

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners: Mark Sievers, Chairman  
Ward Loyd  
Thomas E. Wright

In the Matter of the Application of Grain Belt )  
Express Clean Line LLC for a Limited )  
Certificate of Public Convenience to Transact ) Docket No: 11-GBEE-624-COC  
the Business of a Public Utility in the State of )  
Kansas. )

**ORDER APPROVING STIPULATION & AGREEMENT  
AND GRANTING CERTIFICATE**

<b>I. Clean Line Application</b> .....	2
<b>II. Procedural Background</b> .....	5
<i>A. Prefiled Testimony</i> .....	5
<i>B. Hearing and Post-Hearing Briefs</i> .....	7
<b>III. Provisions of the Stipulation and Agreement</b> .....	9
<b>IV. ITC Great Plains' Objection and Arguments</b> .....	11
<b>V. Findings and Conclusions</b> .....	13
<i>A. Evaluation of the S&amp;A</i> .....	14
1. <i>Has each party had an opportunity to be heard on its reasons for opposing the settlement?</i> .....	15
2. <i>Whether the S&amp;A is supported by substantial competent evidence?</i> .....	15
3. <i>Whether the S&amp;A conforms with applicable law?</i> .....	17
4. <i>Whether the S&amp;A results in just and reasonable rates?</i> .....	19
5. <i>Whether the results of the S&amp;A are in the public interest, including the interest of those parties not consenting to the agreement?</i> .....	20
<i>B. Other Factors for Consideration</i> .....	22
<i>C. Commission's Continuing Regulatory Oversight</i> .....	24
<i>D. Intervention Issues</i> .....	25
<i>E. Conclusion</i> .....	25

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being fully advised of all matters of record, the Commission summarizes the arguments of the parties and finds and concludes as follows:

## I. Clean Line Application

1. On March 7, 2011, Grain Belt Express Clean Line LLC (Clean Line) filed an Application pursuant to K.S.A. 66-131, requesting the Commission grant it “a limited certificate of public convenience and necessity to site, construct, own, operate and maintain bulk electric transmission facilities located in the State of Kansas,” that is, for a Transmission Only certificate.<sup>1</sup> Application, March 7, 2011 (Application). Clean Line is a limited liability company organized under the laws of Delaware, and is qualified to conduct business in Kansas for the purpose of carrying on any lawful business, purpose or activity allowed under Kansas law, including the siting, constructing, owning, operating, and maintaining of bulk electric transmission facilities in Kansas. Application, ¶ 1. Clean Line stated that it is a wholly-owned subsidiary of Grain Belt Express Holding LLC, a Delaware LLC, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC (Clean Line Energy Partners), also a Delaware LLC. Application, ¶ 2.

2. Clean Line Energy Partners’ stated mission is to construct and operate high voltage transmission lines and facilities to connect renewable resources in the United States with load and population centers that have an increasing demand for electricity generated by renewable resources. Clean Line has three other transmission projects underway in the U.S. Application, ¶ 4. The Application stated that one of the projects under development is the Grain Belt Express Clean Line (Grain Belt Express or Project), which will be a 500 to 600 kV high-voltage direct-current (HVDC) transmission line capable of delivering 3,500 MW of power from Kansas to other load centers. The Project will originate in western Kansas near Sunflower’s

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<sup>1</sup> Clean Line requested a “Transmission Rights Only” certificate in its Application. At the hearing, Staff corrected testimony to indicate that Clean Line is actually applying for a “Transmission Only” certificate, since the company is building only transmission and not generation, and will not have any retail customers in Kansas. Transcript of Proceedings, October 10, 2011, page 114 (testimony of Michael Wegner) (Tr., p. 114 (Wegner)).

Spearville substation and traverse east across Kansas into Missouri, and possibly into Illinois and Indiana.<sup>2</sup> The Grain Belt Express will be approximately 550 miles long<sup>3</sup> with approximately 300 miles located in Kansas, and will deliver renewable energy to the PJM Interconnection, LLC (PJM) market and/or the Midwest Independent System Operator (MISO) market.<sup>4</sup> Application, ¶¶ 5-6.

3. Clean Line stated the project includes gathering lines, which are a series of high voltage alternating current (AC Collector System) lines that will deliver energy from wind farms to the converter station near Spearville, Kansas. Direct Testimony of Michael Peter Skelly, March 7, 2011, page 4 (Skelly Direct, p. 4). This AC Collector System will gather power from the converter station to connect wind generators in western Kansas. Application, ¶ 29, footnote 8; Skelly Direct, p. 4; Initial Brief of Grain Belt Express Clean Line LLC, October 21, 2011, paragraph 4 (Clean Line Initial Brief, ¶ 4). Associated facilities of the Project include these converter stations at the western and eastern ends of the line to convert AC electricity delivered to Clean Line into direct current (DC), and convert DC electricity transmitted by the line into AC for delivery back into the grid. As noted, the associated facilities will also include AC lines from wind farms to the western converter station and related substation equipment. The AC lines are needed to gather the generation and deliver it to Clean Line for transmission farther east. Direct Testimony of Anthony Wayne Galli, March 7, 2011, page 4 (Galli Direct, p. 4).

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<sup>2</sup> Clean Line's Application stated the line will cross through Kansas and Missouri. At the hearing and in the Stipulation and Agreement (S&A), Clean Line noted that the line is expected to terminate in Illinois or Indiana. Tr., pp. 9, 98-99; Initial Brief of Grain Belt Express Clean Line LLC, October 21, 2011, paragraph 1 (Clean Line Initial Brief, ¶ 1).

<sup>3</sup> The line may be longer should it continue into Illinois and Indiana. Stipulation and Agreement, October 10, 2011, paragraph 1 (S&A, ¶ 1).

<sup>4</sup> At the hearing, Clean Line stated the line is expected to terminate at the PJM System. Tr., p. 9.

4. Clean Line stated that the Project is anticipated to be financed through private funds, with a projected cost of roughly \$1.7 billion and a projected in-service date of 2016. Application, ¶ 6. Clean Line plans to request negotiated rate authority from the Federal Energy Regulatory Commission (FERC) to negotiate contract rates with transmission capacity customers. Clean Line plans to use an anchor-tenant model to sell a portion of transmission capacity, and will sell uncommitted capacity not secured by anchor tenants to customers through an “open season” process. Application, ¶ 17. Clean Line expects its customers will consist of: (1) wind energy producers located on the western end of the line, an area with favorable wind conditions to produce electricity, and (2) buyers, located on the eastern end of the line, of electricity generated from renewable resources. Application, ¶ 16.

5. Clean Line formally introduced the Project to Southwest Power Pool’s (SPP) Transmission Working Group (TWG) in August 2010, and has held several meetings with SPP staff to provide information to include the Project in the Transmission Interconnection Review Process outlined by SPP criteria. In November 2010, the SPP sent Clean Line a letter outlining what studies needed to be completed to ensure reliable operation of the grid and to assess the impact of the Project on the SPP system, and Clean Line stated the process for scoping those studies has begun. Clean Line stated it will design the project in accordance with good utility practice, all applicable laws, and North American Electric Reliability Corporation (NERC) and SPP criteria, to protect the reliability of the SPP system and comply with technical requirements. Application, ¶ 8. Clean Line became a member of the SPP in February 2011. Application, ¶ 8.

