18. As the Commission has pointed out to the Appellate Court in the Docket 12-0560 appeal, however: (1) the applicable Arkansas and Illinois statutes are not identical; (2) the fact that the Arkansas PSC could reach an absurd, unjust and unreasonable construction of its own statute provides no support for this Commission (or an Illinois court) to do the same regarding the Public Utilities Act; (3) orders from other jurisdictions cannot be the basis for a finding by this Commission, which has no authority to defer to the judgment of the commission of another state; and (4) the facts in the Arkansas proceeding and in Docket 12-0560 (and in this case) are inapposite. With respect to that last point, the Arkansas PSC order noted – contrary to the facts in both Docket 12-0560 and in this case – that P&E’s application “did not seek authorization to begin construction of a transmission line, which authorization Clean Line will seek pursuant to a separate application.” The Arkansas PSC found this fact to be outcome determinative, stating that its “decision was based on the fact that it [could not] grant public utility status to Clean Line [P&E] based on the information about its current business plan and present lack of plans to serve customers in Arkansas.” Further, the Arkansas PSC stated that its decision was without prejudice and that if and when P&E was able to provide more concrete plans satisfying the PSC’s concerns as expressed in its order, the PSC would revisit the matter in a new docket. As the Commission has pointed out to the Appellate Court in the Docket 12-0560 appeal, the Arkansas PSC’s decision suggests that the PSC – like this Commission – does not consider a present lack of ownership of utility facilities to be a bar to obtaining a CPCN.²³

Third, IAA’s citation of *In re American Transmission Co., LLC*, Docket 01-0142 (Jan. 23, 2003), does not support IAA’s construction of the Act or its assertion that the Commission has recognized that current ownership of public utility infrastructure in Illinois is an element

²³ The foregoing paragraph is a paraphrase of the Commission’s argument at pages 12-13 of its brief as appellee in Case Nos. 3-15-099, 3-15-0103 and 3-15-0104 (consolidated) in the Third District Appellate Court, and is here adopted by Grain Belt Express as part of its argument on this point.

necessary to meet the public utility definition. IAA IB at 20-21. American Transmission, which was formed through a spin-off of transmission assets by its owners (several Wisconsin utilities and public power entities) did own transmission assets at the time of applying for a CPCN, but the Commission did not rule in that case (nor did any party argue) that ownership of existing facilities was a statutory prerequisite to applying for and receiving a CPCN. Again, IAA has not cited any Commission order in which an application for a CPCN was denied because the applicant, at the time of the application (or time of the order), did not yet own, control, manage or operate any plant, equipment or property in Illinois used or to be used to provide the proposed utility service and therefore did not yet fall within the definition of “public utility.”

Finally, IAA quotes, out of context, three sentences from a filing made by Rock Island in Docket 10-0579. The quote ends with this sentence: “Read literally, this sentence [the first sentence of §8-406.1] requires an entity to be a public utility in order ‘to apply’ for a certificate to construct a transmission line under §8-406.1.” IAA IB at 23. However, shortly after the sentence quoted by IAA, on the same page of Rock Island’s filing in Docket 10-0579, Rock Island stated: “Certainly, the procedures of §8-406.1 should be equally available to a new transmission utility like Clean Line as they are to incumbent electric utilities.”²⁴

In summary, in §III of its Initial Brief, IAA provides no new basis to warrant the Commission departing from its two previous rulings in this case rejecting the argument that Grain Belt Express’ Application for a CPCN cannot be filed, processed, considered and decided under §8-406.1.

C. Response to LACI

LACI argues, as do CCPO and IAA, that the procedural schedule in a §8-406.1 case is difficult. LACI IB at 10-11. Again, this argument has no relevance to the question of whether

²⁴ *Rock Island Clean Line LLC’s Response to Commission Staff’s Motion to Dismiss*, Docket 10-0579, filed Dec. 14, 2010, at 12; available at: <http://www.icc.illinois.gov/docket/files.aspx?no=10-0579&docId=159373>. “Clean Line” was the defined term used in that document to refer to Rock Island.

Grain Belt Express' Application for a CPCN can lawfully be filed, processed, considered and decided under §8-406.1. *See* §I.A.1 and §III.A above. These arguments may be appropriate to present to the General Assembly in support of a request to repeal §8-406.1, or to amend it to extend the deadline to a later date than 150/225 days after the application is filed, but they provide no support for LACI's contention that an applicant that is not already a "public utility" cannot lawfully file for and receive a CPCN to construct a new high voltage electric service line pursuant to §8-406.1.

LACI also argues, in connection with the §8-406.1 deadline and related procedural schedule, that Grain Belt Express no longer needs a "quick order" in this proceeding in light of the Missouri PSC's denial of Grain Belt Express' request for a certificate. LACI IB at 12. Obviously, it will now take additional time to obtain necessary authority to construct the Project in Missouri, whether through a new proceeding at the Missouri PSC or through obtaining siting authority in Missouri pursuant to §1222 of the Federal Energy Policy Act of 2005. However, obtaining a CPCN from this Commission is also a necessary step in securing all the authorizations needed to construct the Project. More importantly, longer proceedings (particularly proceedings with no deadline) require more resources (including Commission resources, not just the applicant's resources) and more expense. In §8-406.1, the General Assembly has established a process for requesting and obtaining a CPCN to construct a new high voltage electric service line which requires that the case be heard and decided within 225 days, provided that the applicant complies with other requirements of §8-406.1 that are not required of an applicant under §8-406. Grain Belt Express has complied with the requirements of §8-406.1 concerning holding public meetings, providing public notice, providing technical and engineering information in its Application, developing and providing distinct primary and alternate routes, paying a substantial filing fee, and committing to pay construction impact fees to the counties in which its Project will be built. No party contends that Grain Belt Express has

failed to satisfy these requirements of §8-406.1. Therefore, Grain Belt Express is entitled to have an order issued on its request for a CPCN within the time period specified in the statute.

In this regard, however, Grain Belt Express points out that in the briefing on both the motions to dismiss and the motions for reconsideration, it suggested that this case could be converted to a §8-406 case but with the Commission directing that the case be scheduled so that it could be presented to the Commission for a decision by a reasonable deadline such as within eleven months from the date the Application was filed, April 10, 2015.²⁵ This suggestion, if accepted, would have added approximately four months of time to the procedural schedule – certainly long enough to accommodate, for example, additional rounds of rebuttal and surrebuttal testimony, correspondingly more time for discovery, and a longer briefing schedule.²⁶ While this suggestion was directed to the Commission, it is noteworthy that none of LACI, IAA, CCPO and MEZ voiced any support for this suggestion. In other words, none of these intervenors were willing to commit to a “more reasonable” procedural deadline and schedule for this case – they are only interested in this CPCN proceeding having no deadline.

LACI also complains that conducting this case under §8-406.1 is “prejudicial” to intervenors because §8-406.1(i) specifies that an order under §8-406.1 granting a CPCN for a new high voltage electric service line must also include an order pursuant to §8-503 authorizing or directing the applicant to construct the proposed transmission line. LACI IB at 11. LACI apparently believes this is “prejudicial” because an applicant must obtain authority pursuant to §8-503 to construct its project in order to be able to then request and obtain from the Commission an order pursuant to §8-509 of the Act authorizing the applicant to use eminent domain to acquire easements. *Id.* However, this alleged “prejudice” exists in any §8-406.1 case,

²⁵ Grain Belt Express suggested eleven months because this is the time period within which the Commission has historically processed and decided major electric, gas, telephone and water utility rate cases, pursuant to statute. *Grain Belt Express Clean Line LLC’s Response to Motions to Dismiss*, filed June 3, 2015, at 20.

²⁶ These are LACI’s specific concerns with the procedural schedule in this case. LACI IB at 11.

regardless of whether the applicant is an established, incumbent public utility like Ameren Illinois or a new entrant like Grain Belt Express. Like others of the intervenor arguments about §8-406.1, this argument has no bearing on whether an applicant that is not an established public utility can file a request to construct a new high voltage electric service line, and have the request processed, considered and decided, pursuant to §8-406.1.

Further, Grain Belt Express reiterates that it has not requested eminent domain authority in this case; that it has not even started to negotiate with landowners in Illinois to acquire easements and will not initiate landowner negotiations until after the order is issued in this case granting a CPCN and approving a route in Illinois (Tr. 141-142, 169); and that it will need to engage in a considerable period of negotiations with landowners to acquire easements before it would be in a position to file a new application with the Commission pursuant to §8-509 seeking eminent domain authority for easements on those parcels it has not been able to acquire voluntarily, and be able to demonstrate in that proceeding that it has satisfied the Commission's established criteria for granting eminent domain authority.

LACI's final argument in §III is that §8-406.1 (in contrast to §8-406, according to LACI) does not give the applicant the right to conduct or transact business as a public utility. LACI IB at 12. As LACI notes, this argument was already briefed in connection with the motions to dismiss and motions to reconsider. To briefly summarize, LACI's argument is incorrect, for several reasons. First, Grain Belt Express is asking for the same certificate authority the Commission has granted to applicants in previous §8-406.1 cases: to construct, operate and maintain the proposed new high voltage electric service line and related facilities, and to transact an electric public utility business in connection therewith.²⁷ Second, it would be an absurd construction of §8-406.1 (as well as contrary to the prior Commission orders just cited) to

²⁷ See *Ameren Illinois Co.*, Docket 13-0115 (Sept. 4, 2013), at 18; *Ameren Transmission Co. of Ill.*, Docket 12-0598 (Aug. 20, 2013), at 134; *Ameren Illinois Co.*, Docket 12-0154 (Sept. 6, 2012), at 18; and *American Transmission Co. LLC*, Docket 11-0661 (April 10, 2012), at 10.

conclude that it only allows the Commission to authorize construction of a transmission line, but not operation of the transmission line once constructed. The General Assembly cannot have intended such an absurd and unreasonable result. Third, the grant of a CPCN to construct the new high voltage electric transmission line and related facilities makes the certificate holder a public utility as defined in §3-105, because the CPCN is a franchise, license, permit or right to engage in the transmission of electricity, and it authorizes the certificate holder to own property, plant or equipment in this State to be used for the transmission of electricity. Fourth, LACI has not identified any additional evidence that needs to be presented, but has not been presented, in this case to support a finding that Grain Belt Express should be authorized to conduct a transmission public utility business using the Project.

IV. Section 8-406.1(f) Criteria for a Certificate

A. Section 8-406.1(f) – Grain Belt Express’ Promotion of the Public Convenience and Necessity

1. Response to CCPO

CCPO argues that Grain Belt Express has not shown that the proposed Project will promote the public convenience and necessity. CCPO IB at 7. However, CCPO discusses only the testimony of witnesses Matt Langley of Infinity and Michael Goggin of WOW (*id.* at 7-9), and does not discuss any of Grain Belt Express’ evidence.²⁸ The evidence, as summarized in §IV.A.1 of Grain Belt Express’ Initial Brief, demonstrates that the Project will promote the public convenience and necessity.

Despite CCPO’s efforts to diminish Mr. Langley’s testimony (CCPO IB at 8-9), his testimony (Infinity Ex. 1) clearly shows that (1) consistent with the testimony of Grain Belt

²⁸ CCPO states that “Applicant [GBX] offered the testimony of Matt Langley of Infinity Wind Power.” CCPO IB at 7. Although Mr. Langley’s testimony supports the need to construct the Project to provide transmission service from the wind-rich area of western Kansas to PJM and MISO and thereby provide a basis for wind project developers to construct new wind farms in that area, he was not called as a witness by Grain Belt Express. Rather, he testified on behalf of his employer, intervenor Infinity Wind Power. Infinity is a wind power development company developing over 2,200 MW of new wind farms in Kansas which would benefit from the Project’s provision of a delivery system to export wind power from western Kansas to large load centers to the east. Infinity Petition to Intervene at 1; Infinity Ex. 1 at 3-4, 6-7.

Express witnesses Skelly and Berry, developers will not construct new wind farms in the wind-rich western Kansas area unless adequate transmission infrastructure is developed to deliver the output of these wind farms to load and population centers, and (2) there are wind farm developers actively engaged in developing new projects in western Kansas, and actively interested in taking transmission service from Grain Belt Express to deliver the output of those plants to PJM and MISO. Mr. Langley's testimony along with Mr. Goggin's testimony (WOW Ex. 1.0) also show that there is a need for the Project and that it will provide or enable numerous benefits for the public. Among other things, Mr. Langley testified:

- “The Project will allow Infinity and companies like it to deliver inexpensive power from some of the most productive sites in the country to the load centers where it is needed most. . . . The challenge is developing the ability to delivery this cheap power to load centers, where it can help provide stable prices to businesses and customers. The Grain Belt Express Project is the solution to this very real delivery problem.” Infinity Ex. 1 at 3-4.
- “Q: Are you suggesting that there are no other alternatives to exporting Kansas’ wind energy than the Project being proposed by Grain Belt Express? A: Essentially, yes. I do not believe there are other economically feasible ways to export the energy. Grain Belt Express is the most efficient and least cost way to move large amounts of power due to the technology being used.” *Id.* at 4.
- “In order to export power today, a generator in Kansas must work with multiple utilities and transmission operators in order to acquire the rights to export. Many of those agreements are short in term, and very expensive. This makes it very difficult to obtain the financing needed to construct a wind farm. This is really due to the inefficient design of the grid and its lack of modernization. Grain Belt is the best solution to this problem.” *Id.* at 4-5.²⁹
- “In addition to my company and its competitors, the ratepayers of Illinois will also benefit by virtue of being able to receive some of the power that the line will transport. This new power will assist in keeping rates low and predictable for households and businesses in the state.’ *Id.* at 6.
- “Q: Do you agree with Mr. Berry’s assertion that without the Grain Belt Express Project, many projects, including Infinity’s planned Kansas projects, will not be built? A: To a large extent, yes. . . . When assessing the need for Grain Belt Express, it is appropriate to analyze the alternatives to utilizing the transmission that will be built by the Project. In looking at these alternatives, it is clear that there is no existing

²⁹ CCPO points out that Infinity terminated a previous transmission agreement to move power from Kansas to PJM (CCPO IB at 10), but given the difficulties of trying to use the existing AC grid to transport power from Kansas to PJM described by Mr. Langley and Mr. Berry (GBX Ex. 11.0 at 24-25), it is no surprise that Infinity terminated the existing transmission agreement.

project or combination of projects that can yield similar results. The obvious alternative to building the Grain Belt line is to attempt to use the existing infrastructure to accomplish the same goal. The problem is that the current system is not designed to deliver a large quantity of power over long distances.” *Id.* at 6-7.

- “In the absence of Grain Belt, if Infinity tried to develop an energy project in western Kansas and deliver the power east, then the project would face significant technical and financial challenges. The net result of these challenges would be a less reliable and more expensive energy product for ratepayers. In our analysis, with the current technology and infrastructure, it would not be economically feasible to deliver this quantity of clean, inexpensive power in the absence of the Project.” *Id.* at 7.

See also Mr. Goggin’s testimony, WOW Ex. 1.0, at 3-4, 5-7, 14, 15-17, 29-30, 32-33, 36-40.

Among other things, Mr. Goggin testified:

- “Q: If the Project is not built, are there other options for delivering wind energy from the Kansas Resource Area to electricity demand in Illinois, MISO or PJM? A: Not at this time. No transmission projects have been built between SPP and MISO since SPP was created in 2004, and as of July 2014 there were no other transmission service requests between SPP and MISO. . . . Transmission is essential if the wind energy resources in Kansas and the Plains states are to be fully utilized in meeting the renewable energy needs of the U.S. . . . Kansas is on the western edge of the Eastern Interconnection, making export west exceedingly difficult, and as I discussed above, opportunities to move that energy eastward to load centers over existing transmission are virtually non-existent. Areas north and south of Kansas also have very large wind energy resources and relatively low electricity demand, so delivering the wind energy from Kansas to those states is not a viable solution.” WOW Ex. 1.0 at 32-33 (footnotes omitted).
- “The benefit of this project is it delivers wind energy from one of the best wind resource locations to some of the highest need markets for renewable energy – MISO and PJM. . . . If a certificate is not granted for the Project, then the development of 3,500 to 4,000 MW, or potentially even more, of wind resources in western Kansas will likely be lost. I am not aware of other proposed transmission lines that could take the place of serving that prospective wind development, and even if there were the wind development would be additive and not mutually exclusive of that which would be driven by GBE.” *Id.* at 36-37.

CCPO cites at length from the testimony of intervenor witness Michael Severson. The essence of the testimony is that the Grain Belt Express Project is not needed to enable Illinois’ RPS requirements to be met because Illinois utilities and alternative retail electric suppliers (“ARES”) can simply buy RECs from wind generators in Illinois, adjoining states, or even Kansas. CCPO IB at 8-9. Mr. Severson’s facile analysis ignores several important facts. First, although he blithely asserts that Illinois’ RPS requirements can be met by buying RECs, he

offers no explanation of where those RECs – which require the actual generation of an equivalent amount of energy – will come from. In Illinois alone, the current RPS percentage is 10%, but it increases to 25% in 2025. This means that, even assuming relatively flat electrical load in Illinois over the next ten years, the demand for RECs to meet RPS requirements (and thus for electricity generated from renewable energy resources) will be 2.5 times larger in 2025 than it is today. Looking all the PJM and MISO states that have an RPS, the evidence shows that the aggregate RPS requirements of these states in 2020 and 2025 far exceeds the existing, available installed renewable generation whose energy and/or RECs are eligible to meet these requirements.³⁰ GBX Ex. 11.13 at 18-19; GBX Exs. 11.3, 11.4. Second, the evidence overwhelmingly shows that the new wind generation in Kansas – from which Mr. Severson assumed that Illinois load serving entities could simply buy RECs – will not be built unless the Grain Belt Express Project (or some other transmission project, which has not been identified) is built to allow the output of these plants to be delivered to markets in PJM and/or MISO.³¹ Third, Mr. Severson narrowly focused only on RPS requirements, and ignored the need to supply the significant and growing demand for energy from renewable resources over and above RPS requirements. GBX IB at 57-58. Fourth, Mr. Severson ignored the evidence that power generation by new wind plants in western Kansas and delivered into the PJM and MISO grids, including Illinois, by the Project, is a low-cost source of electricity for consumers that is

³⁰ Moreover, with respect to Illinois, Staff witness Mr. Zuraski and Grain Belt Express witness Mr. Berry agreed that, with the significant development of wind generation in Illinois, future wind projects in this State will, increasingly, need to be located in (i) less windy sites with (ii) more difficult and costly access to the transmission grid. GBX IB at 74-75 and 82.

³¹ Further, under the Illinois RPS, ARES may only use RECs that are registered in the PJM or MISO REC registration systems (220 ILCS 5/16-115D(a)(4)), which means that the related renewable energy must be generated in or delivered into PJM or MISO. This is also the case for the RPS of a number of other states, *i.e.*, they require that the generator be located within PJM or MISO or that the energy must be delivered into PJM or MISO (or into the particular state). GBX IB at 55-57; WOW Ex. 1.0 at 5. This is important for Illinois consumers, even if the Illinois RPS requirements were to be met solely by purchasing RECs, because the REC market is a regional market. GBX Ex. 4.0 at 8, 19-20; GBX Ex. 1.0 at 18. Thus, if the new Kansas wind generators are not built, or are (hypothetically) built but cannot deliver their output into PJM and MISO, the regional supply of RECs will be lower, REC prices will be higher, and Illinois consumers will pay more for RPS compliance.

competitive with other sources regardless of the presence or lack of renewable characteristics. GBX IB at 59-60.

2. Response to MEZ

MEZ asserts that Grain Belt Express has “present[ed] no evidence in this docket that the Line is needed to provide adequate, reliable or efficient service.” MEZ IB at 7. To the contrary, the record contains substantial evidence demonstrating that the Project is necessary to provide adequate, reliable and efficient service in accordance with §8-406.1(f)(1). *See* GBX IB §IV.B.1. GBX also contends that it has not been shown that the Project will promote the public convenience and necessity (MEZ IB at 7-8), but in fact the evidence very strongly shows that the Project will promote the public convenience and necessity. Further, the benefits of the Project, including lower wholesale and retail electricity prices, lower REC prices, greater competition in the generation and REC markets, reduced emissions, reduced volatility in the price of electricity, and economic development and employment benefits for Illinois, will all benefit the public in Illinois, not a few isolated individuals. *See* GBX IB §IV.A.

MEZ complains that Grain Belt Express has not submitted the Project to any RTO planning processes for approval, and suggests that the Project could have been submitted “separately” to MISO and PJM. MEZ IB at 6-7. As shown in §IV.A.2 above, the RTOs simply have no process for evaluating the need for a merchant transmission project such as Grain Belt Express. MEZ (and other intervenors) assert, at an abstract level, that the Project should be submitted to the PJM and MISO regional planning processes for a determination of need; but none of them has identified the specific process or procedure at either PJM or MISO through which the Project would be submitted for, and obtain, a determination of need. They cannot do so because there are no such processes.³² However, the fact that the RTOs do not have such a

³² MEZ asserts that Grain Belt Express is not a merchant transmission owner and therefore must submit the Project to a regional transmission planning process. MEZ IB at 7. This erroneous argument, which is based on the contention that Grain Belt Express has a right to obtain regional cost allocation from an

process does not mean that a merchant transmission line like the Project is not needed or economically beneficial; to the contrary, the evidence shows that it is. This Commission, along with the state commissions of the other states in which the Project is to be located, will determine whether the Project should be built. GBX Ex. 11.0 at 67.

Finally, MEZ makes the same argument as CCPO (described immediately above in §IV.A.1), based on Mr. Severson’s testimony that the Grain Belt Express Project is not needed because the RPS requirements into the future can be met simply by purchasing RECs. See §IV.A.1 above for a discussion of the flaws in this argument.

B. Section 8-406.1(f)(1)

Grain Belt Express notes that LACI, unlike all other parties who addressed the §8-406.1(f)(1) issues, did not present its arguments separately under §IV.B.1, §IV.B.2, and §IV.B.3 of the approved outline. Grain Belt Express will respond to LACI’s arguments under §IV.B.3, Least Cost, since the least-cost issue seems to be the predominant focus of LACI’s arguments.

