

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

MISSOURI LANDOWNERS ALLIANCE
MOTION TO COMPEL, AND REQUEST
TO TAKE ADMINISTRATIVE NOTICE

Comes now the Missouri Landowners Alliance (MLA), pursuant to Commission Rule 4 CSR 240-2.090(8), and respectfully requests that the Commission direct Grain Belt Express (GBE) to provide full and complete answers to two of its data requests directed to Mr. David Berry; i.e., Data Request Nos. DB.40 and DB.41.

1. The data requests in question, submitted by the MLA to GBE and Mr. Berry on October 12, 2016, were as follows:

DB.40 With reference to page 24 lines 10-15 of your testimony, please provide a copy of the complete unredacted responses to the RFI [Request For Information] completed in January, 2014.

DB.41 With reference to page 24 lines 14-15 of your testimony, please provide the work papers and documentation which support the figure of 2.0 cents per kWh flat for 25 years for the lowest-priced 4,000 MW, including the name of each wind farm included in that calculation.

2. After discussions regarding these two data requests between counsel for the MLA and GBE, on November 18, 2016, GBE stated that they would stand on their

objections to these two data requests, and would not provide the information as requested.¹

3. In response to DB.40, GBE has provided the following: (1) a one page list of the 14 wind farms which responded to the RFI in question, attached hereto as Exhibit A (marked by GBE as Confidential); (2) a one page map which purports to show the general locations of the wind farms, as shown at Exhibit B hereto (marked by GBE as Highly Confidential); and (3) a 261 page document with the responses to the RFI from the wind farms, but with critical information redacted by GBE, including the name of the wind farm in question, the address and other contact information for the wind farm, and the location of the wind farm. The information provided by GBE to DB.40 is the same as the information it provided to the MLA in response to a similar data request in GBE's 2014 application for a CCN, case No. EA-2014-0207. The redacted RFI responses provided by GBE in that case were received in evidence as Exhibit No. 335(HC), EFIS No. 427.

4. No information has been provided by GBE in response to Data Request No. DB.41.

5. The material provided in the 2014 case as Exhibit No. 335(HC) is voluminous, consisting of the 261 pages of responses from the wind farms to GBE's RFI (with redactions). In lieu of including that same material as part of this Motion, the MLA respectfully asks that the Commission take administrative notice of Exhibit No. 335(HC)

¹ Although GBE did not submit formal objections to the two data requests in question, based on discussions between counsel, the MLA assumes that GBE's objections are essentially the same as those described in the Commission Order cited in footnote 5 below from the 2014 case.

from case No. EA-2014-0207, pursuant to its general authority to take notice of its own records, and Commission Rule 4 CSR 240-2.130(2).²

6. The material requested in DB.40 is relevant to this case in that it is cited by Mr. Berry to support one of the critical aspects of GBE's application for a CCN: the supposedly low cost of generating electricity at the Kansas wind farms.³ Absent the information redacted from the responses to the RFI, the MLA has no means of verifying the accuracy of the information provided in the RFI to GBE. For example, without the redacted information, the MLA is unable to contact the non-party wind farms which responded to the RFI, in an effort to verify the information provided to GBE. Nor can it attempt to verify the credit ratings of the wind farms which claimed to have the lowest cost and highest capacity for their prospective projects. In addition, without the redacted information, the MLA is unable to cross-reference the data from the RFI with the responses submitted by some of those same Kansas wind farms in response to GBE's Open Solicitations for bids for capacity on the proposed line.

7. The material requested in DB.41 is essential if the MLA is to analyze Mr. Berry's claim that the responses to the RFI demonstrate "the lowest-priced 4,000 MW of new wind generation was an average of 2.0 cents per kWh flat for 25 years."⁴ Again, this supposedly low price is one of the cornerstones of the whole GBE case, and the inability to review that claim puts the MLA at a significant disadvantage in preparing its rebuttal case and in cross-examination of the GBE witnesses. In addition, the data in question

² As GBE has noted, the Commission has the same authority as do the courts to take official notice of their own records. See Recommendation of Grain Belt Express Clean Line LLC on Local Public Hearings, f.n. 1 page 1, filed October 14, 2016. EFIS No. 89.

³ Direct testimony of David Berry, p. 24, lines 8-15; Id., bar charts at pp. 28-30.

⁴ Direct testimony of David Berry, p. 24, lines 14-15. And see bar charts based on that evidence at pp. 28-30.

would allow the MLA a means of verifying or challenging Mr. Barry's use of a 55% annual capacity factor in his calculations for the levelized cost of the Kansas wind generation. (See page 1 of his Schedule DAB-5).

8. If the Commission does not direct GBE to provide the materials requested in DB.40 and DB.41, the MLA will be unable to fully develop its rebuttal testimony and cross-examination with respect to the evidence from Mr. Berry which relies on and is derived from the material being sought here by the MLA. Accordingly, the MLA would be deprived of its right to due process of law, as guaranteed under Amendments V and XIV to the United States Constitution, and Article 1 Section 10 to the Missouri Constitution.

9. The MLA acknowledges that in the 2014 case it asked for essentially the same information being sought in this Motion, and that its request to the Commission in that case to compel GBE to provide that information was denied.⁵

10. The parties have followed the procedures in Commission Rule 4 CSR 240-2.090(8) prior to the filing of this Motion.

⁵ Order Denying Motion to Compel and Granting Motions for a Protective Order, issued in the 2014 case on September 24, 2014; EFIS No. 194.

WHEREFORE, the MLA respectfully requests the Commission (1) to take administrative notice of Exhibit 335(HC) from Case No. EA-2014-0207; and (2) to direct Grain Belt Express to provide a full and unredacted response to MLA Data Requests DB.40 and DB.41.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion was served upon the parties to this case by electronic mail this 30th day of November, 2016.

/s/ Paul A. Agathen
Paul A. Agathen

EXHIBITS A & B

Exhibit A to this Motion was designated by Grain Belt Express as Confidential. Exhibit B was designated as Highly Confidential. Accordingly, both Exhibits have been removed from the NP version of this Motion.