6. In its Application and Direct Testimony, Clean Line laid out its business objectives and projects, and the managerial, financial and technical resources and capabilities it has available to support its operations. Clean Line stated it includes executive, professional and

technical personnel who have managed, built and financed projects in both renewable and traditional energy sectors, and who have been involved in the development of energy policy at both state and national levels, and included information about the experience and qualifications of the management team. Application, ¶¶ 38-40 and Exhibit D; Skelly Direct, pp. 37-45. Clean Line plans to contract with an experienced project management, engineering, land acquisition and electrical construction firm or firms to design, develop and construct the Grain Belt Express project and associated facilities, as well as with firms experienced in operating and maintaining transmission facilities. Application, ¶ 41.

7. The Commission has jurisdiction over this proceeding pursuant to K.S.A. 66-131.

## **II. Procedural Background**

8. The following parties have been granted leave to intervene in this proceeding: the Citizens' Utility Ratepayer Board (CURB); Westar Energy, Inc. and Kansas Gas and Electric Company (Westar); ITC Great Plains, LLC (ITC Great Plains); Mid-Kansas Electric Company, LLC (MKEC); Sunflower Electric Power Corporation (Sunflower); and Energy for Generations, LLC (E4G).

### ***A. Prefiled Testimony***

9. The Commission approved a procedural schedule that set deadlines in this docket, including deadlines for prefiling testimony. Order Adopting Report and Recommendations of Prehearing Officer, June 22, 2011 (June 22, 2011 Order). Clean Line prefiled direct testimony with its Application on March 7, 2011, from five witnesses: (1) Michael Peter Skelly (Skelly), chief executive officer of Clean Line Energy Partners and president of Clean Line, provided an overview of business objectives and projects and the managerial, financial and technical resources and capabilities, as well as the need for long-distance multi-state transmission projects

and the benefits of the Grain Belt Express to Kansas and other areas of the country; (2) James Walter Glotfelty (Glotfelty), executive vice president of external affairs of Clean Line Energy Partners, provided information on the transmission services Clean Line will provide and the need for Clean Line's transmission line to connect wind generation areas to load and population centers; (3) David Allen Berry (Berry), vice president of strategy and finance of Clean Line Energy Partners, addressed Clean Line's financial resources; (4) Anthony Wayne Galli (Galli), vice president of transmission and technical services of Clean Line Energy Partners, addressed Clean Line's managerial and technical capabilities and the benefits of HVDC technology for the Grain Belt Express transmission project; and (5) Bryan Begley (Begley), managing director of ZBI Ventures, L.L.C. and limited partner in ZAM Ventures, L.P., addressed Clean Line's application from the perspective of a majority owner of Clean Line Energy Partners.

10. On August 19, 2011, Commission Staff prefiled direct testimony of: (1) Michael J. Wegner (Wegner), chief of energy operations; (2) Thomas B. DeBaun (DeBaun), senior energy engineer; (3) Adam H. Gatewood (Gatewood), managing financial analyst; (4) Elena E. Larson (Larson), energy analyst; and (5) Andy Fry (Fry), energy engineer. DeBaun filed cross-answering testimony on September 1, 2011. Larson filed supplemental testimony on September 27, 2011.

11. As noted above, Westar and ITC Great Plains were granted intervention in this docket. Westar filed direct testimony of Kelly B. Harrison (Harrison), vice president of transmission operations, on August 19, 2011. ITC Great Plains also filed direct testimony on that date, through Alan K. Myers (Myers), vice president of technical services. Although CURB, Sunflower, MKEC and E4G were granted intervention, none filed testimony in this docket.

12. Rebuttal testimony was filed on behalf of Clean Line by Skelly, Glotfelty and Galli on September 19, 2011.

13. Additionally, 153 separate comments from members of the public were filed with the Commission's Office of Public Affairs and Consumer Protection (PACP Office) in this docket. The Commission has reviewed and considered all such comments.

***B. Hearing and Post-Hearing Briefs***

14. On September 30, 2011, Clean Line, Staff, Westar, and E4G each filed a list of disputed or contested issues for the Commission's consideration at the hearing. ITC Great Plains, Sunflower, and MKEC filed a Joint Disputed Issues List on the same date. CURB did not identify contested issues.

15. A hearing was conducted in this proceeding on October 10, 2011, with the Commission presiding. Appearances at the hearing were as follows: Glenda Cafer (Cafer), Terri Pemberton and Kathy Patton on behalf of Clean Line; Andrew Schulte (Schulte) and Ray Bergmeier on behalf of the Commission Staff and the public generally; David Springe (Springe) on behalf of CURB; Cathy Dinges (Dinges) and Marty Bregman on behalf of Westar; Susan Cunningham (Cunningham) and Brett Leopold on behalf of ITC Great Plains; Mark Calcara (Calcara) on behalf of Sunflower and MKEC; and Robert Eye (Eye) on behalf of E4G. Transcript of Proceedings, October 10, 2011, pages 5-6 (Tr., pp. 5-6). Staff reported that notice was contained in the Order Adopting Report and Recommendations of Prehearing Officer on June 22, 2011. No objections were made to notice as described by Staff, and the Commission found that notice of the hearing was proper and the Commission had jurisdiction to hear the matter. Tr., p. 6.

16. At the start of the hearing, Clean Line and Staff addressed two preliminary matters. The first was the Joint Motion (Joint Motion) to Approve Stipulation and Agreement and an attached Stipulation and Agreement (S&A), filed with the Commission on October 10, 2011, prior to the hearing. The signatory parties to the nonunanimous S&A included Clean Line, Staff, CURB and E4G (Joint Movants), which is discussed in more detail below. Tr., pp. 7-15. Westar stated it took no position with respect to the S&A. Tr., p. 15. Sunflower and MKEC stated they did not object to the S&A. Tr., p. 42. ITC Great Plains stated it opposed the S&A, but only on the issue of inclusion of the AC Collector System in the grant of the certificate, which is discussed in more detail below. Tr., pp. 15, 20-21.

17. As a second preliminary matter, Staff asked the Commission to take administrative notice of the Order Approving Contested Settlement Agreement in Docket No. 08-ATMG-280-RTS, which lays out the five-factor test that the Commission has utilized to review settlement agreements. The Commission took administrative notice of the identified docket and articulated five factors the Commission must consider in evaluating settlement agreements. Tr., pp. 24-26.