1. Necessary to Provide Adequate, Reliable, Efficient Service

a. Response to CCPO³³

CCPO states that “GBX does not have customers.” GBX does not have customers under contract for transmission service, but GBX has target customers, consisting principally of (1) owners of wind generators existing or to be built in western Kansas, and (2) wholesale and retail purchasers of electricity in Illinois and other PJM and MISO states who seek to purchase electricity generated by the Kansas wind farms and have it delivered to them by the Project.³⁴

RTO, is addressed in §IV.B.2.b and IV.B.3.d below. However, FERC clearly considers the Grain Belt Express Project to be a merchant transmission project. *Grain Belt Express Clean Line LLC*, 147 FERC ¶61,098 (2014); GBX Ex. 11.0 at 55.

³³ CCPO states that the caption of this subsection in the approved outline, “Necessary to Provide Adequate, Reliable, Efficient Service,” is “incomplete.” CCPO had an opportunity to provide comments on the outline before it was submitted to the ALJ but did not comment on this caption. Further, the section headings in the outline were intended to be stated in a neutral, non-argumentative way.

³⁴ Further, the ultimate consumers of the electricity delivered by the Project to Illinois and other PJM and MISO states will be thousands of retail electricity customers. GBX Ex. 11.0 at 56-58.

GBX Ex. 1.0 at 14; GBX Ex. 11.0 at 55-57. Grain Belt Express has identified significant customer interest in contracting for transmission service on the Project – in its open solicitation conducted in early 2015, the requests for transmission service received far exceeded the capacity of the line. Grain Belt Express is beginning commercial negotiations for transmission service agreements with these customers. GBX Ex. 1.0 at 29; GBX Ex. 11.0 at 7-8. These are the customers who require that the Project be built and placed into operation in order to have adequate, reliable and efficient service; in fact, without the Project, these customers have *no* service. Further, contrary to CCPO’s assertion (CCPO IB at 10), the record shows that adequate, reliable and efficient transmission service to move wind power from western Kansas to PJM is currently not available.³⁵ See GBX IV.B.1.a, b and c.

However, neither Grain Belt Express nor its customers can be expected to enter into definitive transmission service contracts until Grain Belt Express receives necessary regulatory approvals for the Project, including approval of the Project route. These approvals will provide assurances that Grain Belt Express is authorized to build the transmission line, and the regulatory approvals in conjunction with the approved route will enable Grain Belt Express to establish costs and construction schedule with sufficient certainty to establish when service on the line will be available and the pricing for the service. GBX Ex. 11.0 at 81-82, 83-84.

b. Response to MEZ

MEZ argues that there has been no showing that the Project is needed for the reliability of the PJM grid or to relieve congestion in PJM or MISO. MEZ IB at 9. MEZ’s argument unduly limits the scope of the “necessary to provide adequate, reliable, and efficient service” criterion of §8-406.1(f)(1). That the Project is necessary to provide adequate, reliable and efficient service to

³⁵ CCPO states that Mr. Langley’s company, Infinity Wind Power, wants to enter into a transmission service agreement to secure financing, not to transport electricity. CCPO IB at 10. Mr. Langley testified that Infinity’s business is developing new wind generation projects and then selling them to operators. Tr. 838-839. The point remains that new wind projects in the wind-rich area of western Kansas will not be developed without the construction of the Grain Belt Express Project to provide a means to transport the power to load and population centers in PJM and MISO. Infinity Ex. 1 at 6-7.

Grain Belt Express' customers has been demonstrated in the record, as summarized in §IV.B.1.a-c of Grain Belt Express' Initial Brief.

c. Response to Staff

Staff states that the Project is not necessary to provide adequate, reliable and efficient “electric service to Illinois ratepayers,” and that it has not been shown that the Project “is needed or necessary to maintain the reliability of the electric system in Illinois.” Staff IB at 13. Like MEZ, Staff’s analysis unduly limits the scope of the “necessary to provide adequate, reliable, and efficient service” criterion of §8-406.1(f)(1). Nothing in §8-406.1(f)(1) requires that this criterion must only be applied with respect to “electric service to Illinois ratepayers” or to “the reliability of the electric system in Illinois.” Further, the record shows that adequate, reliable and efficient transmission service to move wind power from western Kansas to PJM is currently not available. *See* GBX IV.B.1.a, b and c; WOW Ex. 1.0 at 32-33; Infinity Ex. 1 at 4-5, 6-7..

d. Response to IAA

IAA adopts the same analysis and argument as Staff on this criterion. IAA IB at 27. As shown immediately above, this analysis and argument unduly limits the scope of the “necessary to provide adequate, reliable, and efficient service” criterion of §8-406.1(f)(1). IAA also contends that “the effect of the Project on the reliability of the electric system is unknown at this time” (IAA IB at 27), but Grain Belt Express witness Zavadil demonstrated that the Project will reduce Loss of Load Expectation in Illinois, and will increase the Effective Load Carrying Capability of the electric system in Illinois by the equivalent of the addition of a large new thermal generating plant. GBX Ex. 6.0 at 10-12; GBX Ex. 6.3.

IAA also argues, in this section of its Initial Brief, that Grain Belt Express is “choosing to wait to hire the necessary employees until just before the commencement of construction” and is waiting to see if there is a need for the transmission line before seeking financing. IAA IB at 27-28. Although these arguments would be more appropriately placed and responded to under other

sections of the approved outline, Grain Belt Express will respond here. With respect to the first point, Grain Belt Express is filling positions in its construction management organization for which there is work to be performed in the current, pre-construction phase, and is prudently waiting to fill other positions until there is work to be performed by those positions. GBX Ex. 1.0 at 42-43. In the Rock Island CPCN proceeding, the Commission found this to be a reasonable approach.³⁶ As to the second point, under the project finance approach, construction financing will be secured after transmission service contracts are signed, which cannot happen until regulatory approvals for the Project are obtained. GBX Ex. 11.0 at 75, 79-80. As Mr. Berry explained, this sequencing is typical in the capital markets for financing projects using the project finance approach. *Id.* at 81-82. Grain Belt Express' approaches on the above two topics were described in its direct testimony and were not refuted or disputed by any other witnesses.

2. Promote the Development of an Effectively Competitive Electricity Market

a. Response to CCPO

CCPO states that an effectively competitive electricity market already exists in Illinois. CCPO IB at 10. However, as the Commission has recognized, and as Dr. McDermott and Commission Staff economist Mr. Zuraski testified, this does not preclude a new Project from meeting the statutory criterion of promoting the development of an effectively competitive electricity market, by introducing new efficiencies that are needful and useful to the public.³⁷ CCPO further contends that the questions “will the Grain Belt Express Project promote an effectively competitive market that operates efficiently?” and “will the Grain Belt Express Project promote the development of an effectively competitive electricity market that is equitable to all customers?”, have not been answered in this case. CCPO IB at 11. To the contrary, however, these questions were answered in the affirmative by the testimony of (among others)

³⁶ *Rock Island Clean Line LLC*, Docket 12-0560 (Nov. 25, 2014), at 131.

³⁷ *See Commonwealth Edison Co.*, Docket 13-0657 (Oct. 22, 2014) at 21-22, cited at GBX Ex. 4.0 at 17-18.

Grain Belt Express witness Dr. McDermott (GBX Ex. 4.0), Staff witness Mr. Zuraski (ICC Staff Exs. 3.0 and 5.0), and WOW witness Mr. Goggin (WOW Ex. 1.0). Finally, CCPO asserts, with no citations to the record, that the introduction of the Project into what is already an effectively competitive electricity market could decrease the efficiency of the market and create a situation that is not equitable to all customers. However, Dr. McDermott and Mr. Zuraski each analyzed the impact of the introduction of the Project and the connected low-cost Kansas wind generation into the existing, effectively competitive electricity market in Illinois, and both experts concluded that the Project will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers. GBX Ex. 4.0 at 3-5; ICC Staff Ex. 3.0 at 3.

b. Response to MEZ

MEZ, like CCPO, argues that an effectively competitive electricity market already exists in Illinois. MEZ IB at 9-10. As shown immediately above, however, this circumstance in no way precludes a determination that a proposed new project can promote the development of an effectively competitive electricity market, pursuant to this criterion of §8-406.1(f)(1). MEZ next argues that “in order to issue a CPCN to GBX and enable it to condemn the property of Illinois landowners under power of eminent domain, there must be a public need.”³⁸ MEZ IB at 10. However, Grain Belt Express has not requested eminent domain authority in this case, so whether a “public need” needs to be shown to obtain eminent domain authority pursuant to §8-509, or in the actual exercise of eminent domain authority in a condemnation case in circuit court (and if so, whether a “public need” for eminent domain purposes has been shown to exist), is not relevant to this proceeding and does not need to be determined here.³⁹ (However, see the

³⁸ Later in this same section of its brief, MEZ asserts that Grain Belt Express’ request in this case “involves the taking of private property,” which is of course incorrect. MEZ IB at 12.

³⁹ Grain Belt Express notes that in a §8-509 proceeding, the Commission must determine that the exercise of eminent domain is “*necessary* for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1, 8-503, or 12-218” (emphasis added).

response to a somewhat similar argument by LACI, in §IV.F.3, below.)

Despite the extensive evidence presented in this case by numerous witnesses on the question of whether the Project will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers, MEZ chooses to discuss none of it. Instead, MEZ argues that §8-406.1(f)(1) must be construed based on two unrelated provisions in other Articles of the Act, §16-101A(d) and §20-102(d). MEZ IB at 11. This point of MEZ's argument is in fact pointless, since there is no dispute that part of the second alternative criterion in §8-406.1(f)(1) is "equitable to all customers." In this case, witnesses for Grain Belt Express, the Commission Staff, and WOW have all concluded, based on detailed analysis, that the Project will promote the development of an effectively competitive electricity market that operates efficiently *and is equitable to all customers*.

MEZ characterizes the benefits that the Project will bring to the Illinois electricity market and to Illinois electricity consumers as "*de minimis*." MEZ IB at 11. However, the analysis presented by Mr. Cleveland and Dr. McDermott shows that in its first five years of operation, the Project is projected to provide net present value ("NPV") benefits to Illinois ratepayers, in terms of reduced costs to serve Illinois' electricity load, of \$256,000,000 to \$726,000,000, depending on the future economic and energy market scenario considered. GBX Ex, 4.0 at 29. These NPV results are the present value of the electricity cost reductions in the years 2020 through 2024, discounted to 2015 at an 8% real discount rate (10.5% nominal discount rate, *see* GBX Ex. 4.0 at 29), which far exceeds current and anticipated inflation rates.⁴⁰ At a 5% discount rate, the NPV benefits (cost savings) to Illinois consumers (again, in the first five years of the Project's operation) are \$308,000,000 to \$882,000,000; and at a 3% discount rate, the NPV benefits (cost savings) to Illinois consumers are \$351,000,000 to \$1,008,000,000. GBX Ex. 4.0 at 36.

⁴⁰ As comparison points, in their Levelized Cost of Energy ("LCOE") analyses, intervenor witness Dr. Proctor used an inflation rate for this period of 1.63%, and Grain Belt Express witness Mr. Berry used an inflation rate of 2.5%. LACI Ex. 3.0 Rev. at 3; GBX Ex. 11.7.

Finally, MEZ asserts that the costs of the Project may be imposed on Illinois ratepayers “if GBX chooses to pursue cost allocation.” MEZ IB at 12. To reiterate, Grain Belt Express has no plans or intentions to pursue cost recovery through an RTO regional cost allocation mechanism, and in fact there currently is no such process available to a merchant, interregional transmission facility like the Project. GBX Ex. 1.0 at 14-15; GBX Ex. 11.0 at 67, 69-70; Tr. 208, 222. Further, the proposed cost allocation condition precludes Grain Belt Express from recovering any costs of the Project from Illinois retail ratepayers through PJM or MISO regional cost allocation without first obtaining the permission of the Commission in a separate proceeding initiated by Grain Belt Express. *See* GBX IB §IV.E.1. In such a (hypothetical) Commission proceeding, Grain Belt Express expects that the Commission would base its determination on whether the benefits (whether economic benefits or reliability benefits) of the Project for the Illinois public exceed the costs that Grain Belt Express would be proposing to recover from Illinois retail ratepayers. GBX Ex. 1.0 at 15; GBX Ex. 11.0 at 69. Indeed, in order for Grain Belt Express (with this Commission’s approval) to recover some or all of its costs through an RTO cost allocation mechanism, the RTO would be expected to determine that the benefits (again, whether reliability benefits or economic benefits) of the Project for ratepayers subject to the RTO transmission tariff exceed the costs that Grain Belt Express would be proposing to recover through the RTO tariff. In short, the scenario MEZ fears – that Grain Belt Express would be allowed to recover its costs from Illinois ratepayers through an RTO tariff mechanism, without a determination having been made that the Project is needed for reliability or economic purposes or that its benefits to ratepayers exceed the costs – cannot and would not happen.

c. Response to IAA

IAA, like CCPO and MEZ, argues that that an effectively competitive electricity market already exists in Illinois. IAA IB at 28-29. As shown in the two immediately preceding subsections, however, this circumstance in no way precludes a determination that a proposed

new project can promote the development of an effectively competitive electricity market, pursuant to this criterion of §8-406.1(f)(1). Dr. McDermott and Mr. Zuraski each analyzed the impact of the introduction of the Project and the connected low-cost Kansas wind generation into the existing, effectively competitive electricity market in Illinois, and both experts concluded that the Project will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers. GBX Ex. 4.0 at 3-5; ICC Staff Ex. 3.0 at 3.

IAA argues that the applicant must show that the proposed high voltage electric service line is *necessary* to promote the development of an effectively competitive electricity market. IAA IB at 28, 29. This is a misreading of the statute. The statutory criterion is that the proposed transmission line “will promote the development of an effectively competitive electricity market;” the words “necessary to” do not appear. Notably, the General Assembly *did* include the word “necessary” in the first alternative criterion of §8-406.1(f)(1) (“necessary to provide adequate, reliable, and efficient service . . .”), but not in the second alternative criterion. Further, as discussed in §I.D of Grain Belt Express’ Initial Brief, the courts and this Commission have recognized that the words “necessary” and “necessity” in the certificate sections of the Act are not to be construed as meaning “indispensably requisite,” but rather as “needful and useful to the public.” The record here shows that the benefits the Project will provide will be needful and useful to the public in Illinois.

IAA cites testimony from intervenor witness Dr. Proctor. IAA IB at 29. In the testimony cited, Dr. Proctor did not contend that the Project will not promote the development of an effectively competitive electricity market; rather, he contended that promoting the development of an effectively competitive market is not important in the context of the current wholesale electricity market. This also is a misreading or misapplication of the statutory criterion, or at a minimum an interpretation that injects qualifiers that do not appear in the statute. Dr. Proctor also stated, in the testimony quoted by IAA, that wholesale energy market prices do not include

fixed costs and that the Commission needs to consider the ultimate costs to retail customers.

However, Dr. McDermott effectively rebutted this criticism:

Q. What is your response to Dr. Proctor's claims that retail customers should be the ultimate focus of the ICC? (LACI Exhibit 5.0, lines 89-94)

A. I have covered this issue in my direct testimony. (*See e.g.*, Grain Belt Express Exhibit 4.0, lines 556-560). The wholesale market is most directly connected to the Project and that is the market that is relevant to the evaluation that must be made under the statute. Furthermore, the wholesale market is the most directly connected to retail customers since retail prices for electricity are predicated on wholesale prices. Dr. Proctor's claims that fixed costs are more important than marginal costs misunderstands that markets operate on the basis of marginal cost. Dr. Proctor cites no sources for his pronouncement nor does he even attempt to work out the logic of why fixed costs have anything to do with competition at the margin. Wholesale electricity markets operate on the basis of short-run costs through competition among alternative sources of supply. This short-run price provides the proper incentive for consumers to modify their consumption patterns as well as to promote the correct level of investment in transmission to both relieve transmission congestion, and as we see in this case, to allow new generation to access the market.

Q. How does your above response play into Dr. Proctor's claim that long-run costs matter more to the development of competition? (LACI Exhibit 5.0, lines 26-31)

A. Again, I think Dr. Proctor misstates the import of long-run costs. His claim is that entry and exit are determined by long-run costs. This is only partially true. Entry by a new competitor will only occur if the new competitor's incremental cost (including its fixed cost of entry) is at or below the expected market price. Therefore, a new entrant planning to use the Grain Belt Express line will only enter the market if the total cost of delivering the power plus the operating cost, including the opportunity cost of capital, is expected to be below market prices over the planning horizon. Exit from the market will occur when an incumbent firm's *variable* cost exceeds the market price. That is, firms will not exit a market if they can at least cover their variable costs (i.e., their ongoing costs, excluding any "sunk" costs that were previously incurred.) (GBX Ex. 4.2 at 7-8.)

IAA asserts that Mr. Zuraski testified that Grain Belt Express' evidence "only focused on the benefits of the Project (gross economic impacts), and did not address any of its costs (net economic impacts) from an economic perspective," citing the cross-examination of Mr. Zuraski at Tr. 1140. This is a misleading characterization of the record. Mr. Zuraski's testimony at Tr. 1140 was specifically in reference to Dr. Loomis' study of the economic and employment benefits of the construction of the Project in Illinois, and *not* about the economic analyses

presented by Grain Belt Express witnesses McDermott, Cleveland and Berry which demonstrate that the Project will promote the development of an effectively competitive electricity market:

Q. Is it your understanding that in Dr. Loomis's study that he did not address the net economic impacts of the project and only analyzed the gross impacts of the project?"

A. I think that is a fair characterization, yes. (Tr. 1140.)

In its rebuttal testimony, Grain Belt Express addressed the concern that Mr. Zuraski had raised; and Staff, in its Initial Brief, after summarizing Grain Belt Express' response to Mr. Zuraski's concerns, states: "Taken as a whole, Staff considers this response to adequately address the caveats raised by Mr. Zuraski." Staff IB at 17. Further, Mr. Zuraski himself, based on his review of Grain Belt Express' economic studies and his own economic modeling, concluded that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least-cost means of satisfying those objectives. ICC Staff Ex. 3.0 at 3; *see* Staff IB at 13-17; GBX IB §IV.B.2.e.

Finally, IAA quotes Dr. Proctor's testimony to the effect that Dr. McDermott should have included a comparison of the cost of Kansas wind generation to Illinois wind generation in addressing the issue of increasing competition, and that a "wind-on-wind" comparison of these two alternatives shows that Illinois wind is the least-cost. IAA IB at 30. As Dr. McDermott pointed out, this was not a valid criticism if his analysis, because determining whether the Project is "the least-cost means of satisfying those objectives" (§8-406.1(f)(1)) was not Dr. McDermott's assignment. Rather, that portion of the criterion was addressed by Mr. Berry and Dr. Galli and by Grain Belt Express' routing witnesses, Mr. Gaul and Mr. Lawlor.⁴¹ GBX Ex. 4.2 at 4-5. *See* GBX IB §IV.B.3. Further, Dr. Proctor's assertion that a "wind-on-wind" comparison of Kansas wind generation plus the Project to Illinois wind generation, shows the

⁴¹ In Dr. McDermott's view, however, in a competitive market, the competitors will identify and implement least-cost solutions; if they do not, they will not succeed competitively. *See, e.g.*, GBX Ex. 4.2 at 3 and 6.

latter is the least-cost, is a product solely of the erroneous and unsupportable assumptions Dr. Proctor used in his levelized cost of energy (“LCOE”) analyses.⁴² The errors in Dr. Proctor’s LCOE analyses were described at pages 75-77 of Grain Belt Express’ Initial Brief and are further discussed in §IV.B.3 of this brief, below.

3. Least Cost

a. Response to CCPO, IAA and LACI

The intervenors’ arguments as to how the Commission should determine whether the Project satisfies the “least cost” provision of §8-406.1(f)(1) are in conflict. CCPO states that the Commission has a long-established test for least-cost, involving twelve criteria, which CCPO lists. CCPO IB at 12. However, LACI and IAA contend that Grain Belt Express must demonstrate that the proposed Project (plus the connected wind generation) is least cost compared to other alternatives for providing new generation, both renewable and non-renewable. LACI IB §IV.B; IAA IB §IV.B.2.

The twelve criteria cited by CCPO are criteria that the Commission has historically used in transmission line CPCN cases for evaluating potential routes and determining the optimum route of those proposed by the applicant, Staff and intervenors. *See, e.g., Ameren Transmission Company of Illinois*, Docket 12-0598 (Aug. 20, 2013); *Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company*, Docket 06-0706, Order on Reopening (June 23, 2010). Grain Belt Express agrees with CCPO in that, in §8-406 and §8-406.1 transmission CPCN cases, the Commission has historically determined whether the “least cost” provision is satisfied by examining whether the proposed route of the transmission line, compared to alternative routes, is least cost, using the twelve criteria listed by CCPO. In these

⁴² Among other errors, Dr. Proctor’s comparison of the LCOE of Kansas wind plus the Project to the LCOE of Illinois wind did not include any transmission upgrade costs for the interconnection of 4,000 MW of new Illinois wind generation to the existing transmission grid, even though the costs for the Kansas wind plus the Project alternative included substantial network upgrade costs to interconnect the Project to the PJM grid. GBX Ex. 11.13 at 39. Given Dr. Proctor’s emphasis on the importance of fixed costs in the competitive market, as discussed above, this is a glaring omission from his analysis.

determinations, the Commission has not necessarily selected the route that results in the lowest construction cost for the transmission line, but rather the optimum route considering both construction costs and the other relevant routing criteria.⁴³ However, in the Rock Island CPCN case, Docket 12-0560, the Commission did consider Present Value of Revenue Requirements (“PVRR”) analyses comparing the PVRR of the Rock Island transmission line plus the Iowa wind generation that would connect to it, to the PVRR of new wind generation in Illinois sufficient to produce the same amount of electricity as the Iowa wind generation. *See* the Order in Docket 12-0560 at 39-41, 77, 115-117.

In this case, Grain Belt Express developed its Proposed Route in Illinois from numerous conceptual and potential routes that were evaluated, using a comprehensive set of Routing Criteria that encompassed the twelve criteria the Commission has used. *See* GBX Ex. 8.2 (Illinois Route Selection Study) and GBX IB §V.A and §V.B. The detailed discussion in the foregoing references details how the Routing Criteria were applied to select potential route segments for further consideration and, ultimately, arrive at the Proposed Route (and an Alternate Route). Among other things, the Proposed Route is shorter and has a lower construction cost than the Alternate Route. GBX Ex. 8.2 at 200, 204; GBX Ex. 9.0 at 20.

