BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

RESPONSE OF THE MISSOURI LANDOWNERS
ALLIANCE IN SUPPORT OF SHOW ME'S MOTION
TO STRIKE TESTIMONY OF MJMEUC

Pursuant to Rule 4 CSR 240-2.080(13), the Missouri Landowners Alliance (MLA) hereby offers this Response in support of the "SHOW ME CONCERNED LANDOWNERS' MOTION TO STRIKE AND IN THE ALTERNATIVE TO DELAY SURREBUTTAL TESTIMONY AND HEARING DATES" (Motion to Strike), filed with the Commission on January 26, 2017. In support of this Response, the MLA states as follows:

The MLA seeks the same relief requested by Show Me, and on the same general grounds set forth in their Motion to Strike. Thus the MLA will attempt here to merely point out several additional facts and related arguments which they believe merit consideration.

MJMEUC was not the only party to file testimony this past week which was wrongfully labeled as "rebuttal". Be that as it may, the testimony from MJMEUC is a different animal, and should not be accepted as part of a mass pardon to all the others whose testimony does not constitute rebuttal.

Grain Belt's Application and direct testimony in this case were filed on August 30, 2016.[1] By that point, Grain Belt and MJMEUC had already joined forces in their efforts to obtain approval for the proposed line. Their joint Transmission Service Agreement (TSA) is clearly Grain Belt's primary hope for gaining Commission approval this time around. The TSA is dated June 2, 2016 – nearly three months before Grain Belt filed its Application and direct testimony in this case.[2] Thus MJMEUC clearly had the time and the opportunity to file direct testimony in support of the TSA and the Application on August 30, 2016.

Notably, their TSA specifically provides as follows:

> 5.3 Cooperation. From and after the Effective Date, the Parties shall cooperate with each other to obtain all Governmental Approvals that are required for Transmission Provider [GBE] to construct and operate the Project and put this Agreement fully into effect, including making any filing in support of another Party's application for any such approval as requested by the Party seeking such approval.[3]

Thus well before the Grain Belt Application was filed in this case, MJMEUC was legally obligated, if asked, to join with Grain Belt in filing direct testimony supporting that Application. They would no doubt have been quite willing to do so, given their own interest in having the line approved. Instead, the two parties opted to wait for nearly five months for MJMEUC to show its hand, correctly recognizing that this strategy would limit the opportunity of opposing parties to address the studies and the testimony eventually submitted by MJMEUC.

The expense of filing direct testimony with the Grain Belt Application was certainly not a factor for MJMEUC. Under the terms of the TSA, Grain Belt has agreed

[1] It filed an earlier Application and testimony on June 30, 2016, but that fact does not affect any of the arguments raised here by the MLA.
[2] Schedule MOL-1 to direct testimony of Grain Belt witness Mark Lawlor.
[3] See TSA at Schedule MOL-1, page 16 of 36, Section 5.3.

to reimburse them for the expenses which they incur in complying with the "Cooperation" clause quoted above.[4]

Grain Belt filed hundreds of pages of supporting direct testimony from 15 different witnesses with its Application in this case.[5] Among them were a Randolph County commissioner and the Randolph County assessor. Other than for strategic purposes, there was no reason why Grain Belt could not also have asked MJMEUC to join them in filing direct testimony at that time.

A further distinction between MJMEUC and other parties pseudo rebuttal in this case is demonstrated by the "Joint Prosecution and Defense Agreement" (Joint Agreement) between MJMEUC and Grain Belt.[6] The Joint Agreement "confirms certain understandings" between Grain Belt and MJMEUC "with respect to the joint prosecution, defense and investigation regarding certain cases pending before or to be filed at the Missouri Public Service Commission …" and which relate to the two parties joint efforts to obtain regulatory approval for the proposed line.

Given that Grain Belt and MJMEUC have explicitly agreed to these "joint efforts" to secure the CCN from the Commission in this case, there is no legitimate excuse for MJMEUC to have delayed the filing of what amounts to its direct testimony until the due date for rebuttal.