18. The parties presented brief Opening Statements as follows: Cafer on behalf of Clean Line, Tr., pp. 26-34; Springe on behalf of CURB, Tr., pp. 34-36; Cunningham on behalf of ITC Great Plains, Tr., pp. 36-41; Calcara on behalf of Sunflower/MKEC, Tr., pp. 41-46; Eye on behalf of E4G, Tr., pp. 46-49; and Schulte on behalf of Staff, Tr., pp. 49-52. Dinges waived an opening statement on behalf of Westar. Clean Line witnesses testifying at the hearing included Glotfelty, Tr., pp. 53-111; and Galli, Tr., pp. 132-134. Staff witnesses testifying at the hearing included Wegner, Tr., pp. 113-130; DeBaun, Tr., pp. 137-140; and Larson, Tr., pp. 140-143.<sup>5</sup>

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<sup>5</sup> Larson was offered as a witness to make corrections to testimony.

Testimony of the following witnesses was proffered by the parties and admitted into the record by the Commission: Skelly, Tr., p. 131; Berry, Tr., p. 135; Begley, Tr., p. 135; Myers, Tr., p. 136; Harrison, Tr., p. 136; Fry, Tr., p. 137; and Gatewood, Tr., p. 137.

19. The Commission modified the briefing schedule at the hearing to allow the parties to file initial briefs on October 21, 2011, and reply briefs on October 28, 2011. Initial briefs were filed by Clean Line, Staff, E4G and ITC Great Plains. Reply briefs were filed by Clean Line and ITC Great Plains.

20. At the hearing, ITC Great Plains objected to the S&A, and additionally filed written Objection to the Stipulation and Agreement on October 20, 2011, pursuant to K.A.R. 82-1-230a(c). ITC Great Plains stated its support for the Objection in both its Initial and Reply Briefs, which is discussed in more detail below. Clean Line filed a response to ITC Great Plains' Objection in its Reply Brief.

### **III. Provisions of the Stipulation and Agreement**

21. The S&A attached to the Joint Motion resulted from discussions among all parties to the docket. Although ITC Great Plains, Westar, Sunflower and MKEC intervened in this proceeding, none of these parties signed the agreement. As noted above, Westar took no position with respect to the S&A, Sunflower and MKEC did not object to the S&A, and ITC Great Plains stated it opposed the S&A in only the identified limited respect. Tr., pp. 15, 20-21, 42.

22. The provisions of the S&A are summarized as follows:

(a) Transmission Only Certificate for HVDC transmission line with AC Collector System: Clean Line should be granted a Transmission Only Certificate of Public Convenience and Necessity pursuant to K.S.A. 66-131, to operate as a public utility in Kansas and construct and operate a HVDC transmission line, and associated facilities as contemplated by its Application, including converter stations, lines to connect the converter stations to the SPP, and an AC Collector System comprised of AC gathering lines needed to connect generators in western Kansas.

(b) Authority to construct and operate AC Collector System: The certificate should clearly include authority to construct and operate the AC Collector System, without Clean Line having to seek further certification, or amendments to the certificate, in order to construct or operate the AC Collector System or the Project. Clean Line shall make all filings under the Kansas Transmission Line Siting Act (Kansas Siting Act), K.S.A. 66-1,177 *et seq.*, and the Wire Stringing Rules, K.A.R. 82-12-1 *et seq.*

(c) Conditioned on cost recovery other than through the SPP or Kansas ratepayers: The cost of the Project and AC Collector System owned by Clean Line shall not be recovered through the SPP cost allocation process or from Kansas ratepayers. The granting of the certificate should be conditioned upon Clean Line's representation that there will be no Project or AC Collector System cost allocation to the SPP or recovery of costs from Kansas ratepayers, other than de minimis costs ancillary to any needed interconnection to the SPP. If Clean Line decides to modify the cost recovery process in a way inconsistent with this condition, Clean Line shall file an Application with the Commission to amend its certificate, and include evidence supporting the amendment in accordance with applicable public convenience standards.

(d) SPP studies and approval from SPP TWG: Clean Line shall cooperate with the SPP as appropriate, and shall complete all studies required by the SPP for both the Project and the AC Collector System prior to the completion of any connection. This process shall include obtaining approval from the SPP TWG for interconnection request for either the Project or the AC Collector System to the SPP system. Clean Line agrees to make the results of the SPP studies available to Staff for review.

(e) Quarterly progress reports: Clean Line shall submit quarterly progress reports to the Executive Director, General Counsel and Director of Utilities of the Commission. Clean Line shall file in this docket a Notice of Submittal upon submitting these reports. The reports shall include:

- (1) Percent completion of project;
- (2) Amount spent to date;
- (3) Amount previously expected to have been spent to date;
- (4) Total budget of project (and explanations of increases/decreases);
- (5) SPP agreements and invoices;
- (6) Agreements with other Kansas jurisdictional public utilities; and
- (7) FERC filings.

In addition, if the Application for siting approval is not filed by Clean Line under the Kansas Siting Act, K.S.A. 66-1,177 *et seq.*, the reports shall include:

- (8) Status of routing;
- (9) Status of public outreach/public meetings; and
- (10) Status of right-of-way and real estate acquisition in Kansas.

(f) Withdraw request for waiver of certain statutes: Clean Line shall withdraw its request for waiver of K.S.A. 66-101b through 66-101f, K.S.A. 66-117, K.S.A. 66-128 through 66-128p, and K.S.A. 66-1403. The Joint Movants agreed that the FERC preempts the Commission unless Clean Line acts outside the conduct covered by FERC jurisdiction, at which time the Commission shall decide the applicability of the above-referenced statutes. Clean Line also agrees to withdraw its request for waiver of K.S.A. 66-122.

(g) Waiver of K.S.A. 66-1402: The Joint Movants support Clean Line's request for waiver of K.S.A. 66-1402, which shall be effective only as long as Clean Line continues to utilize a cost recovery mechanism consistent with subsection (c) above.

(h) EL filings: Clean Line shall make all required "EL" filings in accordance with K.A.R. 82-12-1 *et seq.*, as amended, for any transmission line it builds. S&A, ¶ 4.

23. The Joint Movants agreed to be bound by the terms of the S&A and the Commission's Order incorporating its terms to all issues addressed, if the Commission accepted it in its entirety, and to waive any right to appeal the Commission's Order on these issues. S&A, ¶ 5. The Joint Movants also agree that the Application of Clean Line, as modified by the S&A, is in the public interest. S&A, ¶ 6.

#### **IV. ITC Great Plains' Objection and Arguments**

24. ITC Great Plains filed an Objection to the S&A with the Commission within 10 days after the filing of the S&A in accordance with K.A.R. 82-1-230a(c), and served parties to the docket, with the exception of Staff, on the same day. ITC Great Plains, LLC's Objection to the Stipulation and Agreement, October 20, 2011 (ITC Great Plains Objection). Staff stated it was not aware the written objection was filed within the 10-day limit due to a deficiency in service by ITC Great Plains, but that Staff did not oppose the Commission's acceptance of ITC Great Plains' Objection. Staff's Response to ITC Great Plains, LLC's Objection to the Stipulation and Agreement, October 28, 2011, paragraphs 3-5 (Staff Response, ¶¶ 3-5).