Additionally, because Grain Belt Express plans to use HVDC technology for the Project, rather than the AC technology, which is more commonly used in the U.S. bulk transmission system, Grain Belt Express presented a comparison of the capital costs and losses costs for a 780-mile, ±600 kV, 4,000 MW capacity HVDC transmission line (*i.e.*, an HVDC transmission line like the Project) to the capital costs and losses costs of five different AC line configurations that could move the same amount of power over the same distance (780 miles). This analysis showed that the HVDC alternative has both considerably lower capital costs and considerably

⁴³ Some of the twelve criteria, when applied, may actually result in increased construction costs. For example, placing the route to minimize the number of residences in close proximity to the transmission line may result in a route that is longer, has more turns and requires more of the heavier angle structures, and thus increases construction costs.

lower losses costs than any of the five AC transmission alternatives.⁴⁴ GBX Ex. 2.0 at 12-14; GBX IB at 83-85. Staff witness Mr. Rashid noted the advantages of HVDC technology over AC technology for transmission of large amounts of electricity over long distances, including lower power losses, lower construction cost, and narrower horizontal clearance for the transmission line, which means the DC transmission line can operate safely and reliably inside a narrower right of way. ICC Staff Ex. 1.0 at 8. Mr. Rashid reviewed the HVDC versus AC cost comparison presented by Grain Belt Express and concluded that if the proposed project is to be solely dedicated to deliver wind energy from western Kansas to MISO and PJM (which it is), the analysis is valid and the proposed project meets the least cost standard. *Id.* at 10.

On the basis of the record evidence discussed in the immediately preceding two paragraphs, the Commission can conclude that the Grain Belt Express Project satisfies the least cost provision of the §8-406.1(f)(1) criteria.

CCPO, LACI, IAA all argue that the Project is not least cost because, they claim, intervenor witness Dr. Proctor showed that certain other alternatives, including new Illinois wind generation and new combined cycle natural gas-fueled generation, have a lower LCOE than new Kansas wind generation plus the Project. As shown in Grain Belt Express' Initial Brief, pp. 75-78 and 80-81, and discussed further below, Dr. Proctor's original analyses contained a calculation error which, when corrected, showed that the Kansas wind plus the Project alternative has the lowest LCOE. LACI Ex. 3.2 Rev. at 2; GBX Ex. 11.13 at 42-43. Further, Dr. Proctor's analysis was premised on a number of flawed and unsupported assumptions which Grain Belt Express witness Mr. Berry and Staff witness Mr. Zuraski found to be inappropriate and unpersuasive. GBX IB at 75-77; ICC Staff Ex. 5.0 at 1, 3.

Grain Belt Express witness Dr. Karl McDermott noted that there is no requirement to

⁴⁴ The lower-voltage AC alternatives studied require more circuits and more (or wider) rights of way than the HVDC alternative, therefore the HVDC alternative would have lesser impacts than these AC alternatives when analyzed using traditional routing criteria. GBX IB at 84-85; GBX Ex. 2.0 at 13; Tr. 810-812.

evaluate every possible combination of power plants that might be able to access the Illinois market, but observed that Mr. Berry demonstrated that the Grain Belt Express Project is least cost using traditional LCOE and PVRR analyses, which shows that the Project will deliver energy to Illinois at a lower cost than Illinois wind generation and combined cycle gas generation alternatives. GBX Ex. 4.2 at 5. However, Dr. McDermott also discussed policy reasons why the Commission should not apply the least cost provision by requiring Grain Belt Express to prove that Kansas wind generation plus the transmission line is lower cost than various other generation alternatives:

- Q. Are there any policy reasons why the Commission should reject Dr. Proctor's approach that Grain Belt Express should prove its transmission line is the more beneficial than other generation-only alternatives?
- A. Yes. Such an analysis seems to fly in face of greater reliance on competitive markets embedded in the changes made to the Illinois Public Utilities Act in 1997 and following years. Effectively competitive markets require many market participants, and potential market participants, with entry and exit opportunities. In contrast, under central planning as it was practiced in Illinois prior to 1997, an applicant was required to demonstrate to the regulator there was no lower cost alternative than its plan, and accordingly it was required to identify and justify a single least-cost Integrated Resource Plan. The ICC could disagree with the utility's analysis, and if justified by the record, order changes in the plan. In this old world, Illinois electric utilities, by virtue of their monopoly position and vertically-integrated organization, controlled investment in electric infrastructure in the state subject to ICC approval. This is simply not the case now, at least for competitive projects such as the Grain Belt Express proposal. Changes in the industry as well as the changes in the law now make it possible for infrastructure firms other than the traditional utilities to invest. The role of the Commission has also changed in that it has limited to no role in overseeing generation investment and its certificate process for transmission, rather than limiting entry to facilitate the regulation of a monopoly, is now also designed to allow for entry of new firms under the conditions at issue in this docket. Unlike the concept of least cost that was applied to vertically integrated utilities of the past, Grain Belt Express only has control over its proposed project. Further, it is my understanding that the Commission does not even have the authority to order investment in whatever preferred alternative solutions might be identified under Dr. Proctor's hypothetical approach. The Commission would hinder the competitive market by denying new and beneficial transmission lines like the Project entry into the market because there is another, theoretically beneficial generation project that the Commission cannot order to be built and no party in the proceeding is actually proposing to build. . . .

While it may well be that the market might be able to support other beneficial projects, Dr. Proctor's proposal that Grain Belt Express must study an exhaustive universe of alternative solutions *that no one is actually proposing to implement* is misguided and would turn back the clock on the market reforms embedded in the modifications to Illinois law. Perhaps more perversely, Dr. Proctor's approach would ultimately lead to a nearly impossible hurdle that would likely choke off new market-driven transmission investment in Illinois. Projects that are beneficial and promote competition, such as the Grain Belt Express proposal, might be denied a certificate leaving Illinois customers with fewer options and, almost certainly, paying higher prices for electricity.

Finally, Grain Belt Express will only charge any of its costs to customers who voluntarily choose to pay through a commercial agreement to use the Project. The public cost of the project is effectively the minimum it could be. Consumers who do not enter into commercial agreements to use the Project will nevertheless benefit from the Project in the form of lower market prices as I have previously testified, despite incurring no direct Project costs unlike a rate based and tariffed transmission project for which all customers pay a share of the costs. (GBX Ex. 4.2 at 5-7.)

Grain Belt Express witness Mr. Berry pointed out that some of the alternatives to which Dr. Proctor contended the Project should be compared for "least cost" purposes were alternatives no developer is actually proposing or would find technically and economically feasible:

- Q. Is any wind generation company actually pursuing the business plan Dr. Proctor suggests, that is, building thousands of MW of new wind generation in western MISO or western Kansas, paying for interconnection upgrades on the AC grid, and taking the substantial congestion risk to move this power through multiple RTOs to markets in Illinois and other eastern states?
- A. No. Due to our development of the Rock Island Clean Line project (which begins in northwest Iowa) and the Grain Belt Express Project, I am very familiar with the activities of wind generation companies in western MSO and western Kansas. No wind generation company or set of companies is pursuing Dr. Proctor's alternative, which, as I have shown, lacks technical and economic feasibility. Dr. Proctor's "western MISO wind generation" and "western Kansas wind with AC transmission" alternatives are purely theoretical and no one is actually proposing to do them. In contrast, the Project is an actionable proposal in front of the Commission with the backing of actual capital, competent investors, an experienced development team, and interested customers that are experienced, capable wind generation developers. (GBX Ex. 11.13 at 50.)⁴⁵

⁴⁵ Regarding Mr. Berry's statement that the customers interested in taking transmission service on the Project are "experienced, capable wind generation developers," GBX Ex. 11.15 provides a list and description of the 14 companies that submitted transmission service requests in Grain Belt Express' 2015 open solicitation.

In this regard, LACI's citation of *Illinois Power Co. v. ICC*, 111 Ill.2d 505, 490 N.E.2d 1255 (1986) (LACI IB at 32-33), is inapposite. In *Illinois Power*, the Commission had before it two competing proposals by two existing utilities, both of which were parties in the case, to purchase Mt. Carmel Public Utility Co. The Commission was therefore able to evaluate and compare two specific alternatives presented and backed by proposed acquirers that the Commission regulated and that were before the Commission in the proceeding. In contrast, Dr. Proctor's alternatives are hypothetical scenarios that no entity is proposing to implement and that the Commission would have no authority to compel.

Further, Staff witness Mr. Zuraski, after considering Dr. Proctor's analysis, testified in rebuttal that "it is not critically important" to show that Kansas wind farms are able to produce energy at a lower cost than combined cycles. ICC Staff Ex. 5.0 at 4-5. He explained that wind generation and fuel-fired technologies play different roles, satisfy different requirements, and entail different risks, so there is likely to be continued interest in building both types of generation. *Id.* at 5. He also stated that "it is not absolutely necessary that Kansas wind farm projects be expected to produce energy at lower cost than Illinois wind farms." *Id.* He explained that "Even if the expected cost of Kansas wind farms (including the cost of the GBX project) exceeded the expected cost of Illinois wind farms, there would be value in the increased geographical diversity by integrating the Kansas wind into the rest of the grid" (*Id.*), which will render the collective wind resource more like a base load resources and less like a non-dispatchable resource. *Id.* at 5-6. He further observed that "to the extent to which, over time, fewer and fewer prime locations within Illinois remain available for wind farm development, building new wind farms in the more wind-rich areas of Kansas may become the next best alternative, even if they are not presently the best alternative." *Id.* at 6. Nonetheless, he pointed out that, based on the LCOE analysis he conducted, and even without taking into account such factors as the value of geographic diversity provided by Kansas wind generation and the eventual

depletion of prime locations within Illinois, the LCOE analysis shows that the Kansas wind option is less expensive than the Illinois wind option in the base case, on average over 13,122 sensitivity cases analyzed, and in 73% of the 13,122 sensitivity cases. *Id.*

In any event, the LCOE and PVRR analyses prepared by Mr. Berry, and the LCOE modeling performed by Mr. Zuraski, showed that Kansas wind generation plus the Project has a lower LCOE and a lower PVRR than the alternatives of new Illinois wind generation or new combined cycle gas generation, in the base case and in the large majority of the over 13,000 sensitivity scenarios studied. These analyses and results are summarized and further explained in Grain Belt Express' Initial Brief at pages 69-75 and 80-81. These analyses and results included the incorporation of the change in Kansas property tax law applicable to wind farms that was enacted after Grain Belt Express' Application and direct testimony in this case were filed.⁴⁶

In contrast, the comparisons presented by Dr. Proctor utilized a number of flawed and unsupportable assumptions. Dr. Proctor's flawed and unsupportable assumptions were identified, and the problems with them explained, at pages 75-78 of Grain Belt Express' Initial Brief. Dr. Proctor's numerical results that are depicted in the tables on page 33 of IAA's Initial Brief and pages 26-27 of LACI's Initial Brief incorporate these flawed and unsupportable assumptions, and have not been corrected. The Commission should not rely on them.

CCPO and IAA, although relying on Dr. Proctor's analysis, provide no explanation or defense of his underlying assumptions in their initial briefs. LACI, in its Initial Brief, provides some brief explanations of Dr. Proctor's assumptions. For example, LACI states that Dr. Proctor

⁴⁶ A further weakness in Dr. Proctor's analysis is that he conducted only a small number of LCOE comparisons with a limited number of assumption changes. In contrast, Mr. Berry conducted LCOE and PVRR analyses, and Mr. Zuraski conducted LCOE analyses, using a wide range of values for important inputs and combinations of the various input values considered. As noted above, over 13,000 sensitivity scenarios were studied. The alternative of new Kansas wind generation plus the Project had a lower LCOE and lower PVRR than the other alternatives studied in the large majority of these sensitivity cases, thereby providing much greater confidence in the overall conclusions. Mr. Berry's results are reported on GBX Ex. 11.16 through 11.19. In other words, the Berry and Zuraski analyses and results are considerably more robust than Dr. Proctor's analyses and results.

used inflation rates from the Energy Information Administration (“EIA”) for natural gas prices for 2012-2040. LACI IB at 24. While using EIA’s forecast for the price of natural gas in the study may be appropriate, what LACI fails to state is that Dr. Proctor used the imputed inflation rate derived from EIA’s natural gas price forecast as the inflation rate for all costs in his analyses. A low inflation rate for natural gas may be consistent with market expectations, but as applied to other costs, the imputed natural gas inflation rates Dr. Proctor used are too low and are well below historical inflation rates and consensus economic forecasts. GBX Ex. 11.13 at 50-52.

LACI also states that Dr. Proctor “utilized a \$1,750/kW installed cost for new wind generation for both Kansas and Illinois, based on the 2013 Wind Technologies Market Report [published by DOE], noting the significant effect of larger turbine sizes on lowering costs, and determining that recent lower actual costs in the interior region were likely due to larger turbine sizes.” LACI IB at 24-25. In fact, Dr. Proctor simply misread the 2013 Wind Technologies Market Report, erroneously reading it as reporting the same wind farm capital costs for the region of the U.S. that includes Kansas and the region that includes Illinois. The DOE Report showed capital costs of \$1,755 per kw of capacity for new wind plants installed in 2012-2013 in the region that includes Kansas, and \$2,033 per kw of capacity for new wind plants installed in the region that includes Illinois. GBX Ex, 11.13 at 52-53. LACI’s description is simply a post hoc rationalization for Dr. Proctor’s error. Further, Mr. Berry, based on his experience in developing wind projects in both Kansas and Illinois, explained in detail the factors that result in lower capacity costs per kw of capacity for new wind farms in Kansas than in Illinois. *Id.* at 52.

Next, LACI states that Dr. Proctor used a 52% capacity factor for new Kansas wind generation, rather than the 55% capacity factor used in Grain Belt Express’ analyses, because Grain Belt Express had based its Kansas wind capacity factor assumption on “impending improvements in turbine design, technology and size.” LACI IB at 25. In fact, Mr. Berry developed the 55% capacity factor for new Kansas wind farms by applying actual wind speed

data taken from meteorological towers located in the vicinity of the Project's converter station site in western Kansas, to the power curves for currently available wind turbines of two leading manufacturers. GBX Ex. 11.0 at 11; GBX Ex. 11.13 at 54-55. While Grain Belt Express does anticipate further improvements in turbine technology will occur, increasing capacity factors of new wind plants, between now and the Project's expected in-service date of 2019 or 2020, the 55% capacity factor for Kansas wind plants is based on currently available turbine technology.⁴⁷

Finally, LACI states that Dr. Proctor increased the capital costs for the Grain Belt Express Project by 20% and that "[h]e based this in part on the Southwest Power Pool's ["SPP"] finding that actual transmission project costs were 20% to 50% higher than preliminary cost estimates." LACI IB at 25. However, there has been no such SPP "finding." It is noteworthy that LACI did not provide Dr. Proctor's "sources" for this assumption as exhibits to his testimony. As Mr. Berry explained, in response to a data request to LACI for Dr. Proctor's SPP source documents,

Dr. Proctor produced two documents, neither of which supported the claims in his testimony. The first was a trade press article from *RTO Insider* that reported anecdotal evidence about cost overruns on SPP transmission projects approved as part of the 2015 regional transmission plan. The only specific projects discussed in the article are line rebuilds, lower voltage upgrades, and voltage conversion projects. None of these have relevance to the construction of a long-distance HVDC line. The second document was an SPP report on transmission projects, which did not contain any research on historical transmission cost overruns or any conclusion that a 20% overrun was typical or to be expected. Dr. Proctor's claim that his increase to the Project cost is based on SPP research is misleading and must be discarded. (GBX Ex. 11.13 at 55; footnote omitted.)

Further, as Mr. Berry explained, the capital cost estimate for the Project already includes adders for contingency in specific components of the estimate to account for potential capital cost increases due to factors such as inflation in materials costs, increases in labor rates, or weather

⁴⁷ LACI also states that improvements in turbine technology should also be reflected in improvements in capacity factors for Illinois wind generation. LACI IB at 25. However, Mr. Berry used a 40% capacity factor for new Illinois wind generation, whereas the average capacity factor in 2013 for recently-installed projects in the region of the U.S. that includes Illinois was 34.5%. WOW Ex. 1.0 at 19. Therefore, Grain Belt Express' studies used a higher capacity factor for new Illinois wind generation than would be indicated by recent actual data.

delays. Moreover, with a reasonably well-defined route identified for the Project, the volumes of commodities and number of structures in the estimate, and the amount of labor needed to install them, are unlikely to increase materially. GBX Ex. 11.13 at 55-56. Nonetheless, Mr. Berry included in his PVRR analyses scenarios with a 20% capital cost increase for the Project. GBX Ex.11.8 at 1. In these scenarios, Kansas wind generation plus the Project still had a lower PVRR (using a 5% discount rate) than new Illinois wind generation in 95% of scenarios and a lower PVRR (using a 5% discount rate) than new combined cycle gas generation in 89% of scenarios. GBX Ex. 11.16 at 1.

After reviewing Dr. Proctor’s direct testimony describing the reasons for the above-described assumptions and other assumptions used by Dr. Proctor, Staff witness Mr. Zuraski testified that he was not persuaded that any of Dr. Proctor’s assumptions should be adopted, except for the update to incorporate the recent change in Kansas property tax law applicable to wind farms.⁴⁸ ICC Staff Ex. 5.0 at 3.

After he corrected an admitted calculation error in the analysis presented in his direct testimony, Dr. Proctor’s LCOE analysis – with all of his flawed and unsupported assumptions intact – showed that the Kansas wind generation plus the Project alternative is lower cost than either new Illinois wind generation or combined cycle gas generation (LACI Ex. 3.2 Rev. at 2):

Grain Belt Express (Kansas wind):	\$93.59
Combined cycle gas generation:	\$94.20
Illinois wind generation:	\$95.66

With Dr. Proctor’s flawed and unsupportable assumptions removed or changed to supportable values, his LCOE model showed that Kansas wind generation plus the Project has a significantly lower LCOE than either the new Illinois wind generation option or the combined cycle gas generation option (GBX Ex. 11.13 at 56):

⁴⁸ The assumptions used by Dr. Proctor discussed in the text above are not a complete list of Dr. Proctor’s flawed, arbitrary and unreasonable assumptions. See GBX IB at 75-78 for a more complete discussion.

Grain Belt Express (Kansas wind):	\$ 86.73
Combined cycle gas generation:	\$ 97.90
Illinois wind generation:	\$106.85

In summary, based on all the perspectives used in this case for examining “least cost,” the record shows that the Project “is the least-cost means of satisfying the service needs of [Grain Belt Express’] customers,” and “is the least cost means of satisfying [the] objectives” of promoting the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers, as specified by §8-406.1(f)(1).

b. Additional Response to CCPO and IAA

CCPO and IAA argue that neither Infinity witness Mr. Langley nor Staff witness Mr. Zuraski performed an independent study of the assumptions, inputs and analysis of costs of the various alternatives considered by Grain Belt Express.⁴⁹ CCPO IB at 11; IAA IB at 31. With respect to Mr. Langley, this is a straw man argument. Mr. Langley was not attempting to perform or present a least-cost analysis of alternatives in the manner of Mr. Berry, Dr. Proctor or Mr. Zuraski. Mr. Langley, whose company is developing over 2,000 MW of new wind farms in the area of western Kansas that will be served by the Grain Belt Express Project, testified that without the Grain Belt Express Project, there is no reasonable or feasible alternative for transporting the electricity generated by western Kansas wind farms to load and population centers in PJM and MISO, and therefore, without the Project, the new Kansas wind farms likely will not be built. Infinity Ex. 1 at 4-7.

With respect to Commission Staff witness Zuraski, CCPO’s and IAA’s characterization is inaccurate. Mr. Zuraski reviewed the LCOE and PVRR analyses submitted by Grain Belt Express, reviewed and critiqued Dr. Proctor’s LCOE model and assumptions, and conducted his own analyses using his own model. *See* ICC Staff Ex. 3.0 and 5.0.

⁴⁹ Additionally, IAA states that “GBX has failed to meet its burden [that it is the least cost alternative] with the evidence it presented through witnesses Zuraski and Langley.” IAA IB at 31. However, neither Mr. Zuraski or Mr. Langley were witnesses called by Grain Belt Express.

c. Additional Response to LACI

At pages 15-32 of its Initial Brief, LACI provides a lengthy summary of the testimonies of various witnesses concerning the §8-406.1(f)(1) criteria. Grain Belt Express does not necessarily find LACI's summary to be accurate in all respects, but will not lengthen this brief with a line-by-line critique of LACI's summary. Grain Belt Express relies on its own description of its evidence relating to §8-406.1(f), in §I.B, IV.A and IV.B of its Initial Brief.

d. Response to MEZ

MEZ states that the issue of least cost must be considered in light of the Project's purpose (MEZ IB at 12), but then argues that it has not been shown that the Project is the least cost means of meeting the Illinois RPS, because the RPS can be met entirely by purchasing RECs. MEZ IB at 14. The flaws in MEZ's "by buying only RECs" argument have been discussed earlier in this Reply Brief (§IV.A.1 and 2) and at pages 59-60 of Grain Belt Express' Initial Brief. MEZ's argument here on least cost is based on an unduly narrow and limited view of the purpose of the Project, and is inconsistent with MEZ's description of how "least cost" should be evaluated. While energy produced by Kansas wind generators and delivered by the Project to PJM and MISO (and the RECs that are created by that generation) can and will be used to satisfy the Illinois RPS (and the RPS of other PJM and MISO states), the new wind generation enabled by the Project will also help to meet the strong and growing demand for electricity from renewable resources over and above mandatory RPS requirements; will help to meet the demand for electricity generally, including replacing the electricity previously provided by fossil-fueled generators that are being retired or whose use is being reduced; will reduce the volatility of electricity prices that results from volatility in fuel prices; will reduce emissions in the Eastern Interconnection; will increase competition in the wholesale electricity markets in PJM and MISO by allowing 4,000 MW of new, low-cost generation to access those markets; and (perhaps most importantly) will reduce wholesale electricity prices and the cost to serve retail electric load in

Illinois and other PJM and MISO states. *See* GBX IB §I.A and I.B.2.

The remainder of MEZ's argument under §IV.B.3, Least Cost, is, in summary, as follows: Grain Belt Express is not a merchant transmission developer as defined by FERC because Grain Belt Express has not assumed the full market risk of the Project; therefore Grain Belt Express is not entitled to negotiated rate authority; also, therefore, Grain Belt Express is required to participate in the RTO planning processes; and finally, the Commission lacks jurisdiction to accept the proposed cost allocation condition (which the Commission adopted in the Rock Island CPCN case, Docket 12-0560), due to FERC's authority over interstate transmission. MEZ IB at 12-21.