MJMEUC's witnesses seemingly recognize their problem, and so attempt to couch their testimony in terms of rebuttal. Mr. Kincheloe states that the purpose of his testimony "is in response to Grain Belt Express witnesses Michael Skelly Mark Lawlor and David Berry regarding their testimony about the transmission services agreement that

[4] Section 19.8.2, page 29 of 36 of Schedule MOL-1.
[5] See EFIS Nos. 35-49.
[6] A copy of the Joint Agreement was filed with Show Me's Motion to Strike.

MJMEUC has entered into with Grain Belt Express."[7] However, Mr. Kincheloe does not thereafter mention any of the witness to whom he supposedly is responding, nor does he even refer to anything any of them said in their direct testimonies.

The same is true for Mr. Grotzinger, who describes the purpose of his testimony in language almost identical to Mr. Kincheloe's.[8] But he likewise does not even mention any of the witnesses to whom he supposedly is responding, nor does he refer to anything which any of them said.

One will search in vain for any testimony from either MJMEUC witness which could remotely pass for rebuttal testimony, as that term is defined by the Commission.[9] They do not reject anything said by Grain Belt. They do not disagree with anything said by Grain Belt. And they do not propose an alternative to what Grain Belt is proposing. The fact is that the testimony from MJMEUC is not rebuttal, and filing it on the due date for rebuttal does not make it so.

If MJMEUC was concerned that circumstances could change after the filing of the Application (such as securing the supply of energy to be transmitted under the TSA), MJMEUC could have petitioned the Commission at a later point to file supplemental direct testimony.[10] Instead, they joined with Grain Belt in the tactical decision to simply call their direct testimony by another name, and file it five months later. That strategy does not deserve the Commission's blessing.

The MLA is not raising a mere technicality here. The length of time between the filing of the different types of testimony is obviously dependent upon the appropriate

[7] Rebuttal Testimony of Duncan Kincheloe, p. 1 lines 17-19.
[8] Rebuttal Testimony of John Grotzinger, p. 2, lines 6-8.
[9] See Show Me's Motion to Strike, p. 2.
[10] Commission Rule 4 CSR 240-2.130(10) in effect recognizes there may be times when supplemental direct testimony is warranted.

testimony being filed at the appropriate time. The Grain Belt/MJMEUC decision has clearly put the opposing parties at a disadvantage in discovery and the preparation of responsive testimony.

That is not to say that the MLA has not already submitted discovery requests to MJMEUC. However, without having access to the MJMEUC testimony and the detailed schedules which accompanied that testimony, the discovery process was conducted with blinders.

And it was made even more difficult by the fact that MJMEUC has refused to produce certain material on the ground that it is immune from doing so under the terms of a bilateral "Joint Prosecution and Defense Agreement" (JPDA) which it signed with Grain Belt. Within the next several days the MLA anticipates that with it will challenge how the JPDA is being used by Grain Belt and MJMEUC to shield themselves from certain discovery requests. But in the meantime, beginning with data requests from as far back as October of last year, MJMEUC has refused to provide certain documents on the ground that they need not do so under the terms of their JPDA with Grain Belt.[11]

To be clear, the MLA is not conceding that the JPDA has any legal effect whatsoever. The point here is that the agreement nevertheless demonstrates that the two parties are intent on operating with a common interest, in pursuit of a common objective. For all practical purposes they are, in Show Me's words, co-applicants in this proceeding.

As it is, the MLA is potentially faced with responding within one month to eight other witnesses who supported the Grain Belt position with supposed rebuttal testimony. In addition, of course, it must prepare for the hearings in March. The task is already overwhelming. Particularly with the addition of the two MJMEUC witnesses, under the

[11] Details regarding the discovery disputes will be forthcoming shortly in the MLA's Motion to Compel.

current schedule it will be impossible to present the defense against Grain Belt and its allies which this case so clearly deserves.

The bottom line is that the MJMEUC testimony is not rebuttal, and the opposing parties are not the ones who should be bear the consequences their ill-advised strategy.

WHEREFORE, the MLA asks that the rebuttal testimony of the two MJMEUC witnesses be stricken. Alternatively, they ask that the remaining phases of this case be postponed for a period of approximately four months, and for such other relief as the Commission deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 27th day of January, 2017.

/s/ Paul A. Agathen
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