25. For its objection, ITC Great Plains stated its intent is to ensure a reliable and coordinated transmission system in the state, and to maintain a level regulatory playing field for all transmission-only utilities. ITC Great Plains, LLC's Post Hearing Initial Brief, October 21, 2011, page 1 (ITC Great Plains Initial Brief, p. 1). ITC Great Plains stated it does not oppose the grant to Clean Line of a certificate of public convenience and necessity for the HDVC line, as contemplated by the S&A, but asserts that only a limited certificate be granted for the AC Collector System as referenced in Clean Line's Application. ITC Great Plains stated that the AC Collector System lines (hereinafter also referred to as "lead lines") should not be included in the authority granted, without providing some reasonable and specific level of definition surrounding the generator lead lines Clean Line intends to build. ITC Great Plains Objection, ¶ 2. In particular, ITC Great Plains argued that each time Clean Line has identified wind developer partners and wind farm locations, Clean Line should be required to return to the Commission and seek an amendment to its certificate describing with some level of specificity the parameters of the generator lead line, and their locations, length, and voltage. ITC Great Plains Initial Brief, pp. 6-8.

26. ITC Great Plains argued that if the Commission does not require Clean Line to amend its certificate when it identifies where generator lead lines are to be located, the Commission may not have another opportunity to evaluate interests of landowners, environmental organizations, or other interested parties to assure some level of coordination with utilities operating in Kansas. As support for this statement, ITC Great Plains stated that Clean Line could choose to utilize the federal siting process available to it through the National Environmental Policy Act (NEPA), rather than the Kansas Siting Act, to obtain approval to build the Project. ITC Great Plains Initial Brief, pp. 9-11.

## V. Findings and Conclusions

27. As noted above, the Joint Movants have filed a S&A that reflects resolution of numerous issues and otherwise addresses questions raised in this proceeding. The Commission has evaluated the evidence in the record as a whole regarding the proposed S&A in light of the following standard of review. The Commission has previously recognized its authority to approve settlements containing final terms that have been agreed to by the parties, but that do not reveal how these terms were reached. Docket No. 08-ATMG-280-RTS, Order Approving Contested Settlement Agreement, May 12, 2008, paragraphs 9-10 (Atmos Settlement Order, ¶¶ 9-10). Generally, the law favors compromise and settlement of disputes when parties enter into an agreement settling and adjusting a dispute. *Krantz v. University of Kansas*, 271 Kan. 234, 241-242, 21 P.3d 561, 567 (2001). Given the uncertainty inherent in litigation and the strong preference in the law for an amicable resolution of disputes, the Commission generally supports settlement of issues. *Bright v. LSI Corp.*, 254 Kan. 853, 858, 869 P.2d 686, 690 (1994); *Farmland Industries, Inc. v. State Corp. Comm'n*, 24 Kan.App.2d 172, 186-87, 943 P.2d 470, *rev. denied* 263 Kan. 885 (1997).

28. When adopting a settlement, the Commission must make an independent judgment of whether the settlement is supported by substantial competent evidence in the record as a whole. *Citizens' Utility Ratepayer Board v. State Corp. Comm'n*, 28 Kan.App.2d 313, 316, 16 P.3d 319, 323 (2000), *rev. denied* March 20, 2001. To meet this requirement, the Commission has articulated five factors it will consider in evaluating settlement agreements. First, has each party had an opportunity to be heard on its reasons for opposing the settlement? Second, is the settlement supported by substantial competent evidence in the record as a whole? Third, does the settlement conform with applicable law? Fourth, will the settlement result in just

and reasonable rates? Fifth, are the results of the settlement in the public interest, including the interests of those parties not consenting to the settlement agreement? Atmos Settlement Order, ¶ 11. The Commission will consider each factor in deciding whether the settlement in this proceeding should be approved.

*A. Evaluation of the S&A*

29. The Commission has reviewed the provisions in the S&A, and finds it to be a reasonable resolution of the issues and in the public interest. In this Order, the Commission will discuss the issues set forth in the S&A, and will also address the objection set forth by ITC Great Plains. The Commission will first consider the S&A by reviewing the five criteria identified for evaluating whether a specific settlement reached by the parties should be approved. Each criterion will be considered separately.

*1. Has each party had an opportunity to be heard on its reasons for opposing the settlement?*

30. Clean Line, Staff, CURB and E4G all support the S&A. ITC Great Plains participated in the hearing before the Commission, and filed an objection to the S&A. Westar stated it took no position to the S&A, and Sunflower and MKEC stated they do not object to the S&A. Tr., pp. 15, 20-21, 42, 55-56. The record shows that no parties were denied any opportunity to be heard on the Application or on reasons for opposing or not supporting the S&A. The procedural schedule set forth a full opportunity for all parties to present evidence on the issues raised in the Application, including participation in a settlement conference.

31. At the hearing, ITC Great Plains explained its opposition to the settlement in opening statements. All parties were provided with the opportunity to conduct cross-examination of witnesses tendered in support of the S&A, as well as all witnesses tendered to the Commission for questioning. Both Clean Line and Staff pointed out that all of the parties that

intervened in the docket were present during the settlement conferences and participated in negotiation of the issues. Tr., p. 116 (Wegner)

32. The Commission finds that there was an opportunity for all parties, even those opposing or not supporting the S&A, to be heard on reasons for opposition to the S&A.

2. ***Whether the S&A is supported by substantial competent evidence?***

33. Substantial competent evidence is that which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved. *Kansas Gas and Electric v. State Corp. Comm'n*, 14 Kan.App.2d 527, 532 (quoting *Southwestern Bell Tel. Co. v. State Corp. Comm'n*, 4 Kan.App.2d 44, 46, 602 P.2d 131 (1979), *rev. denied* 227 Kan. 927 (1980)). Whether another trier of fact or another party could have reached a different conclusion given the same facts is irrelevant; a decision of the Commission is considered not to be supported by substantial competent evidence “only when the evidence shows the [Commission’s] determination is so wide of a mark as to be outside the realm of fair debate.” *Zinke & Trumbo, Ltd. v. State Corp. Comm'n*, 242 Kan. 470, 474 (1988).

34. This Order has listed names of witnesses submitting prefiled direct, cross-answering, and rebuttal testimony. In this case, two witnesses, Glotfelty for Clean Line and Wegner for Staff, offered testimony in support of the S&A through their testimony at the hearing. Both Glotfelty and Wegner outlined the elements of the S&A and the five-factor test the Commission utilizes to evaluate settlement agreements, and supported the S&A as a whole in light of their respective and independent litigation risks. Tr., pp. 56-57 (Glotfelty), 115-118 (Wegner). All prefiled testimony was admitted as a part of the record, and the Commission has reviewed and considered all such testimony, including materials referenced and incorporated in

such testimony. In addition to reviewing prefiled testimony and questioning witnesses who testified during the hearing, the Commission notes that it has considered statements made by members of the public who filed comments with the Commission's PACP Office.

35. Clean Line stated that when constructed, the Grain Belt Express will have an interconnect with the SPP system from the Clean Line converter station, which is expected to only take power from the SPP system to run the converters, but is not intended to take any power from Clean Line to flow into the SPP system. Tr., p. 10. Clean Line stated that its interconnect to the SPP system will be subject to all of the SPP studies and requirements evaluating the impact of its connection. Tr., p. 20.