MEZ's argument is premised entirely on the contention that Grain Belt Express has a "right" to obtain recovery of its costs through a RTO regional cost allocation process. But Grain Belt Express has no such "right." First, as Mr. Skelly testified, there is no RTO process by which a merchant, interstate transmission project like the Project can recover its costs from the general body of retail ratepayers through an RTO transmission tariff (this is what is commonly referred to as "regional cost allocation"). Tr. 208 ("As I sit here today, we don't have a process to allocate lines that cross three RTOs"), 222 ("there is no process to apply for such a cost allocation"). MEZ repeatedly asserts that Grain Belt Express has a "right" to recover its costs through RTO regional cost allocation, but MEZ does not identify the RTO mechanism or process through which Grain Belt Express *could* recover its costs through RTO regional cost allocation. Moreover, even for projects that are eligible for cost allocation, there is no "right" to cost recovery; rather, the RTO has to determine that recovery of the cost of such a project through the RTO transmission tariff is appropriate.

Second, assuming there were such a process available, Grain Belt Express has agreed to the cost allocation condition (as did its sister company, Rock Island, in Docket 12-0560), which will require Grain Belt Express to obtain this Commission's permission, in a separate proceeding

initiated by Grain Belt Express, before recovering any Project costs from Illinois retail ratepayers through PJM or MISO regional cost allocation.

Further, Grain Belt Express has clearly and categorically stated in this case, through the testimony of its President, that Grain Belt Express and its parent company, Clean Line, do not intend or plan to request cost recovery for the Project through RTO or any other regional cost allocation processes. GBX Ex. 1.0 at 14; *see also* GBX Ex. 11.0 at 69-70. Grain Belt Express has not proposed any circumstances in which it would seek to recover the costs of the Project through RTO or other regional cost allocation processes (assuming there were such a process). All of the circumstances described by MEZ in which Grain Belt Express could seek cost allocation were based on hypothetical scenarios posed by its counsel in cross-examination, not on proposals by Grain Belt Express.

Indeed, when asked if Grain Belt Express would seek to recover costs through RTO cost allocation if the Project were losing money, Mr. Skelly stated “It’s not our plan” (Tr. 217) and “I think that’s not a good rationale. If we built the merchant project and our investors are bearing the risk, I do not think that going back to the Commission and pleading poverty is a good rationale.” Tr. 218. In fact, he categorically stated:

Here’s what I’ll commit to: We will not go to the Commission and say “We want cost allocation because and only because we’re losing money.” We will not go to the Commission with that argument, yes. (Tr. 218)

Mr. Skelly also testified that the investors would bear both the risk of the costs of the Project going over budget and the operational risks of the Project. Tr. 206, 207. He also made it clear that in any situation in which regional cost allocation might be requested, the cost allocation condition would apply and Grain Belt Express would have to request permission from the Commission. Tr. 216.

With respect to MEZ’s contention that Grain Belt Express is not a merchant transmission developer as defined by FERC and is not entitled to negotiated rate authority, Grain Belt Express

has been recognized by FERC as a merchant transmission developer and has been granted negotiated rate authority by FERC.⁵⁰ *Grain Belt Express Clean Line LLC*, 147 FERC ¶61,098 (2014). Grain Belt Express' interconnection request at PJM is being process through PJM's merchant transmission interconnection process. GBX Ex. 2.0 at 28-31. Further, for the reasons described immediately above, MEZ's assertion that "The entire record in this docket shows that GBX's 2013 representation to FERC [that it is assuming all market risk associated with the development and construction of the Project] is flatly untrue now" (MEZ IB at 18) is baseless.⁵¹ Since Grain Belt Express continues to be a merchant transmission provider, it is not obligated to participate in the RTO regional transmission planning processes (and, as previously noted, there is no RTO process in which it can participate. GBX Ex. 11.0 at 67; Tr. 280.).

MEZ's argument that the Commission lacks jurisdiction to accept the cost allocation condition (MEZ IB at 19-20) is also erroneous. The cases MEZ cites in support of this argument all involved the failure or refusal of a state regulatory body to include, in a utility's retail rates, costs that were based on rates established by FERC for services that the utility purchased, which is not the situation presented by the cost allocation condition.⁵² Under the cost allocation condition, Grain Belt Express would be seeking this Commission's permission to recover some or all of its costs through an RTO cost allocation process (should such a process for doing so be created). The cost allocation condition will be a requirement or condition of Grain Belt Express' CPCN, issued by this Commission authorizing Grain Belt Express to construct the Project in

⁵⁰ Any affected party that contends Grain Belt Express is violating the conditions on which its negotiated rate authority is based would be entitled to file a complaint against Grain Belt Express at FERC.

⁵¹ MEZ's assertion that if Grain Belt Express lost its negotiated rate authority, "the entire business model on which its Application to this Commission for a CPCN is premised collapses" (MEZ IB at 18), is also wrong. If Grain Belt Express were to lose negotiated rate authority, it would have to charge tariffed rates, but this would not change its business model, which would still be, in simplified form: (1) obtain regulatory and other approvals for the Project, (2) sign customers to long-term transmission service agreements (based on tariffed rates, not negotiated rates), (3) raise debt and equity to finance construction, secured by the transmission service agreements, and (4) construct the Project and place it into operation.

⁵² *FPC v. Southern California Edison Co.*, 376 U.S. 205 (1964); *Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953 (1986); *Narragansett Electric Co. v. Burke*, 381 A.2d 1358 (R.I. 1977).

Illinois. The extent of the FERC's jurisdiction over interstate transmission does not extend to permission to build, site and operate transmission lines in a state; that authority remains with the states. As the FERC stated in its Order No. 1000:

We acknowledge that there is longstanding state authority over certain matters that are relevant to transmission planning and expansion, such as matters relevant to siting, permitting, and construction. However, nothing in this Final Rule involves an exercise in siting, permitting and construction authority In establishing these reforms, the Commission is simply requiring that certain processes be instituted. This in no way involves an exercise of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning or authority over such transmission facilities. (*Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, Docket No. RM10-23-000 (July 21, 2011), at P107.)

Further, the Commission, if necessary, can enforce Grain Belt Express' compliance (or penalize its non-compliance) with the cost allocation condition by initiating proceedings pursuant to §10-113 of the Act (220 ILCS 5/10-113) to rescind the CPCN, or by imposing other sanctions or penalties on Grain Belt Express, as permitted by the Act, for violation of a Commission order. 220 ILCS 5/4-202, 4-203.

In any event, the underlying concern that MEZ is addressing in her argument at pages 15-21 is the possibility that (1) Grain Belt Express will obtain a CPCN to construct the Project on the basis that it is a merchant transmission project and will not recover its costs from retail ratepayers, without either an RTO or this Commission having determined that the Project is needed for reliability or economically beneficial and that the benefits it provides exceed its costs to customers;⁵³ but then (2) Grain Belt Express is subsequently allowed to recover its costs through an RTO cost allocation process, again without an RTO or this Commission having determined that the benefits of the Project outweigh its costs to customers. However, this scenario really can't happen, for two reasons. First, if Grain Belt Express were to initiate a new

⁵³ However, to issue a CPCN for the Project, this Commission must find that the Project meets either the "necessary to provide adequate, reliable, and efficient service" criterion or the "will promote the development of an effectively competitive electricity market" criterion, as well as find that the Project will promote the public convenience and necessity.

proceeding at the Commission to seek permission to recover costs from Illinois retail ratepayers through RTO regional cost allocation, as required by the cost allocation condition, the Commission will determine if the benefits the Project provides for Illinois customers outweigh the costs Grain Belt Express seeks to recover from the customers. GBX Ex. 1.0 at 15 (“Under this requirement, should Grain Belt Express decide to seek cost recovery through MISO and/or PJM, Grain Belt Express would have to return to the Commission in a future proceeding, and prove that the Project’s benefits outweigh the costs to ratepayers”); GBX Ex. 11.0 at 69. Second, at the RTO level, before the RTO approved including costs of the Project in the costs recovered through the RTO transmission tariff, it would also make a determination that the transmission line is needed for reliability or economic purposes and that the benefits of the transmission line exceed its costs to customers – which is what the RTOs do in their regional planning processes in any event. Thus, there would in fact need to be two separate determinations by two separate authorities that the benefits of the Grain Belt Express Project exceed the costs that are to be recovered from Illinois ratepayers through the RTO transmission tariff, before GBX would be allowed to recovery any costs through RTO regional cost allocation..

C. Section 8-406.1(f)(2) – Capability to Efficiently Manage and Supervise the Construction Process

1. The Record Shows that Grain Belt Express is Capable of Efficiently Managing and Supervising the Construction of the Project

IAA, LACI, CCPO, and Staff assert that Grain Belt Express has not demonstrated it is capable of efficiently managing and supervising the construction of the Project.⁵⁴ IAA IB at 34; LACI IB at 34; Staff IB at 20. These assertions must be rejected. As shown in Grain Belt

⁵⁴ IAA incorrectly asserts that “GBX has presented no evidence that is capable of efficiently managing and supervising the construction of the Project.” IAA IB at 35. To the contrary, Grain Belt Express has presented ample evidence to demonstrate it is capable of efficiently managing and supervising the construction of the Project. Further, this is essentially the same evidence that the Commission relied upon in finding that Rock Island (Grain Belt’s sister company) is capable of managing the construction of the Rock Island project. *See* GBX IB §IV.C, and the Order in Docket 12-0560 at 120-125 (summarizing Rock Island’s evidence on this topic).

Express' Initial Brief, Grain Belt Express has demonstrated that it is capable of efficiently managing and supervising the construction process for the Project because (i) Clean Line and Grain Belt Express have a plan in place to establish an effective construction management organization and are implementing that plan; (ii) Grain Belt Express will engage experienced contractors to carry out the tasks associated with constructing the Project and placing it into operation; (iii) Grain Belt Express will enter into contracts with its contractors that will provide for effective project controls and oversight mechanisms from the project owner's perspective; and (iv) members of Clean Line's management team and one of Clean Line's principal investors, National Grid, have extensive experience in developing construction management organizations and overseeing construction and completion of large projects in the electric utility industry. GBX Ex. 1.0 at 36-37; GBX IB at 86-87. Based on the record, the Commission should find that Grain Belt Express has addressed all the issues raised by intervenors and Staff and has demonstrated that it meets this criterion of §8-406.1(f)(2).

2. The Management Teams of Grain Belt Express and Clean Line Have Sufficient Prior Relevant Experience to Manage and Supervise the Construction of the Project

IAA and Staff assert that Grain Belt Express may not be able to efficiently manage and supervise the construction of the Project because neither Grain Belt Express, nor its parent company, Clean Line, as individual entities, has ever built a transmission line. IAA IB at 35; Staff IB at 20. CCPO also asserts that Grain Belt Express is a "new company that has never constructed any type of transmission line" and that the Commission has no track record to rely upon as to Grain Belt Express's ability to efficiently manage and supervise the construction of the Project.⁵⁵ CCPO IB at 12. However, rather than simply basing its determination under this statutory criterion on the fact that neither Grain Belt Express nor Clean Line, as entities, has ever

⁵⁵ CCPO also asserts that since Grain Belt Express is not a public utility, the Commission has no track record to rely upon as to Grain Belt Express's ability to efficiently manage and supervise the construction process. CCPO IB a 12. The fact that Grain Belt Express is or is not a public utility has no bearing on its ability to manage and supervise the construction of the Project.

constructed a transmission line, the Commission should look at the factors bearing on construction management capability listed at this outset of this §IV.C, including the construction management organization that has been designed, the qualifications of the contractors to be used, the contract terms, and the prior relevant experience of members of Grain Belt Express' and Clean Line's management teams. Further, the Staff and intervenor argument ignores that members of Clean Line's management team and National Grid (a principal investor in Clean Line) have considerable experience with organizing construction management teams and overseeing the construction of large electric industry projects, including transmission lines. Members of the management of Bluescape Resources, Clean Line's newest investor, also have experience with transmission. GBX Ex. 1.0 at 52-54; GBX Ex. 1.2; GBX Ex. 1.4; GBX Ex. 10.0 at 4; Tr. 356, 641, 647; GBX IB at 93-94.

For example, Jayshree Desai, Clean Line's Chief Operating Officer, and Michael Skelly, President and Chief Executive Officer of Clean Line and President of Grain Belt Express, built Horizon Wind Energy (now EDP Renewables North America LLC) into the third largest wind power company in the U.S., and in doing so, they were responsible for hiring personnel to build the company's construction, procurement, operations and asset management departments. At the height of Horizon Wind Energy's construction activities, Mr. Skelly and Ms. Desai managed capital expenditures of over \$3 million per day and managed over \$2 billion worth of contracts with suppliers, manufacturers and balance of plant contractors. GBX Ex. 1.0 at 53. Dr. Galli, EVP of Transmission and Technical Services for Clean Line, while Director of Transmission Development at NextEra Energy Resources, was responsible for routing, siting and engineering for approximately 330 miles of new transmission lines, was responsible for vetting and awarding contracts to contractors, and participated in planning and project management for a 229-mile transmission line. GBX Ex. 1.4 at 1; GBX IB at 93-94.

National Grid, which is owned by one of the largest investor-owned utility companies

and largest owners and operators of electric transmission facilities in the world, was a 40% owner of Clean Line at the time of Grain Belt Express' application and therefore has a strong interest in Grain Belt Express's effective management of the construction of the Project. GBX Ex. 1.0 at 11, 54; GBX Ex. 10.0 at 6, 7. The Commission should consider that National Grid, an experienced developer, builder and operator of transmission facilities, would not have invested \$55.7 million of at-risk capital in Clean Line – which it can only recover and earn a return on if Clean Line's projects are successfully constructed and brought into operation – if it did not have confidence that Clean Line and its subsidiaries will be able to efficiently manage the construction of their transmission line projects and bring them to completion. GBX Ex. 10.0 at 6. Further, in managing the construction of the Project, Grain Belt Express will be able to draw on the relevant and extensive prior transmission line and construction management experience of National Grid. GBX Ex. 1.0 at 34-35, 54. National Grid has committed to making its engineering, procurement, licensing, construction and project management skills and resources available to Clean Line and Grain Belt Express. GBX Ex. 1.0 at 34; GBX Ex. 10.0 at 12. Additionally, members of the management of Clean Line's most recent new investor, Bluescape Resources, have experience in building transmission lines. Tr. 356, 641, 647; GBX IB at 94.

Nor is it true, as IAA asserts, that the Project will be managed by “inexperienced employees” with “little relevant experience.”⁵⁶ IAA IB at 35, 36. As described above, Mr. Skelly provided extensive evidence on the relevant experience of Clean Line's management team. GBX Ex. 1.0 at 52-53; GBX Ex. 1.2; GBX Ex. 1.4. Mr. Skelly further explained that in addition to finding people who have experience working on transmission line projects, it is important to find people with a “with a wide range of skills,” including people who understand the local environment, people who can work with local authorities to obtain necessary permits,

⁵⁶ IAA, relying on GBX Ex.1.4, incorrectly asserts that “the company experience of all [Clean Line] employees consists of prior employment by companies that have collectively built” a total of 742.6 miles of transmission lines. IAA IB at 34. GBX Ex. 1.4 sets forth transmission line experience of only certain senior members of Clean Line's management team, not all of Clean Line's employees. Tr. 355-356.

and people who have technical talents and experience is developing, constructing and operating similar facilities. GBX Ex. 1.0 at 32-33. Accordingly, in addition to prior transmission line projects, the Commission should consider the totality of the extensive, prior experience of the key members of Clean Line's management team (as set forth in GBX Ex. 1.2) as relevant to the management of the construction of the Project.

IAA wants to attach some significance to the fact that Messrs. Begley and Wallack, two members of the Clean Line board of directors, have no prior transmission line experience. IAA IB at 35. IAA ignores, however, that the Clean Line board of directors includes two directors from National Grid and two directors from Bluescape Resources, and that both National Grid and members of Bluescape Resources' management have substantial experience in electric transmission. In addition, Mr. Skelly, the seventh director, has substantial generation and transmission project management experience. GBX Ex. 1.0 at 11, 53, 54; GBX Ex. 10.0 at 7; Tr. 257, 258, 356, 641, 647; GBX IB at 93, 94. Accordingly, the Clean Line board can provide sufficient oversight of the construction management activities, from a board of directors perspective. IAA further asserts, in the same paragraph, that the Clean Line board members have no right to control the "day-to-day" management of Clean Line or its subsidiaries. IAA IB at 35. IAA fails to mention that the testimony it cites to in support of this assertion states in the very next sentence that National Grid "regularly advise[s]" Clean Line and that Clean Line "regularly ask[s]" for National Grid's advice. Tr. 966. In fact, as Mr. Blazewicz of National Grid as well as Mr. Skelly testified, National Grid has committed to making its engineering, procurement, licensing, construction and project management skills and resources available to Clean Line and Grain Belt Express. GBX Ex. 1.0 at 34-35; GBX Ex. 10.0 at 7, 12; GBX IB at 94.

Lastly, Staff and the intervenors continue to ignore that in addition to supervising the construction of the Project through its own construction management employees, Grain Belt Express will also retain an experienced firm to act as the Owner's Engineer ("OE") to

supplement and support Grain Belt Express's management of construction of the Project. An OE is a third-party entity, experienced in the engineering and construction of large-scale infrastructure projects, which the owner retains to assist it in project management activities and overseeing the activities of other project contractors, including the EPC contractors, thereby supplementing the experience and expertise of the owner's internal team. POWER Engineers, Inc. has been selected as the OE for the Grain Belt Express Project in Illinois. GBX Ex. 1.0 at 44; GBX IB at 89-90.

3. Grain Belt Express Will Reasonably Staff its Construction Management Team

IAA asserts that Grain Belt Express' management team may not be sufficient to manage the construction of the Project because Grain Belt Express will have an "insufficient number of employees" with "too many concurrent work obligations" because these employees will be managing up to five different transmission line projects around the country. IAA IB at 34, 35.⁵⁷ To be clear, the construction management organization presented on Grain Belt Express Ex. 1.3 is to manage construction of the Grain Belt Express Project, not to manage construction of the projects of Clean Line's other subsidiaries. Indeed, Mr. Skelly testified that except for the EVP of Transmission and Technical Services, the positions listed in the Grain Belt Express Construction Management Organization (set forth in GBX Ex. 1.3) will be "dedicated exclusively" to the Grain Belt Express Project. Tr. 278.

Lastly, as set forth in Grain Belt Express' proposed financing condition, Grain Belt Express will not commence construction of the Project unless and until there is sufficient construction financing in place for the entire cost of the Project. Accordingly, to eliminate any concerns in this regard, prior to commencing construction, Grain Belt Express will have

⁵⁷ CCPO similarly suggests that Grain Belt Express may not be able to efficiently manage the construction of the Project if this Project and the four other projects in Clean Line's portfolio proceed at the same time. CCPO IB at 13. LACI also argues that "senior management of Clean, including key senior officers Mr. Skelly, Dr. Galli, and Mr. Berry are responsible for all five projects." LACI IB at 34.

adequate financial resources in place to have a fully staffed construction management organization that is exclusively dedicated and assigned to the Project. Also, the proposed financing condition addresses IAA's concern that Grain Belt Express must show it "can run an effective and financially viable business" so as to demonstrate that Grain Belt Express meets this criterion of §8-406.1(f)(2). IAA IB at 36. By satisfying the requirements of the financing condition, Grain Belt Express will have demonstrated that it is a viable business because it has signed up a sufficient number of transmission customers and secured \$2.75 billion in equity and debt financing.

4. Construction of HVDC Transmission Facilities is Not Unusual and It Employs Similar Construction Methods to AC Transmission Line Construction

IAA, LACI and Staff assert that they are concerned about Grain Belt Express' ability to manage the construction of the Project because HVDC technology is "uncommon" and "extremely rare." IAA IB at 35; LACI IB at 34; Staff IB at 21. The assertion that HVDC lines are "rare" or "uncommon" is unfounded. As set forth in Grain Belt Express' Initial Brief, HVDC technology has been used and proven for several decades. In North America, there are over 30 HVDC installations, dating back as far as 1968. GBX Ex. 2.0 at 10. HVDC applications are commonplace worldwide and are continuing to increase in applications similar to what Grain Belt Express plans to use for the Project (and Clean Line plans to use for its three other DC transmission projects). There are also significant HVDC transmission applications in India, China, Australia, New Zealand, Brazil, Japan and Europe. *Id.* at 10; GBX IB at 127.

Moreover, as Mr. Jones of Quanta Services, a leading construction contractor in the energy industry, testified, the structural design and construction processes and practices applicable to HVDC and high voltage AC transmission lines ("HVAC") are similar. For example, National Electrical Safety Code design criteria must be met for both types of transmission lines, and there must be an adherence to local and geological conditions and

construction loading requirements. Further, the means and methods of construction are the same for both HVDC and HVAC transmission lines. GBX Ex. 9.0 at 1; GBX Ex. 9.4 at 9; GBX IB at n. 90. Accordingly, there is no reason to conclude that the construction of the Project will be more difficult to manage simply because it will use HVDC technology.

In asserting that Grain Belt Express is not capable of managing the construction of the Project, Staff, IAA, and CCPO also stress that the project is “large scale” because it is approximately 780 miles long. Staff IB at 21; IAA IB at 34; CCPO IB at 12. However, the overall length of the Project does not in and of itself establish that the Project will be materially more challenging to manage and supervise than a shorter transmission line project. In fact, as Mr. Jones testified, Quanta expects that it will generally repeat the same construction process for each of the typical landowner’s properties that the Project crosses. GBX Ex. 9.4 at 7-8. A longer transmission line project may require the transmission line contractor to repeat the same construction process and activities on a greater number of parcels, but doing so does not render such projects more challenging to construct.

5. This Commission and Other Commissions Have Found that Grain Belt Express and Other Clean Line Subsidiaries Possess the Necessary Managerial and Technical Competence to Construct their HVDC Transmission Projects.

As set forth in detail in Grain Belt Express’s Initial Brief, this Commission, as well as several other state commissions and organizations, have found that Clean Line project companies have the necessary managerial and technical competence to construct their transmission lines. GBX IB at 95-97. In fact, the evidence that Grain Belt Express has presented in this proceeding to demonstrate that it is capable of efficiently managing and supervising the construction of the Project is essentially the same evidence that its sister company Rock Island presented on this topic in Docket 12-0560. *See* the Order in Docket 12-0560 at 120-125 (summarizing Rock Island’s evidence on this topic). Accordingly, as set forth in Grain Belt Express’ Initial Brief and this Reply Brief, Grain Belt Express has demonstrated that is capable of efficiently managing

and supervising the construction of the Project.