36. As set forth in the project description that Clean Line provided to the SPP TWG, there are significant and substantial economic benefits that the project will provide to Kansas. Galli Direct, Exhibit AWG-7, page 11. As noted, the benefits include royalties to landowners who contract with generators, new jobs associated with construction and operation of both the lines and wind generating facilities, and additional tax revenue. Skelly Direct, pp. 7, 30. As laid out fully in Clean Line's Application and supporting testimony, these economic benefits will provide a tremendous stimulus to the United States economy by facilitating a great deal of new investment in renewable energy projects that would not be possible if the Project did not occur. Some of the economic benefits include: (1) creation of transmission facility jobs, including over 4,700 full-time equivalent (FTE) jobs in Kansas over a three-year construction period, and over 120 permanent jobs to operate and maintain the transmission facilities; (2) creation of wind generation facility jobs, including over 16,500 FTE jobs over a one-year construction period, and over 480 permanent jobs to operate and maintain the wind generation facilities; (3) royalties and other income related to the expansion of wind generation projects to Kansas landowners; (4)

approximately \$7 billion in new renewable power generation in western Kansas; and (5) generation of tax revenues for state and local governments, estimated at over \$15 million in additional tax revenue from sales, property, and income tax during the three-year construction cycle. Application, ¶¶ 25, 32-43; Skelly Direct, pp. 5-7.

37. The Commission has weighed the testimony and pleadings of all parties, and after reviewing the record as a whole, finds that substantial competent evidence exists and supports the finding that the S&A is reasonable and should be approved in its entirety. The Commission finds that Clean Line has provided substantial competent evidence through its Application and testimony for the Commission to approve a Transmission-Only certificate for the HVDC transmission line including the construction and operation of the AC Collector System, with the cost-recovery condition as set forth in the S&A and recommended by Staff. Clean Line has agreed to conduct any SPP studies and obtain approval from the SPP TWG as needed, and to provide quarterly progress reports to the Commission concerning the Project. Clean Line has agreed to withdraw its request for waiver of certain statutes requested in its Application, and the Joint Movants agreed to waive K.S.A. 66-1402. Clean Line has acknowledged it must make the EL filings with the Commission concerning the lines in the Project.

**3. *Whether the S&A conforms with applicable law?***

38. No public utility may transact business in Kansas unless it obtains a certificate from the Commission that “public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a ... public utility in this state.” K.S.A. 66-131. In its Application, and also in the S&A, Clean Line requests the Commission limit its certificate to allow the certificated authority to include only the ability to build and operate the Grain Belt Express transmission line and the AC Collector System.

39. The terms “public convenience” and “public necessity” are not defined in Kansas statutes, but in *Central Kansas Power Co. v. State Corp. Comm’n*, 206 Kan. 670, 676, 482 P.2d 1, 6-7 (1971), the Kansas Supreme Court has stated:

[P]ublic convenience and necessity will be promoted by authorization of the plan for electric facilities envisioned in the application. Public convenience means the convenience of the public, not the convenience of particular individuals. [Citations omitted.] Public necessity does not necessarily mean there must be a showing of absolute need. As used, the word “necessity” means a public need without which the public is inconvenienced to the extent of being handicapped.

See also, *General Communications Systems, Inc. v. State Corp. Comm’n*, 216 Kan. 410, 418, 532 P.2d 1341, 1348 (1975); *Atchison, Topeka & Santa Fe Railway Co. v. Public Service Commission*, 130 Kan. 777, 288 P.2d 755 (1930). Public convenience is a relative term, established by proof of the conditions existing in the territory to be served. *Atchison* at 781. “The requirement that an entity receive a certificate prior to commencing public utility business is for the protection and welfare of the people.” *Wycoff v. Quick Way Homes, Inc.*, 201 Kan. 442, 446-47 (1968).

40. In *Central Kansas Power Co.* at 677, citing *Kansas Gas & Electric Co. v. Public Service Comm’n*, 122 Kan. 462, 251 P.2d 1097, 1099, the Court stated:

In determining whether such certificate of convenience should be granted, the public convenience ought to be the Commission’s primary concern, the interest of public utility companies already serving the territory secondary, and the desires and solicitations of the applicant a relatively minor consideration.

41. The Commission has examined the statutory requirements and directions set forth by the Kansas Supreme Court in evaluating this factor. At the hearing, Clean Line witness Glotfelty testified the S&A conforms to applicable law. Tr., p. 37 (Glotfelty). Staff witness Wegner also testified at the hearing that Staff counsel advised that Clean Line does conform to the applicable law. Tr., p. 117 (Wegner).

42. The Commission considers the public convenience to be the primary concern in granting this certificate. The Commission finds no provision in the S&A is in violation of applicable laws. Currently, considering the planned capacity for alternative energy in the SPP system, only limited additional wind generation can be constructed in Kansas. Without the construction of the Grain Belt Express, as to the interests of public utility companies already serving the territory, the Commission finds that the service that Clean Line seeks to provide is not being provided by any other Kansas utility, as Clean Line only intends to export wind energy resources outside Kansas and the SPP footprint. The Commission has general authority over public utilities in the state, and finds that it is within the Commission's authority to acknowledge that the export of Kansas' abundant wind energy resources is in the public's interest.

43. ITC Great Plains raises no challenge of illegality in the sense that the S&A should be rejected. ITC Great Plains' Objection to inclusion of the AC Collector System is not legally supported, and if it were, it would be a secondary consideration of the Commission's, since the public convenience standard as set forth by Kansas courts is the Commission's primary concern. The Commission concludes that the S&A conforms with applicable law.

*4. Whether the S&A results in just and reasonable rates?*

44. Glotfelty testified at the hearing that the S&A confirms that Clean Line will request negotiated rate authority from the FERC. This will ensure that the costs for the project are paid by those who purchase capacity on the line, which are either utilities on the eastern end of the line or wind generators in Kansas seeking access to markets, and should not have any impact on Kansas ratepayers. Tr., pp. 57-58 (Glotfelty).

45. Wegner testified at the hearing that since Kansas ratepayers are not paying for the line, there are no rates to be set. Tr., p. 117 (Wegner). Clean Line's business plan does not have

Kansas ratepayers paying for this project, and the project will not go through the cost allocation procedures of the SPP as the project is financed through private investment. Tr., p. 11.

46. The Commission finds that Clean Line does not seek to recover rates or costs for its Project from Kansas ratepayers or through the SPP, while noting that such finding is not a factor material in this docket under the five-factor test the Commission uses to evaluate settlement agreements. The finding that recovery of costs of the Project will not be borne by Kansas ratepayers is nonetheless material to the Commission's ultimate determination of Clean Line's Application, as more fully discussed in the public interest section below.

**5. *Whether the results of the S&A are in the public interest, including the interest of those parties not consenting to the agreement?***

47. A nonunanimous S&A would fail this test if the objecting party was not provided an opportunity to be heard on its objections; if the S&A was not supported by substantial competent evidence; if it was not in conformance with applicable law; or if it did not result in just and reasonable rates. Therefore, the findings and conclusions supporting these factors are also relevant to this factor. Atmos Settlement Order, ¶ 29.

48. Staff stated that the Commission should grant the certificate as agreed to by the parties in the S&A because it encourages wind development in Kansas while protecting Kansas ratepayers, which protects the public's interest. Tr., p. 52. Wegner testified that Kansas ratepayers will not be responsible for the cost of the line, and that the Project provides an opportunity for wind developers to develop wind projects in western Kansas, including providing a market for Kansas manufacturers of wind turbines and components. Tr., p. 118 (Wegner). Granting Clean Line a certificate of public convenience allows Kansas to both receive benefits and to provide benefits to other areas of the country at no cost to Kansas ratepayers.

49. Glotfelty testified at the hearing that the public interest is clearly served since Kansas ratepayers are not paying for the line, but will still obtain the economic development benefits associated with wind generation. Tr., pp. 57-58 (Glotfelty). Glotfelty stated that there is value at the local and state levels as wind farms are built. Moreover, Kansas ratepayers will not pay or be at risk for the inclusion of the AC Collector System. Tr., pp. 58-59 (Glotfelty).

50. The Commission finds that the need for long-distance, multi-state transmission projects such as the Grain Belt Express proposed by Clean Line in this proceeding will promote the development of wind generation facilities in Kansas, which will provide benefits to Kansas and other areas of the country. These benefits are certainly in the public's interest and Kansas' interest, especially since Clean Line's merchant model for cost recovery does not charge Kansas ratepayers to execute the proposed Project. Public comments indicate significant support for the approval of Clean Line's Application, to help connect Kansas' wind energy to larger markets farther east, to generate more jobs and greater revenues to local jurisdictions, and to strengthen Kansas' reputation as an attractive place to do business.

51. Clean Line demonstrated that construction of its project in Kansas will promote economic development and provide benefits to local communities, which include: construction of wind farms that could not otherwise be built due to insufficient transmission, construction and permanent maintenance jobs, and growth of turbine and related manufacturing employment.

52. The project will also generate tax revenues for state and local governments in Kansas. Application, ¶ 33. Kansas landowners will benefit from royalties resulting from expansion of wind generation projects. Application, ¶ 34.

53. After balancing all the interests represented by the parties to this proceeding, including those objections represented by ITC Great Plains and other intervenors who did not

voice support or opposition to the S&A, the Commission finds that approval of the S&A is in the public interest, as it provides the opportunity for wind energy resources to be further developed in Kansas and exported to other areas of the country. The Commission finds that it is in the public's interest to promote the development of wind energy resources, which is vital to economic growth in the state. Clean Line's Project promotes both Kansas' wind energy resources and introduces diversity in the transmission line system with the construction of its HVDC transmission lines and AC Collector System. The S&A also yields other additional benefits to all parties' interests. There is a benefit of stemming potentially protracted litigation, thereby promoting administrative efficiency, a well-settled public policy goal.

***B. Other Factors for Consideration***

54. The Commission has previously examined several issues regarding whether a certificate should be granted for an entity to build transmission in or through Kansas. Wegner testified at the hearing that the elements of the public convenience standard were covered in DeBaun's testimony and Wegner's testimony. These issues include: (1) Whether the S&A will result in unnecessary duplication of utility service? (2) The impact on wholesale competition? (3) The effect of the S&A on the Commission's jurisdiction to effectively regulate and audit public utility operations and transmission operations, including the effect of the S&A on ongoing authority to regulate, review, and oversee the Applicants' transmission operations in Kansas? (4) Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area affected by the resulting public utility operations in the state? (5) The effect of the transaction on reliability of service? (6) Whether the S&A will promote adequate and efficient service? (7) Whether the S&A reduces the possibility of economic waste? (8) What impact, if any, the S&A has on the public safety? (9) The effect of

the transaction on customers? (10) The effect of the transaction on the environment? (11) The effect of the transaction on public utility shareholders? (12) Whether the transaction maximizes the use of Kansas energy resources?<sup>6</sup>

55. In addition to having considered each of the foregoing issues, the Commission has also evaluated whether the Applicant possesses the necessary managerial, technical, and other experience necessary to operate and own a transmission line. Clean Line Initial Brief, ¶ 11.

56. The Commission has also stated that it should consider the impact of a transmission line on neighboring states, due to the regional nature of the transmission system. Order, Docket No. 08-KMOE-028-COC, August 12, 2008, paragraph 40.

57. Clean Line, by and through its witnesses Skelly and Glotfelty, and in its Application, has demonstrated that it has considered and addressed in its Application and supporting testimony the above stated issues for whether a certificate should be granted for an entity to build transmission in or through Kansas. Clean Line's project facilitates the export of wind energy resources out of the state and region; there is not another public utility that is providing this service. Thus it would not be duplicating the transmission services being offered by other public utilities in Kansas. Clean Line Initial Brief, ¶ 17. Clean Line's project would also benefit wholesale competition in the market, and would not have any negative impact on Kansas customers or public utility shareholders. Skelly Direct, pp. 33-36. Clean Line stated that using renewable energy facilitated by the Grain Belt Express will avoid construction of carbon-based fuel generation, and accordingly will reduce emissions of carbon dioxide, nitrogen oxides, and sulfur dioxide, as well as reduce water consumption used to cool thermal power plants. Application, ¶ 31.

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<sup>6</sup> See Docket Nos. 06-SPPE-202-COC, 06-WSEE-203-MIS, 07-ITCE-380-COC, 08-KMOE-028-COC, 08-PWTE-1022-COC, 08-ITCE-936-COC/08-ITCE-937-COC/08-ITCE-938-COC.

58. Staff thoroughly evaluated the standards the Commission has set forth in previous applications for certificates of convenience. *See* Testimony of Thomas B. DeBaun, August 19, 2011, pages 5-7 (DeBaun Direct, pp. 5-7 (summary)). Staff reviewed prior Commission orders that have interpreted public convenience standards, as set forth in the testimony of Staff witness DeBaun, and concluded that Clean Line has met those factors and the public convenience standard and should be granted the certificate for its Project as proposed.

***C. Commission's Continuing Regulatory Oversight***

59. Glotfelty testified at the hearing that the S&A is clear that Clean Line will use Kansas statutes when applicable to build this line, which would give the Commission as much oversight over the process as legally authorized. Tr., p. 73 (Glotfelty). Approving a certificate of convenience and necessity for Clean Line gives the Commission continuing regulatory oversight over Clean Line. Additionally, Clean Line, by and through its agreement to the S&A, has agreed to submit quarterly reports detailing the progress of its project in Kansas. Clean Line has stated that it will comply with the Wire Stringing Act, K.S.A. 66-183, and the Kansas Siting Act, K.S.A. 66-1,177 *et seq.* Application, ¶¶ 44-45.