D. Section 8-406.1(f)(3) – Capability to Finance the Construction of the Project without Significant Adverse Financial Consequences

Grain Belt Express submits that the arguments presented by the intervenors on the §8-406.1(f)(3) criterion are essentially the same as the arguments presented by opponent on this issue in the Rock Island CPCN case, Docket 12-0560: that Grain Belt Express is a “shell” company; that its parent company Clean Line currently has only a fraction of the capital required for construction of the Project; that Grain Belt Express has no customers signed to contracts; that the project financing method is untested; and that the proposed financing condition is insufficient. *See, e.g.*, IAA IB at 36-40.

Likewise, Grain Belt Express has presented very similar evidence to the evidence its sister company presented in Docket 12-0560 on the identical criterion in §8-406(b): that Clean Line continues to secure sufficient new capital to finance development activities for the Project; that the project finance approach is well-established in the financial markets and has been used to raise hundreds of millions of dollars to finance the construction of transmission lines, generating plants, pipelines, and other infrastructure projects; that for the project finance approach, investors, lenders and credit rating agencies strongly prefer that the project company be organized as a single purpose entity with no other business activities; that many significant investors and lenders have participated in financing new transmission projects through the project finance method and continue to be interested in doing so; that transmission customers will not enter into binding, long term transmission contracts until the Project obtains its primary regulatory approvals authorizing the line to be built; that Clean Line’s management is experienced in raising significant amounts of capital to finance the construction of energy industry projects, and has the expertise to execute the financing plan; and that the proposed financing requirement will ensure that Grain Belt Express will secure sufficient construction financing to cover the entire construction cost of the Project before it begins to construct

transmission facilities, and that it will protect transmission customers, retail ratepayers, landowners and the Project's investors from significant adverse financial consequences. *See* GBX IB at 97-105; GBX Ex. 11.0 at 70-89. All of this evidence is similar to the evidence on which the Commission, in the Rock Island CPCN case, found this criterion was satisfied. *See* Order in Docket 12-0560 at 131-137. A notable distinction is that based on its January 2014 Request for Information and its February 2014 open solicitation for transmission service requests, Grain Belt Express is considerably farther along in identifying and securing transmission service customers than was Rock Island. GBX IB at 44-46.

CCPO attempts to make an issue of Clean Line's cash on hand on May 31, 2015. CCPO IB at 13. CCPO's argument does not take into account that a term sheet with Bluescape Resources for its investment had already been negotiated and that in June 2015, Bluescape Resources invested \$12 million of new capital in Clean Line. Tr. 1073-1074. Nor does it take into account how much cash on hand is needed on a daily basis to meet the obligations of the business. Both CCPO and IAA argue that Clean Line does not have any bank loans or lines of credit. CCPO IB at 13; IAA IB at 36. Apparently, CCPO and IAA think this is bad, but in fact it is good: Clean Line has been able to fund the development activities for its subsidiaries' projects entirely through equity investments from its owners, without having to incur debt.⁵⁸

LACI argues that Grain Belt Express has not identified another transmission line project exactly like this Project that has raised its construction financing through project financing. LACI IB at 35. Grain Belt Express is not aware of any other transmission projects exactly like this Project, *i.e.*, a transmission line owned by an independent transmission company that will pass through four states and three RTOs. However, GBX Exhibit 11.11 shows a total of 19 precedent project financing transactions for transmission projects, raising a total of over

⁵⁸ As of the date the Application was filed, Clean Line's owners had invested a total of \$125,000,000 of equity capital in the company, and Grain Belt Express had no debt. GBX Ex. 11.0 at 72. Subsequently, Bluescape Resources has committed to invest an additional \$17,000,000 in Clean Line. GBX Ex. 11.13 at 24.

\$7,270,400,000.⁵⁹ As shown on the exhibit, eight of the transactions were for transmission projects using the “capacity sales” revenue model, like Grain Belt Express. LACI states that the CREZ transmission projects in Texas were “rate regulated” (LACI IB at 35; *see* GBX Ex. 11.11); however, many of the CREZ transmission projects are similar to the Gain Belt Express Project in that they were developed by independent transmission companies, not by incumbent utilities.⁶⁰ GBX Ex. 11.0 at 77-78. During 2011, Cross Texas Transmission, Wind Energy Transmission Texas, and Lone Star Transmission raised an aggregate amount of approximately \$1.1 billion of debt capital for their CREZ transmission projects. *Id.* at 78. More generally, the project finance approach has also been widely used to raise construction financing for new independent power generation projects (which are typically financed based on power purchase or off-take agreements) and new pipeline projects; for example, the U.S. wind power industry has raised tens of billions of dollars of project-level debt and equity over the past five years. GBX Ex. 11.0 at 79.

IAA attempts to characterize, negatively, Clean Line’s financial management approach as “raise money, spend money, run out of money, raise more money.” *See* IAA IB at 36-37. In fact, the history recounted by IAA demonstrates that Clean Line has been successful, over a period of years, in continuing to raise new equity capital, from both existing and new investors, as the needs of its projects required. After obtaining initial capital from the first two investors, ZAM Ventures and Michael Zilkha, Clean Line obtained an investment commitment in November 2012 from a new investor, National Grid, for \$40 million of equity capital. In 2014, National Grid committed to invest an additional \$15 million, and ZAM Ventures made additional

⁵⁹ The amount of capital raised in two of the 19 project financings is not publicly available. GBX Ex. 11.11.

⁶⁰ The companies developing the CREZ transmission projects included Electric Transmission Texas, Lone Star Transmission, Wind Energy Transmission Texas, and Cross Texas Transmission, all of which were new, independent entities established for the purpose of developing CREZ transmission projects. GBX Ex. 11.0 at 78.

equity investments as well. (As of the date of the Application, ZAM Ventures had invested a total of \$65.5 million in Clean Line and National Grid has invested a total of \$55.7 million. GBX Ex. 11.0 at 71.) Most recently, Clean Line has secured additional investment from another new investor, Bluescape Resources. Bluescape Resources has committed to invest \$17 million in Clean Line and has an option to invest an additional \$33 million. GBX Ex.11.13 at 24.

At the time the Rock Island CPCN case, Docket 12-0560, was being litigated and briefed, in December 2013 and early 2014, opponents were making similar arguments to the effect that “Clean Line will soon run out of money.” *See* Order in Docket 12-0560 at 145-148. Since that time, however, Clean Line has continued to successfully raise additional equity capital, including \$15 million from National Grid, \$17 million to \$50 million from Bluescape Resources, and additional amounts from ZAM Ventures, to continue its operations and development activities on its projects.

The intervenors are simply unable to come to grips with the fact that there is no reason for Clean Line to obtain additional investment capital significantly in advance of when it is needed, and there is certainly no need to secure the amounts of capital needed to construct a project years in advance of the start of construction. Such an approach would unnecessarily tie up investment capital; further, lenders typically charge costly commitment fees for advance loan commitments. Commitments for financing are typically made by lenders and investors much closer to the time that construction is scheduled to commence, and in any event such commitments are very seldom made before the project obtains its major required regulatory approvals. GBX Ex. 11.0 at 81-82. Securing commitments for financing to fund the full construction cost of the Project, in advance of obtaining the major regulatory approvals (such as the CPCN requested in this case), is not the practice in the financial markets, and is not necessary to demonstrate that Grain Belt Express is capable of financing the construction of the Project without serious adverse financial consequences.

E. Proposed Conditions Relating to Grant of the CPCN

1. Response to CCPO

In its Initial Brief, CCPO does not discuss any of the conditions or requirements proposed by Grain Belt Express (cost allocation condition, financing condition, interconnection agreement requirement, and conditions relating to protection and restoration of landowner properties from potential impacts of construction – *see* GBX IB at 105-110). However, CCPO proposes several other conditions or requirements. CCPO IB at 15-17.

CCPO's first proposed condition appears to be premised on the assumption that under §8-406.1(i), the Commission must "order" Grain Belt Express to construct the Project pursuant to §8-503. CCPO IB at 15-16. This is not accurate. Section 8-406.1(i) requires a CPCN order for a new high voltage electric service line under §8-406.1 to also include an order "authorizing or directing" the construction of the transmission line and related facilities. In this case, Grain Belt Express has only requested an order pursuant to §8-503 authorizing the construction of the Project. Application ¶87. Therefore, CCPO's statement that "GBX will be ordered to build the Grain Belt Express Project without a showing of the ability to finance the proposed construction" (CCPO IB at 16) is incorrect. Further, Grain Belt Express understands that the conditions and requirements imposed on its CPCN are also applicable to the §8-503 authorization. GBX Ex. 1.0 at 58-59.

CCPO proposes that Grain Belt Express be required to prove it has secured financing for the proposed construction before attempting to acquire easements. CCPO IB at 15-16. CCPO does not give any justification for this proposed requirement, other than the supposition that Grain Belt Express might acquire easements but not have sufficient funds to complete the Project. *Id.* CCPO's proposed requirement would materially modify the financing condition that the Commission adopted in Docket 12-0560 for Rock Island, and that Grain Belt Express and Staff recommend be adopted here, but CCPO did not propose this modification through testimony in

this case. Most importantly, CCPO's proposed requirement is not needed to protect landowners. As CCPO itself points out, Grain Belt Express' President, Mr. Skelly, committed in testimony that if Grain Belt Express were to acquire easements but then not go forward to construct the Project, Grain Belt Express will release the easements. *Id.*, citing Tr. 364. Therefore, consistent with Mr. Skelly's testimony, if the Project is terminated, all easements that have been acquired will be released.

CCPO's third proposed requirement is that "the easement should be restricted to GBX." CCPO IB at 16. As discussed in §V.E, below, Grain Belt Express' form of Easement Agreement limits the use of the easement to an electric transmission line. Therefore, the easement cannot be sold or subleased to other entities for the installation of other types of facilities or other uses. However, the easement should not be "restricted to GBX," because scenarios can be envisioned, over the long life of the transmission line, in which it could be sold to a new owner.⁶¹ So long as the Easement Agreement precludes any uses of the easement other than the electric transmission line, the easement grantor is adequately protected.

CCPO's final proposed requirement is that Grain Belt Express should be required to post a bond or other financial security to provide financing for costs of the removal of the line when its operational life is concluded, and that it should be required to increase the amount of the bond or security annually. CCPO IB at 17. Like CCPO's other proposed requirements, this proposal was not presented in testimony so it could be discussed on the record. Grain Belt Express opposes this proposal. First, as Mr. Skelly and Mr. Lawlor testified, Grain Belt Express is unaware of any electric transmission line ever being retired and dismantled. Tr. 172-173, 288. Mr. Skelly explained that transmission lines don't post security because transmission lines don't get taken out of service. Tr. 238. CCPO might argue that this is because virtually all

⁶¹ The Commission would need to approve such a transaction, and, in order to operate the installed transmission facilities, the new owner would need to obtain its own CPCN from the Commission. In either proceeding, the Commission could consider and impose such conditions and requirements on the transaction and/or the new owner's CPCN as it deemed appropriate.

transmission lines constructed historically have been constructed by incumbent utilities and similar providers. However, Grain Belt Express submits that transmission lines remain operational not based on who owns them, but because they remain valuable, useful assets. As necessary over time, individual components of the line may be replaced, but the transmission line remains a useful, functioning asset to transport and deliver power from generators to receiving points. Further, in the unlikely event that Grain Belt Express were to encounter financial difficulties at some point in the operating life of the Project, and have to undergo a bankruptcy or financial restructuring, the transmission line would remain a valuable and useful asset, which could be sold to a new owner who would continue to operate it; or it could continue to be operated by Grain Belt Express, on a profitable basis, after financial restructuring is completed.

Moreover, Commissioner Staff financial witness Janis Freetly, when asked if it would be prudent to require Grain Belt Express to post a bond for decommissioning the line, stated that she was not familiar with any decommissioning of a transmission line, and therefore did not think it a likely scenario that would need to be guarded against or financed for. Tr. 338-339.

A similar proposal was made, in intervenor testimony, in the Rock Island CPCN case, Docket 12-0560. *See* Order in Docket 12-0560 at 99. The Commission did not adopt the proposal. Further, as described in the Docket 12-0560 order, Rock Island noted in responsive testimony that Clean Line had found, in a study done for another of its projects, that in the event of the need to dismantle the facilities, the proceeds that could be obtained from the sale of scrap metal and parts and the sale of reusable equipment (including converter station equipment and components) exceeded the estimated cost of dismantlement and restoration of the line. Order in Docket 12-0560 at 63. Grain Belt Express believes it is a valid consideration, in evaluating CCPO's proposed requirement, that in the unlikely event the transmission line needed to be dismantled, the sale of scrap metal and parts and reusable equipment and components would yield significant revenues that could be used to cover the costs of dismantlement of the

transmission line and restoration of the land.

2. Response to IAA

At pages 40-41 of its Initial Brief, IAA appears to be arguing that Grain Belt Express should be required to establish compliance with the conditions Grain Belt Express has proposed before proceeding with the Project. However, that is already an express requirement of the financing requirement, *i.e.*, that Grain Belt Express cannot begin to install transmission facilities on easement properties until it has satisfied the financing requirement, including documenting compliance through the required compliance filing with the Commission. This is also essentially a requirement of the interconnection agreement requirement, *i.e.*, Grain Belt Express cannot energize the Project until it complies with the interconnection requirements of, and signs all necessary interconnection agreements with, SPP, MISO and PJM. GBX IB §IV.E.3. The cost allocation condition is intended to be in effect and applicable throughout the development, construction and operation of the Project, so requiring Grain Belt Express to establish compliance with this condition before beginning to construct the Project would make no sense. Similarly, the condition relating to protection and restoration of landowner properties from potential impacts of construction establishes processes and procedures that Grain Belt Express and its contractors are to follow during construction of the Project (and after, to the extent any remediation actions are required).

3. Response to LACI

LACI argues the financing condition may not legally substitute for the statutory requirement that Grain Belt Express show it is capable of financing the proposed construction. LACI IB at 35-36. However, Grain Belt Express has shown it is capable of financing construction of the Project, based on its financing plan, the experience and expertise of its management team, the commercial attractiveness of the Project, the history of transmission projects and other energy industry infrastructure projects being successfully financed using the

project finance approach, the interest among investors in transmission projects, and other factors discussed in §IV.D of Grain Belt Express' Initial Brief. The financing condition will protect transmission customers, investors, landowners and retail ratepayers from significant adverse financial consequences. Further, in the Rock Island case, the Commission was not persuaded by arguments similar to LACI's argument here. *See* Order in Docket 12-0560 at 150-151.

With respect to the cost allocation condition, LACI also makes essentially the same jurisdictional argument as MEZ, contending that the Commission may have no control over the imposition of Project costs to Illinois retail ratepayers. LACI IB at 36-37. Grain Belt Express disagrees with LACI's analysis, for the reasons set forth in the response to MEZ's similar argument in §IV.B.3.d, above.

F. Other Considerations Under §8-406.1

1. Response to CCPO

CCPO's arguments set forth under this heading of the outline repeat arguments made in §III and IV.A through D relating to Grain Belt Express' compliance with the §8-406.1 criteria. CCPO IB at 17-18. CCPO's point here is, essentially, that an applicant that is not a public utility cannot satisfy the requirements of §8-406.1(f)(1), such as the "ability to manage construction" criterion. Grain Belt Express disagrees. The applicant's ability to satisfy this and the other §8-406.1(f) criteria should be based on the facts presented, such as the experience of its management team and contractors, its financing plan, customer interest in its proposed project, whether the project will promote the development of an effectively competitive electricity market and the other benefits it will provide to the public, and so forth – not simply on whether or not the applicant is an existing public utility.

2. Response to IAA

IAA argues in this section that the Commission should not grant a CPCN to Grain Belt Express because its sister company, Rock Island, having obtained a CPCN in Docket 12-0560, is

now encountering difficulties with the Iowa regulatory process for approval of that project. IAA IB at 41-42. In a nutshell, the issue Rock Island has encountered in Iowa is this: Rock Island filed a petition with the Iowa Utilities Board (“IUB”) for the necessary authority for the Rock Island project in Iowa (referred to as a “franchise petition”). Tr. 357. Rock Island sought to have the IUB conduct a proceeding to determine the need for the Rock Island project (*i.e.*, a similar proceeding and determination to a CPCN case under §8-406 or §8-406.1 before this Commission) before requiring Rock Island to go through the right-of-way acquisition process for the project in Iowa. (This is referred to as “bifurcation.” Tr. 357.) However, the IUB decided that it would not follow this approach, but rather would require Rock Island to go through the right-of-way acquisition process before the IUB would proceed with the “need” determination.⁶² Tr. 240. IAA asserts that “Rock Island had a different understanding of the regulatory process than did the Iowa Utilities Board.” IAA IB at 42. However, Mr. Skelly testified that prior to filing the franchise petition and the request for bifurcation with the IUB, Rock Island had research conducted, consulted with counsel, and evaluated whether bifurcation is permissible and feasible in Iowa. This investigation included obtaining a letter from the general counsel of the IUB stating that bifurcation is feasible. Tr. 357. Therefore, Rock Island believed it was appropriate and feasible to request bifurcation. Tr. 358.

Rock Island is now working to understand the IUB’s specific requirements for the amount of land rights that must be acquired and to determine the appropriate schedule to move the project and the proceeding forward in Iowa.⁶³ While it is working to ascertain the appropriate schedule and the amount of right-of-way acquisition that should occur prior to a “need” determination, Rock Island is continuing to work on other necessary aspects of the project, including completing the RTO interconnection studies and processes, working with

⁶² The Commission can observe that this seems to be the reverse of the process followed in Illinois, where an applicant typically first obtains a CPCN from the Commission for a proposed transmission line, including an approved route, and then proceeds to acquire easements from landowners.

⁶³ Rock Island has already acquired about 15% of the right-of-way for the project in Iowa. Tr. 361-362.

potential customers at both ends of the line, and conducting various environmental and biological studies and surveys along the route. Tr. 359, 926-927. In short, Rock Island is committed to proceeding with the Rock Island project, and there is no basis to criticize its efforts in this regard.

3. Response to LACI

In this section of its Initial Brief, LACI provides a long, academic discussion of eminent domain law, the apparent point of which is to argue that the Grain Belt Express Project does not meet the “public use” requirement that LACI asserts must be met for the taking of private property through condemnation. LACI IB at 37-44. LACI’s arguments are misplaced in numerous respects.

First, this is not an eminent domain case, and so LACI’s argument is premature. Grain Belt Express has not requested eminent domain authority in this proceeding. Application ¶11. In order to obtain eminent domain authority to acquire easements on specific landowner properties, Grain Belt Express will need to file one or more separate proceedings with the Commission pursuant to §8-509 of the Act and obtain rulings authorizing it to utilize eminent domain to acquire easements on those properties. Section 8-509 specifies that eminent domain authority may be granted “where necessary for the construction of” a project that the Commission has approved. In those proceedings, Grain Belt Express will need to demonstrate that it has satisfied the criteria the Commission has established and applied for determining that the use of eminent domain is “necessary for the construction” of the Project.⁶⁴

Second, contrary to LACI’s contention, the granting of a CPCN to construct the Project does not deprive landowners of any property rights. Specifically, a §8-406.1 proceeding neither confers property rights on the applicant nor deprives landowners of their protected property interests. *Adams County Property Owners & Tenant Farmers v. ICC*, 2015 IL App (4th) 130907, §51 (appeal from the order in the Illinois Rivers Project §8-406.1 proceeding, Docket

⁶⁴ See, e.g., *Ameren Illinois Company*, Docket 13-0456 (Sept. 10, 2013), at 3; GBX IB at 158 n. 129.

12-0598; the Appellate Court held that “the underlying proceedings before the Commission neither conferred property rights on ATXI nor deprived landowners of their protected property interest”); *Zurn v. City of Chicago*, 389 Ill. 114, 132 (1989) (“No property or property rights of the landowner are taken, nor are such rights affected by anything which occurs in the hearing before the commission for a certificate of convenience and necessity”); *Illinois Power Co. v. Lynn*, 50 Ill. App. 3d 77, 81 (4th Dist. 1977) (“The hearing [before the Commission] was on the reasonableness of the utility’s *plans* and could not confer property rights” (emphasis in original)). LACI has cited no authority in support of its contention that the grant of a CPCN for the Project will place a “cloud” on landowners’ properties that deprives them of their property rights without due process and compensation. LACI IB at 37. Indeed, the law just cited knocks out the fundamental premise of LACI’s argument at pages 37-44 of its Initial Brief.⁶⁵

Third, landowners whose property is crossed by the route the Commission approves in its order in this docket are not in any imminent danger of an eminent domain proceeding or a condemnation action. Grain Belt Express has not yet started to contact landowners in Illinois to negotiate the acquisition of easements. Tr. 141-142, 169. In §8-509 cases, the Commission typically requires the utility to demonstrate that it has had numerous contacts with landowners, made offers, and engaged in extensive negotiations, as part of determining that the utility has met the criteria the Commission applies in determining whether eminent domain authority is “necessary.” Obviously, engaging in such contacts and negotiations may take a significant amount of time, before Grain Belt Express would be in a position to file any §8-509 applications (assuming any are needed). Moreover, even if it were to request and receive eminent domain authority from the Commission, Grain Belt Express will still have strong incentives not to file

⁶⁵ Further, as stated repeatedly in Grain Belt Express’ Initial Brief and in this Reply Brief, Grain Belt Express will be offering landowners compensation for easements that includes a payment equal to the full fair market value of the fee interest in the easement area, even though Grain Belt is only acquiring an easement, not fee title, and even though the landowner will be able to continue to farm virtually the entirety of the easement area.

condemnation actions, but rather to continue to attempt to acquire the easements through negotiations: condemnation actions are expensive to litigate, take time to litigate to judgment (often 6 to 12 months), and for the latter reason can delay the start or completion of the Project.

Fourth, LACI's contention that the Project does not meet the "public use" requirement for eminent domain that LACI claims is established by various court decisions it cites (LACI IB at 38-42) is incorrect. Mr. Berry presented extensive testimony to show that the Grain Belt Express Project and the service it will provide will be "for public use," and this evidence was not rebutted by any other witness.⁶⁶ GBX Ex. 11.0 at 46-66. Further, the grant of a CPCN to Grain Belt Express for the Project will make Grain Belt Express a public utility as defined in §3-105 of the Act. Moreover, in granting a CPCN for the Project, the Commission will necessarily have found that construction of the Project will promote the public convenience and necessity. §8-406.1(f).