60. Staff stated that the reporting requirements are in the public interest, providing the Commission with the oversight necessary to ensure Clean Line adheres to the conditions of its certificate, and creates the mechanism for the Commission to monitor the progress of the project, track Clean Line's agreements with the SPP and other utilities, and stay informed about the siting process. Staff's Post Hearing Brief, October 21, 2011, paragraph 14 (Staff Brief, ¶ 14).

61. The Commission will have continuing jurisdiction over Clean Line's certificate, including the ability to open an investigation at any time if there is a question about whether certification is in the public interest for Kansas. *See* Reply Brief of Grain Belt Express Clean

Line LLC, October 28, 2011, paragraph 4 (Clean Line Reply Brief, ¶ 4). ITC Great Plains is correct in its assertion that there is no guarantee that the Commission will have jurisdiction over a future siting proceeding in Kansas. ITC Great Plains Reply Brief, p. 11. ITC Great Plains argues that the Commission will not necessarily be provided with future opportunities or jurisdiction to evaluate other interests, but the Commission finds that to be incorrect. ITC Great Plains, LLC's Post Hearing Reply Brief, October 28, 2011, page 6 (ITC Great Plains Reply Brief, p. 6).

***D. Intervention Issues***

62. In this docket, the Commission has discovered issues with the application of the intervention rules of the Commission, and how those rules are applied to parties interested in intervening in matters before the Commission, particularly where intervention may serve to unduly prolong the final action upon an application. The Commission will be carefully examining petitions to intervene in future proceedings to determine if parties are articulating facts determining how legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by a proceeding, and thus justify or warrant the right of intervention, and the terms upon which intervention is to be permitted. K.A.R. 82-1-225.

***E. Conclusion***

63. The Commission concludes that Clean Line has fulfilled the standard applied in Kansas for certification under K.S.A. 66-131. The Commission finds there is sufficient competent evidence demonstrating that Clean Line has the managerial, financial and technical experience to construct, operate and maintain the line. Skelly Direct, pp. 37-45; Wegner Direct, pp. 3-8; Gatewood Direct, pp. 2-5. Based on the findings and conclusions stated above, and considering the entire record as a whole, the Commission approves the Joint Motion to Approve

Stipulation and Agreement. The Commission finds that Clean Line should be issued a certificate of public convenience and necessity in accordance with the provisions of K.S.A. 66-131, to transact the business of a public utility in the state, and limits the certificate right to Transmission Only, upon the terms and conditions as set forth in the Stipulation and Agreement.

64. The Commission finds that by granting the certificate of public convenience and necessity, Clean Line will be permitted to develop its plans to improve the transmission system in Kansas as well as aid in the development of Kansas' wind resources, which allows a new entrant into the business of electric transmission with a primary focus on electric transmission. This action by the Commission does not pre-judge approval of the actual siting of the Project, as that process would occur as part of a specific site application, pursuant to K.S.A. 66-1,177 *et seq.*, and related proceedings which concern the proposed line's operating characteristics, physical properties and location.

65. The Commission finds that granting the certificate to Clean Line will help expand renewable generation resources and transmission infrastructure in Kansas through the use of HVDC technology, which allows for better control when variable wind generation is injected into the grid and for the transfer of significantly more power with less power lost over long distances when compared to AC lines. Clean Line Initial Brief, ¶ 16; Skelly Direct, p. 9; DeBaun Direct, p. 18; Direct Testimony of Elena E. Larson, August 19, 2011, pages 11-12 (Larson Direct, pp. 11-12).

66. Clean Line's stated purpose is to construct and operate high voltage transmission lines to connect renewable resources in Kansas with load and population centers in eastern markets that have an increasing demand for electricity generated by renewable resources. Application, ¶ 4. The Commission finds it would make little sense to approve the certificate for

construction of the HVDC line without the AC Collector System. As stated by Clean Line in its Application, “Developers will not invest capital in wind generation facilities in western Kansas without reasonable assurances and expectations that transmission infrastructure will be in place on a timely basis to bring their output to market centers.” Application, ¶ 26. If the Commission were to approve the certificate only for the HVDC line portion of the project, and not include or limit its approval of the AC Collector System, potential investors would be less likely to provide funding for the Project, and the Project might not move forward and thus might not provide significant economic benefits and opportunities in the state that are in the public’s interest. The Commission finds that this would be a significant and unnecessary handicap to the development of Clean Line’s Grain Belt Express.

67. The Commission has reviewed ITC Great Plains’ Objection, and finds that there is no basis under the five-factor test, or under a consideration of the additional related issues identified in paragraph 54, or under other applicable law, to reject the S&A. The Commission has considered the public at large and balanced the competing interests in arriving at its decision.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The Commission finds and concludes that the Joint Motion to Approve Stipulation and Agreement (S&A) is reasonable and should be granted, and by attaching the Stipulation and Agreement, the terms and conditions are incorporated into this Order. All parties had an opportunity to be heard as to reasons for opposing the S&A, the S&A is in the public interest, does not impact rates for Kansas consumers, is supported by substantial competent evidence, and conforms with applicable law.

B. The Commission concludes that Grain Belt Express Clean Line LLC has satisfied the requirements of K.S.A. 66-131 and is therefore granted a certificate of public convenience limited to Transmission Only.

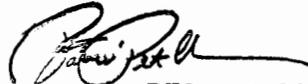
C. This Order shall be served electronically on the parties. Parties have 15 days from the date of service of this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529(a)(1).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Sievers, Chairman; Loyd, Commissioner; Wright, Commissioner

Dated: DEC 07 2011

  
ORDER MAILED DEC 07 2011  
ELECTRONIC

Patrice Petersen-Klein  
Executive Director

mrd

Attachment  
A

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

In the Matter of the Application of Grain )  
Belt Express Clean Line LLC for a Limited )  
Certificate of Public Convenience to Transact ) Docket No. 11-GBEE-624-COC  
the Business of an Electric Public Utility in the )  
State of Kansas. )

**STIPULATION AND AGREEMENT**

COME NOW Grain Belt Express Clean Line LLC (“Clean Line”), the Staff of the Kansas Corporation Commission (“Staff”), the Citizens’ Utility Ratepayer Board (“CURB”), and Energy for Generations, LLC (“E4G”), (referred to collectively as the “Signatories”), and hereby submit to the Kansas Corporation Commission (“Commission”) for consideration and approval the following Stipulation and Agreement (“Stipulation”).

**I. BACKGROUND**

1. On March 7, 2011, Clean Line filed an Application for a limited certificate of public convenience and necessity (“Certificate”) to site, construct, own, operate and maintain bulk electric transmission facilities located in the State of Kansas, and requested a Transmission Only Certificate under K.S.A. 66-131. The Certificate requested would allow Clean Line to develop the Grain Belt Express Clean Line (“Grain Belt Express”), which will be a ±500 or ±600 KV high-voltage direct-current (“HVDC”) transmission line capable of delivering 3,500 MW of power from Kansas to other load centers. The Grain Belt Express will originate in western Kansas near Spearville, Kansas and traverse east across Kansas into Missouri and possibly through Illinois into Indiana. The Grain Belt Express will be approximately 550 miles long (or

longer should it continue into Illinois and Indiana) and will deliver renewable energy to the Midwest Independent System Operator (“MISO”) markets and/or PJM Interconnection, LLC (“PJM”) markets.

2. Because Clean Line’s rates and services will be regulated under the jurisdiction of the Federal Energy Regulatory Commission (“FERC”), the Application also requested the Commission declare Clean Line exempt from, or in the alternative, waive certain statutory requirements as follows:

K.S.A. 66-101b	Rates and Service
K.S.A. 66-101c-f	Publication & Regulation of Rates
K.S.A. 66-117	Rates and Schedules
K.S.A. 66-122	Accounts and Reports
K.S.A. 66-128 through 128p	Valuation of Property for Ratemaking Purposes
K.S.A. 66-1402 and 1403	Submission of Affiliate Contracts and Fixing Rates Impacted by Affiliate Contracts

3. On June 22, 2011, the Commission issued an Order adopting the report and recommendations of the prehearing officer, establishing a procedural schedule for this docket which included, in part, discovery between the parties, the filing of direct, cross-answering and rebuttal testimony, a settlement conference and an evidentiary hearing. The settlement conference was held on September 26, 2011 at the Commission’s offices in Topeka, Kansas. All parties attended, and based upon discussions held at that meeting and thereafter, an agreement for resolution of the issues involved in this docket was reached between Staff, CURB, E4G and Clean Line.

## II. TERMS OF THE STIPULATION AND AGREEMENT

4. The Signatories hereby agree that the following terms, if adopted by the Commission as its Order in this docket, are a reasonable and fair settlement of the issues herein and promote the public interest in the State of Kansas:

- a. Clean Line should be granted a Transmission Only Certificate of Public Convenience and Necessity pursuant to K.S.A. 66-131 to operate as a public utility in Kansas for the purpose of constructing and operating a HVDC transmission line and associated facilities as contemplated by its Application, including converter stations, lines to connect the converter station to SPP and a collector system comprised of AC gathering lines needed to connect generators in western Kansas to the Project (“AC Collector System”) (collectively, “the Project”).
- b. The Certificate granted to Clean Line for this Project should clearly include the authority to construct and operate the AC Collector System, which is an integral part of the overall Project. Clean Line does not have to seek further certification, or any amendments to this Certificate, in order to construct or operate the AC Collector System or the Project. Clean Line will make all filings required under the Kansas Transmission Line Siting Act, K.S.A. 66-1,177 *et seq.*, and the Wire Stringing rules, K.A.R. 82-12-1 *et seq.*
- c. It is the intent of the Signatories that the cost of the Project and any AC Collector System owned by Clean Line will not be recovered through the SPP cost allocation process or from Kansas ratepayers. As such, the Signatories recommend that the Commission’s Order condition the granting of the Certificate upon Clean Line’s representation that there will be no Project or AC Collector System cost allocation to SPP or recovery of Project

or AC Collector System costs from Kansas ratepayers, other than de minimis costs ancillary to any needed interconnection to SPP. If, after the Commission grants Clean Line a Certificate with the noted condition, Clean Line determines that it will modify this cost recovery process in a way that is inconsistent with this condition, Clean Line will file an application with the Commission to amend its Certificate, including evidence supporting such amendment in accordance with applicable public convenience standards.

- d. Clean Line will cooperate with the SPP as appropriate. If the Project or any portion of the AC Collector system owned by Clean Line is to be connected with the SPP system, Clean Line will complete all studies required by SPP for both the Project and the AC Collector System owned by Clean Line prior to the completion of any such connection. This process will include obtaining approval by the SPP Transmission Working Group ("TWG") of any interconnection request for either the Project or any portion of the Clean Line owned AC Collector System to the SPP system. Clean Line agrees to make the results of the SPP studies available to the Staff for its review.
- e. Upon being granted a Certificate by the Commission, Clean Line agrees to submit quarterly progress reports thereafter to the Executive Director, General Counsel and Director of Utilities of the Commission. Upon submitting the reports, Clean Line will also file in the docket a Notice of Submittal. Such reports shall include the following information:
  - (1) Percent completion of project
  - (2) Amount spent to date
  - (3) Amount previously expected to have been spent to date
  - (4) Total budget of project (and explanations of increases/decreases)

- (5) SPP Agreements and Invoices
- (6) Agreements with other Kansas jurisdictional public utilities
- (7) FERC Filings

In addition, if an application for siting approval is not filed under K.S.A. 66-1,177 *et seq.* the reports will include:

- (8) Status of routing.
  - (9) Status of public outreach/public meetings.
  - (10) Status of right-of-way and real estate acquisition in Kansas.
- f. Clean Line agrees to withdraw its request for waiver of K.S.A. 66-101b through 66-101f, K.S.A. 66-117, K.S.A. 66-128 through 66-128p, and K.S.A. 66-1403. The Signatories agree that the FERC preempts the Kansas Commission unless Clean Line acts outside the conduct covered by FERC jurisdiction, at which time the Kansas Commission will decide the applicability of these statutes. In addition, Clean Line agrees to withdraw its request for waiver of K.S.A. 66-122.
- g. The Signatories agree to support Clean Line's request for waiver of K.S.A. 66-1402. The waiver of K.S.A. 66-1402 will be effective only as long as Clean Line continues to utilize a cost recovery mechanism consistent with section 4.c. above.
- h. Clean Line will make all required "EL" filings in accordance with K.A.R. 82-12-1 *et seq.*, as amended, for any transmission line that it builds.

### **III. OTHER PROVISIONS**

5. If the Commission accepts this Stipulation in its entirety and incorporates the same into a final order without material modifications, the Signatories shall be bound by its

terms and the Commission's Order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's Order on these issues.

6. The Signatories agree that the Application of Clean Line, as modified by this Stipulation, can be found by the Commission to be consistent with the public interest, and accordingly recommend that the Commission so find and that this Stipulation be approved.

7. No Signatory shall be deemed to have approved, accepted, agreed, or consented to any principle or precedential determination, or be prejudiced or bound thereby in any other current or future proceeding before the Commission except as provided for herein.

IN WITNESS WHEREOF, the Signatories have executed and approved this Stipulation and Agreement, effective as of the 10<sup>th</sup> day of October, 2011, by subscribing their signatures below.

  
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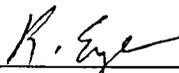
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ATTORNEY FOR ENERGY FOR  
GENERATIONS

**CERTIFICATE OF SERVICE**

**DEC 07 2011**

11-GBEE-624-COC

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Approving Stipulation and Agreement and Granting Certificate was served by electronic service on this 7th day of December, 2011, to the following parties who have waived receipt of follow-up hard copies.

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**ORDER MAILED DEC 07 2011**  
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DEC 07 2011

**CERTIFICATE OF SERVICE**

11-GBEE-624-COC

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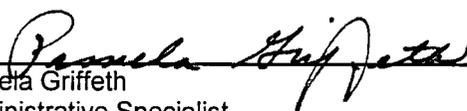
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