Section 8-509, the eminent domain section, provides that eminent domain authority may be granted "where necessary for the construction" of facilities that have been authorized under §8-406.1 or §8-503. Further, §8-509.5 of the Act (220 ILCS 5/8-509.5) specifies that "Notwithstanding any other provision of this Act, any power granted under this Act to acquire property by condemnation or eminent domain is subject to, and shall be exercised in accordance with, the Eminent Domain Act." Finally, the Eminent Domain Act specifies that:

[I]f the exercise of eminent domain authority is to acquire property for private ownership or control, or both, then the condemning authority must prove by clear and convincing evidence that the acquisition of the property for private ownership or control is (i) primarily for the benefit, use, or enjoyment of the public and (ii) necessary for a public purpose.

* * * * *

Evidence that the Illinois Commerce Commission has granted a certificate or otherwise made a finding of public convenience and necessity for an acquisition of property (or any right or interest in property) for private ownership or control

⁶⁶ Although the specifics of the two projects are different in various respects, Mr. Berry's testimony is essentially the same evidence that Rock Island presented in Docket 12-0560 to show that the Rock Island project and the service it provides will be "for public use," and on the basis of which the Commission found that the Rock Island project satisfied the public use standard. *Rock Island Clean Line LLC*, Docket 12-0560 (Nov. 25, 2014), at 9-17 and 28.

(including, without limitation, an acquisition for which the use of eminent domain is authorized under the Public Utilities Act, the Telephone Company Act, or the Electric Supplier Act) to be used for utility purposes creates a rebuttable presumption that such acquisition of that property (or right or interest in property) is (i) primarily for the benefit, use, or enjoyment of the public and (ii) necessary for a public purpose. (735 ILCS 30/5-5-5(c).)

Thus, the applicable provisions of the Act and the Eminent Domain Act incorporate the “public use” requirement that LACI discusses, and the issuance of a CPCN to the Project will establish a rebuttable presumption that the public use/public purpose requirement is met.⁶⁷ Indeed, with regard to the well-known *Kelo* case⁶⁸ cited by LACI (LACI IB at 41-42), the Illinois Eminent Domain Act was substantially revised *after* the *Kelo* decision, as LACI notes (LACI IB at 42-43) to (among other things) conform the law to the *Kelo* principles, including “requir[ing] a higher standard of proof by a condemning authority if a taking is for private ownership and control.” LACI IB at 42-43. LACI accurately cites §5-5-5(c) of the Eminent Domain Act for this proposition; but as quoted directly above, §5-5-5(c) includes specific provisions for meeting this test in the case of condemnations for projects approved pursuant to the Public Utilities Act.

Grain Belt Express also points out that the *Kelo* case and the Illinois case of *Southwestern Ill. Dev. Auth. v. National City Environmental, L.L.C.*, 199 Ill. 2d 225 (2002), cited by LACI, both involved condemnations by a governmental entity in which the property was to be taken in fee and then transferred to a private entity for a completely different use than the condemnnee’s use of the property (in *Kelo*, it was for the destruction of the condemnnee’s house and the construction of a new commercial facility on the property). In contrast, in this case, Grain Belt Express would be condemning (should that prove to be necessary) solely to acquire an easement, with the landowner retaining fee title to the property and allowed to continuing farming in the easement area. Further, the U.S. and Illinois Constitutions do not prohibit the taking of private

⁶⁷ This is another reason why LACI’s argument in this case is premature: The Eminent Domain Act gives the landowner the right to rebut the presumption that the acquisition of the property for a project authorized under the Public Utilities Act is primarily for the benefit, use or enjoyment of the public and is necessary for a public purpose.

⁶⁸ *Kelo v. City of New London*, 545 U.S. 469 (2005).

property through eminent domain; rather, they prohibit the taking of private property through eminent domain without due process and just compensation. U.S. Constitution, Amendments V and XIV; Illinois Constitution, Art. I, §2 and 15. Grain Belt Express will not be obtaining or taking any easements without just compensation.

LACI's final argument in this section of its Initial Brief is that a decision by the Commission that Grain Belt Express can receive a CPCN pursuant to §8-406.1 would be so arbitrary as to violate the substantive due process rights of the landowners, because Grain Belt Express is not a public utility. LACI IB at 43-44. This argument is simply bootstrapping from LACI's argument that Grain Belt Express was not entitled to file its Application pursuant to §8-406.1. *See* GBX IB §III, and §III of this Reply Brief. Further, LACI cites no authority for the assertion that landowners have "substantive due process rights" that would be violated by issuance of a CPCN.

V. Proposed Route of the Project in Illinois and Land Acquisition

A. Description and Development of the Proposed Route

Grain Belt Express conducted a detailed and comprehensive Route Selection Study to identify the Proposed Route that best minimizes the overall effect of the transmission line on the natural and human environment, avoids circuitous routes and unreasonable costs, and minimizes special design requirements. GBX Ex. 8.2 at 28; GBX Ex. 8.11 at 9; GBX IB at 112. The Routing Team developed Routing Guidelines, Routing Constraints and Routing Opportunities to guide the route selection process, and then using those criteria, moved through iterative phases, beginning with broad geographical areas and narrowing down until the Proposed Route was identified. GBX IB at 112-118. During each phase of the process, the Routing Team received, reviewed and incorporated stakeholder feedback and input. *Id.*

LACI argues that Grain Belt Express' Route Selection Study is flawed and failed to adequately consider landowner impacts. In support of this argument, LACI alleges the following:

(1) Grain Belt Express witnesses Mr. Lawlor and Mr. Gaul have no education or experience in agriculture, so it is not surprising the Route Selection Study impacts landowners; (2) the Mississippi River crossing was developed in conjunction with the “rejected” Missouri project; (3) Grain Belt Express gave little consideration to the Project’s impact on farming operations; (4) the Route Selection Study failed to include stakeholder input regarding agricultural impacts; and (5) the Proposed Route has non-paralleling line siting, which causes increased impacts to landowners. LACI IB at 44-46, 51. Grain Belt Express will address each point in turn.

First, Grain Belt Express witnesses Mr. Lawlor and Mr. Gaul were part of an interdisciplinary routing team that worked in conjunction to develop the Proposed Route. Mr. Lawlor’s responsibilities with Grain Belt Express include overseeing the siting process, regulatory permits and public outreach. He has personal experience in developing wind energy projects (which, clearly, involve potential impacts to agricultural properties) and managing transmission policy in the Midwest region. Mr. Lawlor was involved in siting the Project in all four states, and in this process consulted with numerous organizations, including representatives of agricultural, environmental and conservation organizations. GBX Ex. 7.0 at 1, 12-13. Mr. Gaul has experience in siting and permitting transmission projects, including in other agricultural states such as Kansas and Missouri. GBX Ex. 8.0 at 1-2. However, Mr. Lawlor and Mr. Gaul were not the only individuals involved in the Route Selection Study, but rather were part of a 33-person routing team. GBX Ex. 8.2 at 221-222. Together, the routing team members have experience in transmission route planning and selection; natural resource impact assessment; land use assessment and planning; cultural resource identification and assessment; impact mitigation; and transmission line engineering, design and construction. GBX Ex. 7.0 at 6; GBX 8.2 at 28; GBX IB at 112.

Second, while the Mississippi River crossing point was identified in conjunction with the development of the Missouri route, this does not make the Proposed Route flawed. The Project

route through Kansas and Missouri was determined before the Proposed Route in Illinois, but the selection of the Mississippi River crossing was not determined solely by the Missouri route – Grain Belt Express considered Illinois routing criteria as well. GBX Ex. 8.0 at 6-7; GBX Ex. 8.2 at 65. More importantly, the determinative factor in selecting the Mississippi River crossing point was identifying the location that best addressed specific criteria and concerns, and had the fewest constraints, for crossing the river – the crossing point selected is not simply the point at which the Missouri portion of the route reaches the river. As described in detail in the Route Selection Study, Grain Belt Express considered numerous crossing points, eventually focusing on five potential crossings. GBX Ex. 8.2 at 65-71. The South Saverton river crossing was ultimately selected after the routing team considered engineering requirements, environmental concerns, and existing infrastructure, among other factors, for both Missouri and Illinois. *Id.*; GBX IB at 115-116.

Third, Grain Belt Express considered farming operations as part of the routing criteria developed and used in the Route Selection Study. One of the goals of the Route Selection Study was to develop a Proposed Route that minimized the overall effect of the transmission line on the natural and human environment, which includes minimizing impacts on agricultural land. GBX Ex. 8.2 at 25; GBX IB at 112. Grain Belt Express developed Routing Guidelines to guide the development of alignments with respect to area land uses, sensitive features and considerations of economic reasonableness. GBX Ex. 8.2 at 28; GBX IB at 112. One Routing Guideline was specifically aimed at minimizing impacts on agricultural use, including the operation of irrigation infrastructure. The routing process also focused on Routing Opportunities such as paralleling parcel boundaries and the grid-based section lines of the public land survey system as a way to place the route along logical divisions of land ownership and use, particularly in farming areas. GBX Ex. 8.2 at 32-33; GBX Ex. 8.0 at 5; GBX IB at 112. Grain Belt Express also considered Routing Constraints, which are areas that should be avoided to the extent

feasible. GBX Ex. 8.2 at 31-32; GBX IB at 113. One Routing Constraint considered by the routing team was the presence of irrigation facilities. GBX Ex. 8.2 at 32; GBX IB at 113. The selection of the route segments that comprise the Proposed Route reflect emphasis on following parcel and section boundaries and existing linear infrastructure. GBX Ex. 8.0 at 11-12. Additionally, and as discussed in Grain Belt Express' Initial Brief (at 135-143) and in §V.F below, Grain Belt Express entered into an AIMA with the Illinois Department of Agriculture which establishes processes and procedures to avoid, minimize and mitigate impacts on farming and agricultural operations. Thus, Grain Belt Express considered agricultural impacts throughout the entire planning and development process for the Project and the Proposed Route.

Fourth, Grain Belt Express gathered, considered and incorporated stakeholder input (including comments regarding agricultural concerns) during each phase of the route selection process. LACI cites to a Route Selection Study prepared for the Spoon River Transmission Line on behalf of Ameren Transmission Company (and which is not in the record of this proceeding), for the proposition that Grain Belt Express failed to include similar stakeholder input regarding the importance of agricultural uses. LACI IB at 46. Yet what LACI relies on is just a chart that shows that 12 out of 63 comments received during a mapping exercise referenced agriculture as relevant to the route selection process. ATXI Ex. 8.2, Pt. 2 of 2 at 18, *In re Ameren Transmission Co.*, Docket 14-0514 (filed Aug. 21, 2014). The chart provides no information on how these comments were used. While Grain Belt Express did not provide a breakdown of the number of agricultural-related comments it received, Grain Belt Express explained that it developed the Proposed Route by collecting input from landowners during the Public Meetings, which were attended by over 3,100 persons and necessarily would include comments regarding agricultural operations. GBX Ex. 7.0 at 13; GBX Ex. 8.0 at 6-7, 10; GBX Ex. 8.2 at 38-41; GBX IB at 117. During the Public Meetings, the landowners located their properties on large maps and submitted written comments about their observations, recommendations or concerns. GBX Ex. 8.0 at 10;

GBX 8.2 at 39-41; GBX IB at 117. Grain Belt Express considered and incorporated these comments when determining the Proposed Route. GBX Ex. 8.0 at 7; GBX Ex. 8.2 at 39-41; GBX IB at 117-118. Overall, Grain Belt Express held over 300 stakeholder meetings and 27 Public Meetings, sent 17,073 direct mail invitations for Public Meetings, had more than 3,100 attendees at the Public Meetings, and received more than 900 comment cards from the Public Meetings. GBX Ex. 7.0 at 9; GBX Ex. 8.2 at 41. Thus, Grain Belt Express broadly solicited, and received, input on the various routing options from persons in the area, including owners and operators of agricultural properties.

Fifth, LACI acknowledges that the Routing Team considered placing the transmission line along property and section lines, as a preferred approach in order to avoid agricultural impacts. LACI IB at 46. However, LACI is incorrect that Grain Belt Express “shunned” its goal of using linear opportunities when developing the Proposed Route.⁶⁹ LACI IB at 46-47. What LACI fails to acknowledge is that in addition to utilizing linear opportunities along parcel lines, other paralleling opportunities exist, such as along existing linear infrastructure and utility corridors. GBX Ex. 8.2 at 32. As explained in the Route Selection Study, the Proposed Route parallels existing infrastructure, such as transmission lines, pipelines, roads, and rail lines, where possible. *Id.* In such an instance, the Proposed Route may run diagonally through a parcel in order to follow existing infrastructure. During the first round of Public Meetings, Grain Belt Express solicited information from landowners as to which type of features landowners preferred for parallel alignments. *Id.* Further, when developing the Proposed Route, Grain Belt Express considered not only opportunities, such as parallel alignments, but also took constraints into

⁶⁹LACI cites to maps in the Route Selection Study as evidence that the Proposed Route cuts diagonally through parcels. LACI IB at 46. Despite the map set containing 77 pages, LACI only identified 7 map pages as examples of the Proposed Route not following property lines. *Id.* Of those 7 pages, 4 actually are of the Alternate Route. *Id.* (citing GBX Ex. 8.2 at 384, 390, 392, 393). LACI also cites to Ms. Kleinik Davis’ testimony for another example of the Proposed Route traversing diagonally through parcels. *Id.* Grain Belt Express addressed Ms. Kleinik Davis’ concern about the 90 degree turn on her property at pages 147-148 of its Initial Brief and explained the reason for the need for the turn at that location.

consideration. *Id.* at 32. As Grain Belt Express explained in its Initial Brief, parallel alignments may not always be optimal if they cause a greater impact on residences (GBX IB at 113) or split farm fields, thus *increasing* impacts on landowners and farming operations (GBX IB at 147-148). Grain Belt Express considered and attempted to place the line along field, parcel or property boundaries where doing so *would reduce impacts to land use*.

In sum, Grain Belt Express worked with landowners and other stakeholders throughout the route selection process and adequately considered impacts to farming and agricultural operations. Grain Belt Express' Route Selection Study identified the Proposed Route that best minimizes the overall effect of the transmission line on the natural and human environment, avoids circuitous routes and unreasonable costs, and minimizes special design requirements.

B. Selection of Proposed Route vs. Alternate Route

[No reply required.]

C. Proposed Revisions to the Proposed Route (Rex Encore and Branch Properties)

Branch Properties submitted an Initial Brief outlining the proposed revisions to the Proposed Route submitted by Branch Properties, Rex Encore, and Grain Belt Express. Branch IB at 4-7. Branch Properties submitted both a Northern Realignment and Southern Realignment. Branch Ex. 1.0 at 9; Rex Encore Ex. 1.4; GBX Ex. 8.8 at 4; GBX IB at 123. Rex Encore also submitted a modification to the Proposed Route ("Rex Encore Modification"), which is similar to the Branch Properties' Northern Realignment. Rex Encore Ex. 1.0 at 6-7; GBX IB at 122-123. Grain Belt Express then proposed two adjustments to the Rex Encore Modification ("Grain Belt Express Adjustment") that would reduce its overall impacts and best meet the guidelines and criteria set forth in the Route Selection Study. GBX Ex. 8.8 at 2-3; GBX Ex. 8.9; GBX IB at 122-123. The parties' revisions are described in detail in Grain Belt Express' Initial Brief at pages 122-124. The Branch Parties' Southern Realignment is not consistent with Grain Belt Express's Routing Criteria and neither Grain Belt Express nor Rex Encore supports the Southern

Realignment. Rex Encore 1.0 at 16; GBX IB. at 124-125.

The Grain Belt Express Adjustment takes a middle path between the Rex Encore Modification and Branch Properties' Northern Alignment. Branch IB at 7. While Branch Properties states that the Grain Belt Express Adjustment will interfere more with Branch Properties' farming operations and a residence on 96th Avenue, the Northern Alignment would impact additional landowners along Township Road 1610 E and would come within 500 feet of two residences. GBX Ex. 8.8 at 5; GBX IB at 124. Additionally, an angle in the Northern Realignment falls within a small stream valley and would need to be moved to meet reasonable design standards. This shift would then move the Northern Realignment closer to two residences along Township Road 1610 E and required several additional angles. GBX Ex. 8.8 at 5; GBX IB at 124. Thus, Grain Belt Express believes that the Grain Belt Express Adjustment will overall have lesser impacts on present uses than would the Branch Properties' Northern Realignment.

Branch Properties prefers its Realignments; however, in the alternative, Branch Properties would support the Grain Belt Express Adjustment and prefers this revision over the Rex Encore Modification. Branch IB at 7. Rex Encore also does not object to the Grain Belt Express Adjustment. Rex Encore Ex. 1.0 at 7. Thus, the Grain Belt Express Adjustment is acceptable to all interested parties, best meets the Grain Belt Express Routing Criteria, and should be adopted by the Commission as a revision to the Proposed Route.

D. Proposed Design Aspects of the Project

1. Easement Widths

LACI asserts that the 200 foot wide easement sought by Grain Belt Express for the Project is "wider than other recent transmission projects in this state," and cites to a recent application made by Commonwealth Edison ("ComEd") for a CPCN (Docket No. 13-0657), to (i) call into question whether Grain Belt Express needs a 200-foot wide easement (as requested) for the Project, and (ii) assert that Grain Belt Express failed to compare burdens to landowners

(in the form of easement widths) in its decision to use HVDC technology for the Project.⁷⁰ LACI IB at 47. LACI's argument fails because it is premised on the incorrect assumption that easement width is *the* determinative factor as to the potential burden the Project may impose on landowners. A closer examination of the cited ComEd application shows that the ComEd project will actually impose a more significant burden on landowners than will the Grain Belt Express Project.

Specifically, in the cited Docket 13-0657, ComEd sought a CPCN pursuant to 8-406.1 to construct a new 345 kV electric transmission line that is approximately 60 miles long. ComEd requested a minimum right-of-way of between 110 and 120 feet wide. *See* Verified Petition of ComEd in Docket 13-0657 (“the “ComEd Petition”), ¶¶ 8, 10, 12.⁷¹ As set forth in the testimony proffered by ComEd witness Kaup, ComEd intends to install (i) double-circuit self-supporting steel structures with a typical span of 925 feet for 34.2 miles of the transmission route, and (ii) triple-circuit self-supporting steel structures with a typical span of 700 feet for 25.4 miles of the route. ComEd Petition, ¶13; ComEd Ex. 6.0 in Docket 13-0657 (“ComEd Ex.”) at 9.

Unlike the ComEd project, the transmission structures for the Grain Belt Express Project will have spans of 1,200 feet. GBX IB at 129. Dr. Galli explained that “the right-of-way width is driven primarily by the distance that you have between structures,” which he referred to as “span length,” because the right-of-way needs to be wide enough to accommodate the movement of the conductor caused by wind and other conditions. Tr. 796.⁷² Dr. Galli further testified that the requested 200-foot wide right-of-way allows Grain Belt Express to *reduce* the number of

⁷⁰ In making this argument, LACI cites to various documents in a separate docket (Docket No. 13-0657) that are not contained in the record for this case. Accordingly, in order to provide a response to the arguments LACI asserts here, Grain Belt Express must cite to relevant testimony and other documents from that same docket.

⁷¹ ComEd's Petition is found on the Commission's eDocket website:
<http://www.icc.illinois.gov/docket/files.aspx?no=13-0657&docId=206354>

⁷² *See also* GBX Ex. 2.0 at 19 where Dr. Galli explains that the amount of “predicted wire ‘blowout’ increases as the span... between structures/towers increases” and therefore wider right-of-ways are required to accommodate the greater amount of predicted “blowout.”

structures that it will use for the Project. Tr. 803, 825. Accordingly, while ComEd may have requested a narrower right-of-way, the ComEd project imposes a *larger* burden on the landowners since the ComEd line will have shorter span lengths (700 feet and 925 span lengths for the ComEd project as compared to 1,200 foot span lengths for the Grain Belt Express Project), and therefore the ComEd project will have more transmission structures occupying the landowner's property as compared to the Grain Belt Express Project.⁷³

Also, LACI inaccurately states in its initial brief that the right-of-way sought by ComEd was sufficient to accommodate “two 345 kV circuits and one 138 kV circuits with room for a future set of two more 345 kV and one more 138 kV circuit.” LACI IB at 47. To be clear, the cited ComEd project only involved the “installation of one [three-phase 345kV] circuit;” ComEd proposed to install (i) double-circuit steel poles “*capable* of supporting a second 345 kV circuit” (for 34.2 miles of the transmission line), and (ii) triple-circuit steel poles “*capable* of supporting a second 345kV circuit and a 138 kV circuit” (for 25.4 miles of the transmission line). (emphasis added.) ComEd Petition, ¶13; ComEd. Ex. 6.0 at 9. ComEd explained that it sought to install the double-circuit and triple-circuit steel poles to allow for “future long-term growth” and to avoid having to “remove single-circuit poles installed as part of the [subject] Project when additional circuits need to be installed in the future.” ComEd Petition, ¶13; ComEd. Ex. 6.0 at 10. None of the testimony LACI cites establishes that the narrower right-of-way sought by ComEd in Docket 13-0657 was sufficiently wide to accommodate the additional 345 kV and 138 kV circuits that ComEd may seek to add to the transmission structures at a future date.

Nor does LACI explain how much power would be transmitted by the transmission lines in the ComEd project. The ComEd project involves lower voltage lines (138 kV and 345 kV). The Grain Belt Express Project will be a ±600 kV HVDC transmission line capable of carrying

⁷³ Based on the typical span lengths, Grain Belt Express estimates that the ComEd project will have 5-8 transmission structures per mile, as compared to 4-5 transmission structures per mile in the Grain Belt Express Project. While farmers can still farm their land in the easement area, farmers claim that the transmission structures are obstacles that impact their farming operations.

4,000 MW. GBX Ex. 2.0 at 5, 14. In his direct, Dr. Galli analyzed and compared the AC alternatives for moving 4,000 MW of power over a 780-mile distance, and concluded that all but one of the AC alternatives required multiple lines to carry 4,000 MW over a distance of 780 miles. *Id.* at 13. Dr. Galli further testified that the HVDC line (capable of transmitting 4,000 MW of power over a distance of 780 miles) will have a narrower right-of-way than the AC alternatives he examined. Tr. 810, 811. LACI apparently agrees that lower voltage lines require narrower right-of-ways than higher voltage lines. LACI IB at 54.⁷⁴

Accordingly, it is simply untrue that Grain Belt Express failed to consider burdens to landowners in its decision to choose HVDC technology for the Project.

Further, except for four specific locations identified in Dr. Galli's testimony, 200 feet is the maximum requested easement width sought by Grain Belt Express. GBX Ex. 2.0 at 18, 20-21; GBX IB at 127-128. Grain Belt Express anticipates that the actual right-of-way for the Project will vary between 145 feet and 200 feet wide around the centerline, depending on Project requirements at particular locations. Upon approval of the Proposed Route, Grain Belt Express will then engage in more detailed pole spotting activities that will allow it to identify specific locations where narrower right-of-ways may be feasible. GBX Ex. 2.0 at 18; Tr. 153-154, 802-803. Also, Grain Belt Express' sister company, Rock Island, similarly requested a 200 foot right-of-way for the entire DC section of that Project, which this Commission found to be reasonable and approved. Order in Docket 12-0560 at 171-172.

LACI also argues that in selecting HVDC technology for the Project, Grain Belt Express "only compared costs to its bottom line." LACI IB at 47. This argument ignores that Grain Belt Express intends to pay landowners 100% of the fair market value of the easement area, and

⁷⁴ One of LACI's criticisms of Grain Belt Express witness Mr. Roddwewig's study of real estate sales in Christian County (in connection with his testimony regarding the Project's impacts on property values) is that the Christian County parcels had "considerably lower voltage lines" than the Grain Belt Express Project. LACI asserted that since the parcels were crossed by lower voltage lines, they likely required easements that are narrower than 200 feet because such easement widths are "not likely needed for these lower voltage lines." LACI IB at 54.

therefore the price Grain Belt Express pays for easements is a function of the size of the easement area. GBX Ex. 7.0 at 22; GBX IB at 132. Therefore, it is in Grain Belt Express' financial interest to seek to obtain the narrowest easement possible, consistent with safety and reliability requirements, so as to avoid purchasing easement land it does not actually need to construct and maintain the Project.

Lastly, LACI bluntly asserts that it does not know how much land Grain Belt Express intends to burden because Grain Belt Express wishes to control activities outside the easement area permanently. LACI IB at 48. To be clear, what the proposed easement agreement for the Project provides is that Grain Belt Express may “cut down and trim any tree located outside the Easement that in the opinion of Grain Belt may interfere with the safety, proper operation and/or maintenance of the Facilities.” GBX Ex. 7.17 at ¶3(c). On cross-examination, Grain Belt Express witness Mr. Lawlor clarified this provision, when he was asked whether, pursuant to paragraph 3 of the proposed easement, Grain Belt Express “has the right in its discretion to limit the use of the land outside the easement,” and Mr. Lawlor answered that “I believe the only use at reference here is that of tree trimming.” Tr. 158. A FERC-approved mandatory NERC reliability standard requires that transmission owners maintain adequate clearance between transmission lines and vegetation, and Grain Belt Express has previously acknowledged it must comply with this NERC requirement.⁷⁵ GBX Ex. 2.0 at 41-42. Other than the right to trim trees located outside the easement area for purposes of protecting the safety and integrity of the Project structures, facilities and operation, LACI has failed to identify any provision of the proposed easement agreement (or testimony from this case) that establishes Grain Belt Express intends to control any other activities outside the easement area.

⁷⁵ NERC Standard FAC-003-3, Transmission Vegetation Management (<http://www.nerc.com/pa/Stand/Reliability%20Standards/FAC-003-3.pdf>).

2. Structure Types and Other Design Parameters

a. Response to IAA

IAA states that Dr. Galli testified that monopole structures will be used for tangent structures for roughly 90% of the Project in Illinois, and asserts that the final order should include this percentage as a minimum threshold that Grain Belt Express must satisfy. IAA IB at 44. As set forth in the AIMA, Grain Belt Express has already committed to use “lattice mast” and “tubular steel monopoles” (which are both single foundation/pier structures) for tangent structures (i.e., non-turning structures), except where “specific engineering and environmental challenges are presented.” GBX Ex. 7.15 at 4; GBX Ex. 2.0 at 16; GBX IB at 129. However, the engineering of the Project is not sufficiently advanced at this time, and will not be sufficiently advanced until after the Proposed Route is approved by this Commission, for Grain Belt Express to be able to commit to a minimum threshold percentage for the monopole structures. Tr. 772-773, 802-803.

b. Response to LACI

LACI asserts that Grain Belt Express “is free to use multi-footed lattice structures at its heart’s desire,” that Grain Belt Express prefers multi-footed lattice structures even when monopoles are appropriate, and that the AIMA does not protect landowners from Grain Belt Express’ indiscriminate use of multi-footed lattice structures. LACI IB at 48. None of this is true. First, as set forth above in §V.D.2.a, per the terms of the AIMA, Grain Belt Express has committed to using single-foundation structures for tangent structures except where “specific engineering and environmental challenges are presented.” GBX Ex. 7.15 at 4; GBX Ex. 2.0 at 16; GBX IB at 129. The AIMA is an agreement between Grain Belt Express and the Illinois Department of Agriculture and sets forth terms that the Illinois Department of Agriculture has determined meets its requirements to minimize and mitigate impacts to agricultural properties. The terms of the AIMA will be incorporated into the easement agreements with landowners.

GBX Ex. 7.0 at 24; GBX Ex. 7.15, ¶ 19(D); GBX IB at 135-136. Also, this cited term in the AIMA is the same term contained in the AIMA for the Rock Island Project, which this Commission determined was sufficient and appropriate, and directed Rock Island to comply with the “tangent structure provision” of the AIMA. Order in Docket 12-0560 at 182.⁷⁶

Second, LACI mischaracterizes Dr. Galli’s testimony where it asserts that “GBX prefers multi-footed lattice structures even when monopoles are appropriate.” LACI IB at 48, citing Tr. 778:7-13. The cited portion of Dr. Galli’s testimony shows that Dr. Galli simply preferred not to “commit” Grain Belt Express to a requirement that if requested by a landowner, Grain Belt Express will use a “more robust monopole” instead of a “dead-end or heavy angle structure.” The testimony does not establish that it is Grain Belt Express’ preference to use multi-footed structures. Tr. 778. Indeed, in declining to make such a commitment, Dr. Galli testified that “every situation is very specific.” Tr. 778. Dr. Galli further testified that he expects roughly 90% of the structures to be single-foundation structures.⁷⁷ Tr. 772-773.

LACI also suggests that because Grain Belt Express “makes its money by earning a margin,” and “not a guaranteed rate of return,” it has “every reason to use the cheapest transmission structures and it prefers multi-footed lattice structures.” However, as the intervenors have repeatedly pointed out, Grain Belt Express is not an incumbent utility, that earns its profit by the application of an allowed rate of return to an investment base (rate base).

⁷⁶ LACI further asserts that this Commission (i) “cannot rely on the AIMA and GBX’s promise to conclude that GBX will primarily use monopoles or lattice mast structures,” and (ii) cannot look to the past conduct of Grain Belt Express or its sister companies because they have never built a transmission line. LACI IB at 49. However, as shown above, this Commission has previously determined that the terms of the AIMA and Rock Island’s agreement to comply with this provision are sufficient to ensure that Rock Island will only use multi-footed structures where necessary and appropriate.

⁷⁷ LACI also asserts that because angles as “narrow as 15 degrees can entitle [Grain Belt Express] to use the larger multi-footed lattice structures,” that “large scale use of GBX’s preferred multi-footed lattice structures is possible.” LACI IB at 49. This assertion is undermined by Dr. Galli’s testimony that (i) “a 15-degree angle could be a heavy angle or it could be a light angle depending upon topography... [and] what kind of span length that you may require on one side or the other” (and therefore may not require a multi-footed structure), and (ii) that he expects 90% of the structures to be single foundation structures. Tr. 772-773, 818.

Rather, Grain Belt Express has a strong incentive to use the most economical and efficient structure types; i.e., smaller sized structures for the Project where possible, to minimize costs. Further, even if LACI's (completely unsupported) assertion that it is Grain Belt Express' preference to use multi-footed lattice structures were true, LACI provides no evidence that multi-footed lattice structures are cheaper than more "robust monopoles" and that the purported lower cost of such structures makes them more attractive to Grain Belt Express.

Lastly, LACI's entire argument here is based on the faulty premise that a much larger, "robust," single-footed monopole structure is always less burdensome to the landowner than a multi-footed structure. But, as Dr. Galli testified, such robust structures may actually cause more damage to landowner property because the "robust" single-footed structure will require, *inter alia*, larger foundations, many more trucks of concrete, and heavier cranes to construct such structures. Tr. 774.

E. Grain Belt Express's Approach to Land Acquisition

IAA states that it "takes issue" with Grain Belt Express' ability to obtain and negotiate voluntary easements, and requests that two conditions relating to the easement agreements be incorporated into the Final Order. IAA IB at 45.

First, IAA requests that the Commission's Order require that pending easement offers to landowners would still be honored after Grain Belt Express is granted eminent domain authority. *Id.* Grain Belt Express has not asked for eminent domain authority in this proceeding, and as such, consideration of this proposed condition is premature. The appropriate place for proposing this condition would be during a §8-509 proceeding if and when Grain Belt Express requests such authority. Additionally, eminent domain authority under §8-509 will not be granted unless Grain Belt Express can establish that it has engaged in considerable good faith negotiation efforts with the landowner, which includes making offers and multiple contacts (or attempts at contacts) with the landowner. Further, Grain Belt Express has strong incentives to avoid having to file

condemnation cases in circuit court. Condemnation cases are costly to litigate and can potentially delay the Project given the length of time required to litigate such a case (often 6 to 12 months). As a result, to avoid the expense and delay of a condemnation action, Grain Belt Express has strong incentives to provide fair and reasonable compensation offers that landowners will accept.

That stated, as Grain Belt Express witness Mr. Lawlor testified (Tr. 137-138), Grain Belt Express will continue to hold open pending easement compensation offers to landowners after it is granted eminent domain authority by the Commission (assuming such authority is requested and received).

Second, IAA requested that the Order require that the easement agreements would only be used for the Project. IAA IB at 45-46. Mr. Lawlor of Grain Belt Express has already testified that the easement agreement only allows the easement to be used for “a single transmission line.” Tr. 152-153; GBX Ex. 7.17 ¶ 2, 2(b). The form of easement agreement also states that the easement will be used for the transmission of electrical energy. GBX Ex. 7.17 ¶ 2(b). Thus, Grain Belt Express’ form of Easement Agreement provides Grain Belt Express only with the authority to use the easement for the construction, operation, and maintenance of the Project.

F. Landowner Concerns about Impacts of Construction on their Properties

1. Response to MEZ

MEZ asserts in her Initial Brief that the Project will cause damage to prime farmland including soil compaction, water logging, and damage to drain tiles. MEZ IB at 21. Grain Belt Express addressed these issues in great detail in its Initial Brief, explaining the actions it will take to prevent or, if necessary, remediate these impacts. GBX IB at 134-146. Further, Mr. Jones of Quanta testified that in his experience, the avoidance and remediation measures that Quanta intends to employ for the Project are effective in mitigating transmission line construction-related impacts to farmland, including water logging. GBX Ex. 9.4 at 6-7.

MEZ next asserts that the AIMA defines “prime farmland” but the terms of the AIMA

treat such land “no differently than it would a brownfield site.” MEZ IB at 21. MEZ fails to cite to any basis for this assertion, and ignores the plain terms of the AIMA. GBX Ex. 7.15; GBX IB at 135-137. The AIMA is between Grain Belt Express and the Illinois Department of Agriculture and sets forth terms that the Department of Agriculture has determined meets its requirements to minimize and mitigate impacts to agricultural properties. GBX Ex. 7.0 at 24; GBX IB at 135. Also, the terms of the AIMA are essentially the same terms set forth in the AIMA for the Rock Island Project, which this Commission (i) determined was sufficient and appropriate for addressing landowners’ concerns regarding construction-related impacts to land, and (ii) ordered that Rock Island comply with as a condition of the order. Order in Docket 12-0560 at 202-205.

MEZ also asserts that much of the land that would be traversed by the Project is prime farmland. MEZ IB at 21. However, Grain Belt Express estimates that only approximately 1.7 acres of land in the State of Illinois will be taken out of production for use by the Project’s support structures and associated foundations. GBX Ex. 7.22 at 2; GBX IB at 142.

Lastly, MEZ asserts that the Project will increase the time and expense for landowners to perform farming operations within the easement and around the transmission structures. MEZ IB at 21. However, Grain Belt Express is offering to pay landowners both (i) a one-time easement payment equal to 100% of the fair market value of the easement area, and (ii) structure payments, which are to be paid in one lump sum or annually, as selected by the landowner. GBX Ex. 7.0 at 22-23; GBX IB at 132-133. Accordingly, with respect to landowners with at least one transmission structure on their land, Grain Belt Express will have compensated them in excess of the full, fair market value of the easement area. Grain Belt Express believes that its compensation package reasonably compensates landowners for any additional time and expense incurred to farm around transmission structures.

2. Response to IAA

IAA asserts that it “takes no direct position” as to landowner concerns about impacts of

construction on their properties, but also states that the Project will cause soil compaction, will impact drainage tiles, aerial application, irrigation systems, GPS and precision data systems in farm equipment, and hinder the ability to farm efficiently. IAA IB at 45. Grain Belt Express addressed each of these issues in great detail in its Initial Brief. GBX IB at 134-146.

IAA further asserts that Grain Belt Express should be held to the terms of the AIMA. IAA IB at 45. By executing the AIMA, Grain Belt Express has agreed to comply with its terms; it has also agreed to incorporate the terms of the AIMA into each of the easement agreements. GBX Ex. 7.0 at 24; GBX Ex. 7.15 at 8. Further, in the Rock Island CPCN order, the Commission adopted a set of requirements that Rock Island must follow to avoid, mitigate and remediate adverse impacts on agricultural properties from construction activities. Grain Belt Express has proposed that this same set of requirements (many of which are actions specified in the AIMA) be specified as requirements in the CPCN order for this Project. GBX Ex. 7.0 at 25; GBX Ex. 7.16; GBX IB at 110.

3. Response to LACI

LACI asserts that its members are concerned about damages from construction and ongoing maintenance activities, including soil compaction, damage to drainage tile, impacts to aerial application, impacts to GPS equipped devices, interference with the use of large farming equipment, and damages to forested areas and wetlands. LACI IB at 50. Grain Belt Express addressed each of these concerns in great detail in its Initial Brief. GBX IB at 134-146, 147-149. Further, Grain Belt Express has fully committed to comply with the avoidance, mitigation and remediation requirements set forth in the AIMA, has agreed to incorporate the terms of the AIMA into each of the easement agreements, and has proposed that the CPCN order in this case expressly set forth such requirements as a condition of the order. GBX Ex. 7.0 at 25; GBX Ex. 7.15 at 8; GBX Ex. 7.16; GBX IB at 110.

Grain Belt Express recognizes and appreciates landowners' concerns regarding

construction-related impacts. Without diminishing these concerns, Grain Belt Express notes that these types of concerns are expressed for virtually every proposed transmission line project, and because of that, there is a set of recognized processes and procedures that have been developed to prevent, mitigate and remediate any such impacts to agricultural properties. These processes and procedures are typically embodied in an AIMA and are followed by transmission line developers and contractors in the construction process.

LACI cites to the Missouri PSC's Order as support for its argument that landowners will experience agricultural impacts from the Project. LACI IB at 50-51. While the Missouri PSC Order refers to concerns regarding agricultural impacts, it contains no discussion of the measures Grain Belt Express has committed to carrying out to address those concerns. GBX Ex. 7.22 at 13. In contrast, this Commission's Order granting Rock Island its CPCN recognized and approved the measures Rock Island committed to carrying out to avoid, minimize and mitigate agricultural impacts. GBX Ex. 7.16; GBX Ex. 7.22 at 13; *Rock Island Clean Line LLC*, Docket 12-0560, (Nov. 25, 2014), at 202-205.

Grain Belt Express has committed to the measures specified in the Rock Island CPCN Order and to working with each landowner to address siting concerns and impacts to agricultural operations. GBX Ex. 7.0 at 25; GBX Ex. 7.16; GBX Ex. 7.22 at 14. Additionally, the AIMA outlines specific actions to address landowner concerns. GBX Ex. 7.22 at 14. Further, the compensation provided in the easement agreement is intended to compensate landowners for any impacts that may be caused by the construction and operation of the Project. *Id.* Thus, Grain Belt Express has set forth ample evidence of its commitment to appropriately address potential impacts to agricultural properties and operations and the efforts it will undertake to avoid, minimize or mitigate such impacts.

a. Impacts to Soil pH and Reduced Productivity

LACI asserts that construction of the Project will impact the soil because soil layers will

be disturbed and the soil pH level will increase, which will lower the productivity of fields and deprive farm operations of income. However, as Mr. Jones of Quanta explained, unless a landowner requests that any removed soil be returned to the landowner or spread on the property, Quanta will arrange for removed soils to be hauled away and disposed of, thereby avoiding the mixing of various soil layers and avoiding any changes to soil pH levels. GBX Ex. 9.4 at 3, 5.

Further, Grain Belt Express has agreed to pay landowners (i) a one-time easement payment equal to 100% of the fair market value of the easement area, (ii) structure payments, which are to be paid in one lump sum or annually, as selected by the landowner, and (iii) additional payments for, inter alia, crop damage and crop loss. GBX Ex. 7.0 at 22-23; GBX IB at 132-133. Accordingly, any landowners who see a reduction in crop yields will be compensated for any such losses, in addition to being paid the full, fair market value of the easement area and all structure payments.

b. Impacts to Forested Areas and Wildlife

LACI alleges that the Project also will impact forested areas and wildlife – specifically that the Project will require the removal of five acres of trees from CCPO witness Ms. Locke’s property, resulting in a loss of carbon sequestration credits and marketable timber, and that Ms. Kleinik Davis may no longer be able to photograph wildlife and may see a loss of bald eagles on her property. LACI IB at 51-52. Grain Belt Express addressed the steps it took, in developing the Proposed Route, to avoid or minimize potential impacts to existing forests and other conservation areas, in §V.F.5 of its Initial Brief.

Grain Belt Express also addressed the land-specific concerns raised by Ms. Kleinik Davis and Ms. Locke, in §V.F.8.c and §V.F.8.f of its Initial Brief. In regards to Ms. Kleinik Davis’ concern about the Project impacting bald eagles, which are a protected species, Grain Belt Express will coordinate with the U.S. Fish and Wildlife Service and the Illinois Department of Natural Resources to evaluate potential risks to avian species, and will implement an Avian

Protection Plan. GBX IB at 148-149. Additionally, Grain Belt Express will coordinate with federal and state agencies to ensure that the Project complies with all laws regarding forests and other conservation areas. GBX 7.22 at 20-21; GBX IB at 144.

Grain Belt Express addressed Ms. Locke's concerns about the Project's impact on her timberland. GBX IB at 151-152. First, Ms. Locke's property is located on the Alternate Route, which no party advocated should be adopted in this area. Therefore, Ms. Locke will not experience any loss of timberland due to the Project. GBX Ex. 8.11 at 9; GBX IB at 151. Second, Grain Belt Express will compensate landowners for any marketable timber that is removed as a result of the Project. GBX Ex. 7.22 at 18; GBX IB at 151. Landowners can choose to have marketable timber that is removed from the right-of-way set aside to sell; thus, the landowner would be compensated by Grain Belt Express and could also sell the timber. GBX Ex. 7.22 at 18; GBX IB 151. Finally, Ms. Locke does not have any contracts on her land for selling CO2 credits; however, any existing CO2 contracts would be considered during the timber appraisal process. GBX IB at 151-152.

c. Property Values

LACI argues in its Initial Brief that property values will suffer because of the Project. LACI IB at 52-54. To support this argument, LACI alleges that Grain Belt Express witness Mr. Roddewig conducted an outdated and inapplicable literature review, compared suburban land to agricultural land, and conducted an inappropriate study in Christian County. *Id.* at 53-54. Not so.

Mr. Roddewig has extensive experience and the qualifications to provide a summary of national real estate literature regarding impacts of transmission lines on property, to summarize his prior research into the effect of transmission lines on Illinois property, and to describe the effects of transmission line corridors on prices and rents for commercial and industrial properties. GBX Ex. 12.0 at 1-8. Mr. Roddewig, is a certified Real Estate Appraiser in 18 states, including Illinois, is a licensed real estate broker in Illinois, holds professional designations from

the Appraisal Institute, the Counselors of Real Estate, and the Royal Institute of Chartered Surveyors, and has legal experience in land use and zoning. *Id.* at 2. He has over 35 years of professional experience in the real estate industry and has spent over 25 years analyzing the impact of development, operation or expansion of power plants, airports, regional malls, landfills and quarries on property values. *Id.* at 2-3. Additionally, Mr. Roddewig has provided testimony in four transmission line proceedings before the Commission in which he analyzed sales data in studies concerning the possible impact of transmission lines on property values in Illinois. *Id.* at 3. He has also testified before multiple government agencies and courts regarding real estate valuation, market analysis and land use planning. *Id.* at 4.

Mr. Roddewig relied on his experience and expertise to conclude that the published studies and his own research do not support intervenor claims that the Project will “destroy” property values or cause values to decrease between 20% and 50%.⁷⁸ GBX Ex. 12.0 at 9. To the contrary, Mr. Roddewig found that more than half of the published research has found that transmission lines do not cause any impact on prices and values.⁷⁹ *Id.* Where studies do find any adverse impacts, those impacts range from 2% to 7%. *Id.* However, these studies also find that any adverse impacts are temporary, meaning that when a transmission line is announced or installed, values may initially drop but then will return to the initial price or higher as buyers and sellers become comfortable with the transmission lines. *Id.* at 13.

Contrary to LACI’s assertion, including a study from the 1970s does not make Mr. Roddewig’s literature review outdated. LACI IB at 53. LACI points to a study from 1972, but

⁷⁸ CCPO landowner witness Ervil “Wayne” Fischer, Jr. asserted that the transmission line will “destroy the value of [his] farm and potential residential sites...” CCPO Ex. 3.0 at 1. CCPO witnesses Don Hennings alleged that the line would devalue land by around 20% (CCPO Ex. 7.0 at 2) and Natalie Locke alleged that property with a second transmission line would be devalued “by as much as 50%” (CCPO EX. 6.0 at 4).

⁷⁹ As required by standards of professional real estate appraisal practice, studies on this topic involve comparing the sales prices in actual sales of real estate on which a transmission line corridor is located, or is close to a transmission line, to sales prices of comparable properties in the area that are not crossed by or near to a transmission line, to identify whether there are any identifiable differences in sales prices. GBX Ex. 12.0 at 11.

fails to acknowledge the over 40 other studies and reports upon which Mr. Roddewig relied. *See* GBX Ex. 12.1 Exhibit C. Many of these studies and reports were published within the last ten years, some as recently as 2012 and 2014. *Id.* The 1972 study LACI alludes to found little empirical evidence to support adverse price reductions of agricultural land due to transmission lines. GBX Ex. 12.0 at 20. In support of the continued relevance of this study, two articles from 2012 support the same conclusion – there is no evidence to support the claim that transmission lines reduce agricultural land values. *Id.*

LACI also alleges that Mr. Roddewig’s studies are inapplicable to the current situation because the properties do not all have the same soil conditions as the land over which the Project will cross, do not all involve corn-soybean crop rotation, do not have the same easement widths, and do not have uniform pole placement. LACI IB at 53. However, what Mr. Roddewig’s literature review revealed was that over the past 25 years, the conclusions from national sales data research studies have been very consistent. GBX Ex. 12.0 at 14. The majority of those studies, from the 1980s, 1990s and 2000s, have found no adverse impacts on prices or values of homes and neighborhoods adjacent to transmission lines. *Id.* The consistency of the studies for over 25 years undermines LACI’s argument that simply because the conditions in the previous studies are not an exact match with the properties to be crossed by the Grain Belt Express transmission line, the studies are inapplicable. The studies from the past 25 years did not all reflect the same conditions, but resulted in consistent outcomes. *Id.*; Tr. 692-694. Because these studies look at a wide variety of different types of locations, properties, agricultural factors and soil types, variations in land conditions or pole placement do not make them inapplicable to the Project. *See* Tr. 722-723.

LACI argues that Mr. Roddewig’s report should be disregarded because his comparisons of the impacts on land values in urban areas to rural areas “misses the mark” (LACI IB at 53), but Mr. Roddewig did not solely compare urban land to agricultural land. As detailed in Mr.

Roddewig's testimony, he analyzed and conducted studies in a variety of areas – including suburban, exurban and rural. GBX Ex. 12.0 at 13-21. For example, Mr. Roddewig reviewed studies focused on the impacts of transmission lines on agricultural land (GBX Ex. 12.0 at 20) and conducted studies on the impacts of transmission lines on Chicago suburb subdivisions (GBX Ex. 12.0 at 14-15) and land ranging from the suburbs of Chicago to 50 miles east of the Mississippi River (Tr. 708-709). These studies all reflect the same conclusion: there is little to no impact on property values from proximity to a transmission line corridor and power lines. GBX Ex. 12.0 at 9, 13, 15-16, 20.

Finally, Mr. Roddewig's study of Christian County sales was an appropriate comparator to the potential impacts of the Grain Belt Express Project. Christian County is one of the counties that is crossed by the Proposed Route of the Project (GBX Ex. 7.0 at 14), and it contains farm land that is crossed by existing transmission lines. GBX Ex. 12.1 at 28. Mr. Roddewig collected and analyzed farm land sale prices on existing power line corridors and compared them to prices paid for farm land not within a power line right-of-way. *Id.* As part of conducting his study, he personally drove through Christian County to observe all of the properties included in his study to identify whether they had any unique or unusual characteristics that would impact their sales prices. Tr. 724.

LACI argues that the Christian County study is an inappropriate comparator because Mr. Roddewig considered soil quality for the whole parcel, not just the easement, and because Mr. Roddewig did not account for potential access issues caused by the placement of transmission structures. LACI IB at 54. This is nit-picking. Mr. Roddewig's study compared sales of properties with transmission line right-of-way corridors to properties without corridors. GBX Ex. 12.1 at 31; Tr. 699. Thus, those properties without a transmission corridor did not have an easement with which to compare soil classification to properties with an easement. Tr. 698. Additionally, the county records upon which Mr. Roddewig relied provide the soil classification

of each property. GBX Ex. 12.1 at 30. Further, the study was designed to compare the impact of transmission corridors on total property values, not to appraise each individual property. Tr. 699. As a result, the study looked at the property values as a whole and the total impacts of any transmission line corridor – which would necessarily include any potential variation in soil classification of the easement and any potential impact on landowner access.⁸⁰ Tr. 698-699.

LACI also alleges that the Christian County study found that properties impacted by the transmission line right-of-ways lost an average of 5.93% in value. LACI IB at 54. This is an incomplete description of the results. Mr. Roddewig’s study found that the average adjusted price of farm land with a transmission line corridor sold for 5.93% less than land without a corridor. GBX Ex. 12.1 at 32. However, because one property without a transmission line right-of-way sold for a price over double the average and another sold for one-third of the average price, using the median price may be more appropriate. *Id.* When using the median price, those properties with a transmission line corridor sold for 4.0% higher than properties without. GBX Ex. 12.0 at 21. Thus, Mr. Roddewig testified, taking into account both the average price and median price, the impact on land values was no more than 2%. *Id.*; GBX 12.1 at 32.

d. Health Impacts

LACI states that many landowners expressed concern about perceived health impacts from electric and magnetic fields (“EMF”). LACI IB at 54. Grain Belt Express witness Dr. Wayne Galli addressed the health impacts of EMF in his rebuttal testimony. GBX Ex. 2.5 Rev. at

⁸⁰ LACI states that Parcel 19 on the map on page 29 of GBX Ex. 12.1 appears to be outside the physical placement of any poles. LACI IB at 54. However, Parcel 19, 19A and 19B are all considered together as one parcel in comparing sales prices. GBX Ex. 12.1 at 30-31. LACI also argues that Grain Belt Express’ requested 200 foot right-of-ways are “extraordinary” and not likely needed for the lower voltage lines in Christian County. LACI IB at 54. As discussed in § V.D.1 above, 200 feet is the maximum right of way that Grain Belt Express will use and it will strive to use narrower rights of way wherever possible. Further, LACI’s contention does not detract from the validity of the Christian County study, which is based on comparisons of sales prices for properties with transmission lines to sales prices of comparable properties without transmission lines. Moreover, based on the concerns expressed by landowner witnesses, Grain Belt Express understands the primary concern about property value impacts to be the presence of the transmission structures and conductors, not the width of the easement, which the landowner can continue to use for farming purposes.

2-7. However, LACI asserts that Dr. Galli did not have the qualifications necessary to address these concerns and that Grain Belt Express did not provide competent evidence to refute landowner health concerns (which themselves were not based on expert testimony concerning any engineering, scientific or public health studies). LACI IB at 54-55.

As an initial matter, Dr. Galli did not analyze raw data and develop his own report on impacts of EMF on human health, and he did not testify as to whether EMF causes long-term health effects. Rather, Dr. Galli read and reviewed reports produced by governmental and other scientific and public health organizations that analyzed studies on long-term health effects of EMF, and reported those organizations' conclusions. GBX Ex. 2.5 Rev. at 4-5; Tr. 781-782. None of those organizations found that the body of scientific studies establish that strong magnetic fields cause long-term health effects. GBX Ex. 2.5 Rev. at 5. These organizations have developed EMF exposure limits for the general public and for occupational workers, but only at levels found in certain special medical, research, and industrial environments. *Id.* The recommended exposure limits are 1000 times higher than the EMF exposure from the Grain Belt Express Project. *Id.* at 5-6.

With a Ph.D. in electrical engineering (GBX Ex. 2.0 at 1), Dr. Galli is qualified to read and report the results of reports that themselves analyze studies on long-term health effects of electric and magnetic fields. Additionally, as a degreed electrical engineer, Dr. Galli is qualified to calculate and report the strength of electric and magnetic fields produced by a transmission line and compare these field strengths with the recommended maximum EMF exposure limits and with the levels of electric and magnetic fields to which people are exposed in everyday life. GBX Ex. 2.5 Rev. at 2-4. As a result, his testimony competently supports the conclusion that the electric and magnetic fields that will be produced by the transmission line are far below the recommended exposure limits established by governmental and health organizations, and are comparable if not less than the field strengths encountered in normal daily activities.

e. Decommissioning

LACI also claims that the Project is at risk of being decommissioned, which would leave landowners with transmission structures on their land.⁸¹ LACI IB at 55. This argument is without merit. Grain Belt Express witnesses Mr. Lawlor and Mr. Skelly and Commission Staff witness Ms. Freetly, when questioned, all stated that they are unaware of any high voltage transmission line that has been decommissioned. Tr. 172-173, 238, 288, 338-339. Grain Belt Express anticipates that the transmission line will be in existence for 50 to 100 years. Tr. 287. Before constructing the Project, Grain Belt Express will have long-term contracts in place that will ensure the Project will be financially viable for several decades. Tr. 173.

Further, a transmission line is a valuable asset and continues to be useful even if its owner were to encounter financial difficulties. If a transmission line owner encounters serious financial difficulties, the most likely outcome will be that the company undergoes a financial reorganization or the transmission line is sold to another entity. Thus, the original owner may no longer operate the line, but another company will likely acquire the line as a valuable asset. There is no reason to assume, and LACI offers no examples or support for the assertion, that a transmission line will stop operating and be left standing in the field without an owner to operate and maintain the line.

G. Interactions with Pipelines and Railroads

1. Rockies Express Pipeline

[No reply required.]

2. Illinois Central Railroad and BNSF Railroad

Illinois Central Railroad Company (“ICRR”) states in its initial brief that it takes no position on Grain Belt Express’ Application. ICRR IB at 1. ICRR does state that its “biggest

⁸¹ CCPO raises the same argument in §IV.E of its Initial Brief, requesting that Grain Belt Express post a bond to provide financing for the cost of removing the Project. Grain Belt Express addressed this argument in §IV.E of this Reply Brief.

concern is the safety and integrity of its rail operations and to protect the railroad's ability to maintain and develop their freight business.” ICRR IB at 1. As set forth in Grain Belt Express' Initial Brief, Grain Belt Express and its EPC contractor will comply with all applicable and customary safety practices and procedures when performing construction related activities on or about railroad property, including (i) acquiring all applicable permits and reviewing the conditions contained therein, (ii) completing all requisite forms, (iii) setting up temporary guard structures and preparing and submitting detail plans for that activity, (iv) performing due diligence to locate any and all underground utilities, and (v) coordinating with the track master to have railroad flagmen on site during construction. Tr. 562-564; GBX IB at 155-156.

ICRR requests that any order in this case require Grain Belt Express to “abide by railroad safety requirements when the project requires the use of railroad property.” ICRR IB at 2. Grain Belt Express has every intention of reaching agreement with each railroad it will cross as to how it will cross the railroad and the safety requirements associated with Grain Belt Express' construction and maintenance activities. However, ICRR has not provided any safety requirements for the record in this case nor presented any proposed safety requirements to Grain Belt Express for review, and therefore Grain Belt Express cannot make a blanket agreement to comply with any and all safety requirements prescribed by ICRR. Nor is there any need for such a condition, because the railroad property is privately owned, and therefore Grain Belt Express will be unable to enter upon or perform any construction activities without getting ICRR's permission. In negotiating Grain Belt Express' crossing permit or easement rights with ICRR, Grain Belt Express and ICRR will need to reach agreement regarding safety practices.

Lastly, ICRR requests that any order approving the Project require Grain Belt Express “to reach agreement with ICRR prior to any occupation of ICRR's property or acquire the right to occupy ICRR's property through a circuit court eminent domain proceeding with proper subject matter jurisdiction which can only take place after [Grain Belt Express] has acquired general

eminent domain authority pursuant to 220 ILCS § 5/8-509 and then subsequently received an order from the Illinois Commerce Commission pursuant to 735 ILCS § 30/10-5-10(g) to exercise eminent domain rights over railroad property.” ICRR IB at 3. There is no need for the order in this case to include ICRR’s proposed requirement because 735 ILCS § 30/10-5-10(g) already establishes this requirement, stating that “no property... belonging to a railroad... may be taken or damaged, pursuant to the provisions of this Act, without the prior approval of the Illinois Commerce Commission.” In other words, there is no reason for the Order to direct Grain Belt Express to do what it is already required to do by law.

Like ICRR, BNSF Railway Company (“BNSF”) states in its initial brief that it “takes no position on the granting/denial of [Grain Belt Express’] Application.” BNSF IB at 1. Otherwise, BNSF makes the same two requests as ICRR:

- (1) BNSF requests that if the CPCN is granted, that “GBX be required to abide by the BNSF’s safety requirements to the extent that GBX or its contractors are on or about the railroad right of way, and be required to address the safety and operational issues to protect the safety and integrity of BNSF’s rail operations”; and
- (2) BNSF requests that Grain Belt Express be required to seek general eminent domain authority as a utility pursuant to 22 ILCS 5/8-509 and pursuant to 735 ILCS 30/10-5-10(g). BNSF IB at 3, 4.

Like ICRR, BNSF has not placed any of its safety requirements into the record or submitted them to Grain Belt Express for review. Thus, Grain Belt Express cannot make a blanket commitment at this time to comply with BNSF’s safety requirements. Further, as set forth above, there is no reason to include in the order a requirement that Grain Belt Express must seek eminent domain authority pursuant to 735 ILCS 30/10-5-10(g), because that statute already requires that Grain Belt Express obtain specific approval of this Commission prior to seeking to exercise eminent domain authority to acquire an easement on railroad property.

VI. Request for Authority Under §8-503

A. Response to CCPO

The fact that the Missouri PSC has issued an order denying Grain Belt Express’ request

for a certificate of convenience and necessity for the Project in that state does not make the requested order herein pursuant to §8-503 authorizing construction of the Project an “impossibility.” CCPO IB at 19. Grain Belt Express has options for obtaining regulatory approval for the Project in Missouri. GBX IB at 16.

B. Response to IAA

IAA questions why Grain Belt Express is requesting that the order authorizing it to construct the Project, pursuant to §8-503 and §8-406.1(i), specify that construction should begin within 2.5 years following the date of the order, when §8-406(f) of the Act states that authority conferred by a CPCN issued by the Commission shall be exercised within two years. IAA IB at 47-48. However, these sections reflect two separate requirements. Section 8-406.1(i) expressly requires that the order authorizing construction of a new high voltage electric transmission line specify “in the manner and within the time.” In response to this provision, Grain Belt Express has proposed that the order specify that construction should commence within 2.5 years, for the reasons explained by Mr. Skelly. GBX Ex. 1.0 at 59; Tr. 272. Further, “in the manner” encompasses all the Project related approvals and directions in the Order, such as the approved route, approved easement widths, approved structure types, and required actions to prevent impacts to landowners’ properties. GBX IB at 159. Section 8-406(f), in contrast, specifies that a CPCN granted by the Commission shall be “exercised” within two years. Arguably, this provision of §8-406(f) is not applicable to a CPCN issued pursuant to §8-406.1 in light of the specific authorization in §8-406.1(i) for the Commission to specify the manner in which and time within which the new high voltage electric service line and related facilities are to be constructed. In any event, to “exercise” the CPCN does not require that construction of the Project be commenced. Conducting environmental, biological and engineering surveys and studies on landowner properties, negotiating for and acquiring easements from landowners, continuing with the interconnection study processes, conducting detailed engineering and design

activities, ordering and acquiring equipment, and signing transmission customers to service contracts, among other activities, are all actions that comprise exercising the authority granted by the CPCN.

IAA states that “GBX is attempting to negotiate easements first, then it will only apparently seek eminent domain authority if it hits an impasse with easement negotiations with landowners.” IAA IB at 48. IAA is correct, as Grain Belt Express has stated repeatedly in this case, and this is the usual and normal order of operations to acquire easement rights for a transmission line. Grain Belt Express reiterates, however, that even if were to request and obtain eminent domain authority with respect to specific parcels, it will still have strong incentives to acquire those easements through negotiations, to avoid a condemnation action. *See* §V.E above.

C. Response to LACI

LACI argues that Grain Belt Express will receive authorization pursuant to §8-503 to construct the Project solely because of the “automatic” provision of §8-406.1. LACI IB at 56. However, the record shows that Grain Belt Express meets the criteria of §8-503 for issuance of an order directing it to construct the Project, regardless of the applicability of 8-406.1(i). GBX IB at 156-157.

VII. Grain Belt Express’ Accounting-Related Requests

A. Use of the FERC Uniform System of Accounts

No party substantively opposed this request. IAA states that the request should not be granted if Grain Belt Express is not granted a CPCN. IAA IB at 49. Grain Belt Express does not disagree, since the request is premised on it being an Illinois public utility.

B. Request to Maintain Books and Records Outside of Illinois

No party substantively opposed this request. IAA states that the request should not be granted if Grain Belt Express is not granted a CPCN. IAA IB at 49. Grain Belt Express does not disagree, since the request is premised on it being an Illinois public utility.

C. Request for Proprietary Treatment of Certain Information

No party substantively opposed this request. IAA states that the request should not be granted if Grain Belt Express is not granted a CPCN. IAA IB at 49. While this statement of position may have solely been the result of cutting and pasting from §VI.A and §VI.B, above, Grain Belt here disagrees with IAA's position. Whether or not a CPCN is granted for the Project, the information that Grain Belt Express has designated as proprietary and confidential (which no party has disputed) remains proprietary and confidential and should be protected as such for two years following the date of the Commission's final order.

VIII. Other

LACI and the IAA contend that the Commission should not rule on Grain Belt Express' Application for a CPCN because it is moot. They say the Application is moot, and that "the project is an impossibility", because the Missouri PSC has foreclosed any chance that Grain Belt Express can obtain a certificate of convenience and necessity for the Project in that state. LACI IB at 56-59; IAA IB at 49-53. However, the underlying premise of this argument by LACI and IAA - that the July 1, 2015 and August 12, 2015 orders of the Missouri PSC denying, respectively, Grain Belt Express' request for a certificate and its motion for rehearing, foreclosed any possibility of obtaining a certificate of necessity and convenience in Missouri - is incorrect.

As Mr. Skelly testified, Grain Belt Express may file a new application for a certificate with the Missouri PSC that addresses the concerns expressed by the PSC; or, Grain Belt Express may pursue federal citing authority under §1222 of the Energy Policy Act of 2005.⁸² GBX Ex. 1.5 at 4-5. The Missouri PSC specifically left open the possibility that Grain Belt Express may obtain a certificate of necessity and convenience in Missouri by expressly inviting Grain Belt Express to file a new application if at any point Grain Belt Express gathers information that would make a better case for the Project. *Id.* Because Grain Belt Express has these options for

⁸² Mr. Skelly identified a third option, to file an appeal of the Missouri PSC order with the courts, but Grain Belt Express has decided not to pursue that option, and the time for filing an appeal has expired.

obtaining regulatory approval in Missouri, and intends to pursue one or both of them, the Commission's determination in this docket may indeed "be carried into effect." Said differently, the Missouri PSC order does not support the misplaced contention by LACI or IAA that "the project is an impossibility." As the evidence shows, Grain Belt Express has options available to it for obtaining regulatory approval to construct the Project in Missouri, and is committed to using one or both of those options to obtain the necessary authority for Missouri. *Id.*; Tr. 268-269; GBX IB at 16.

Moreover, the Missouri and Illinois cases are separate matters. Missouri PSC approval for the Project is not a condition precedent to this Commission's responsibility to hear and decide Grain Belt Express' CPCN application, any more than is the regulatory approval for the Project, already secured, in Indiana and Kansas. For that reason, the cases cited by LACI and IAA are easily distinguished. For example, in *Shifris v. Rosenthal*, 192 Ill.App.3d 256 (1st Dist. 1989), the appellate court determined that when a building permit that was the fundamental premise of the dispute was revoked by the issuing authority, the parties' dispute became moot. Without the permit, which was a precondition of building defendants' house, no house could be built. And, there is no indication that the defendant could, or that any efforts were being made to, obtain the permit after it was revoked. See, *Shifris*, 192 Ill.App.3d at 261 ("[h]ere, the controversy over the issuance of a permit to build on the subject property clearly ceased to exist upon the County Department's revocation of the permit").

Here, the issuance to Grain Belt Express of a certificate of convenience and necessity for the Project by the Missouri PSC is not a pre-condition for an adjudication of Grain Belt Express Application for a CPCN in Illinois. Neither LACI nor IAA cite to any law, or other authority, that requires Grain Belt Express to secure certificates of convenience and necessity from the several states in any particular order, or demonstrate to the Commission that it has secured such certificates from any other state, or that the proceedings in any other state must be brought to a

final conclusion, with prejudice, before Grain Belt Express may apply for, and secure, a CPCN from the Commission to construct the Project in Illinois.⁸³

And, as explained above, Grain Belt Express is pursuing, and it remains a real possibility that Grain Belt Express will obtain, authority to construct the Project in Missouri. So, unlike the dispute in *Shifris*, which “ceased”, the application here is not moot, nor the Project “impossible.” Contrary to the assertion by LACI, the Grain Belt Express Project may well be carried into effect if the ICC approves the Grain Belt Express application (LACI IB at 57). The Grain Belt Express application is, therefore, an actual controversy that the ICC must decide. See, *Shifris*, at 261 (the court “had a duty to decide actual controversies by rendering judgments which can be carried into effect...).

The other cases cited by LACI and IAA are no more helpful to them than *Shifris*. As in *Shifris*, the premise of the disputes in the other cases cited by LACI and IAA disappeared, rendering the disputes moot. See, e.g., *Independent Coin Payphone Association v. ICC*, 170 Ill.App.3d 958 (1st Dist. 1988) (Illinois Bell filed a revised tariff which eliminated the alleged discrimination that the Association complained of, and the Commission approved the revised tariff), and *Continental Air Transport Co., Inc.*, Docket 58699 (Sept. 29, 1976) (federal limitations on Continental’s fuel purchases were subsequently lifted, and therefore Continental continued to operate the service lines it had sought to suspend due to unavailability of sufficient fuel). As the U.S. Supreme Court stated in *Chafin v. Chafin*, 133 S. Ct. 1017, 1023 (2013), a case “becomes moot *only* when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Id.* Here, a decision granting a certificate in accordance with Grain Belt Express’ Application will most definitely provide effectual relief with respect to the Project in Illinois. Grain Belt Express may then invoke one or both of the options available to it to secure

⁸³ Said differently, there is no law that would have precluded the Commission from adjudicating Grain Belt Express’ Application if Grain Belt Express had first filed in Illinois before it had filed for the necessary approvals in Kansas, Indiana and Missouri.

