BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Grain Belt Express LLC for an Amendment to its Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and Associated Converter Station	)))))))	File No. EA-2023-0017

RESPONSE TO APPLICATION FOR REHEARING

Grain Belt Express LLC ("Grain Belt Express") hereby provides this Response to the Application for Rehearing filed Missouri Farm Bureau Federation, Missouri Cattlemen's Association, Missouri Pork Association, Missouri Soybean Association and Missouri Corn Growers Association (hereafter collectively referred to as the "Ag. Associations") and hereby requests that the Commission reject the Application for Rehearing.

I. Argument

The Ag. Associations present two arguments that are ultimately inconsequential to the Commission's Report and Order ("Order") amending the Certificate of Convenience and Necessity governing the proposed Grain Belt Express Transmission Line ("Transmission Line" or "Project"). First, the Ag. Associations suggest that the Commission was unaware that a modeling assumption relating to the future cost of using carbon fuels was assumed and not tied to a known price increase, despite exhaustive questioning on the issue by the Ag. Association counsel, the Missouri Landowner's Alliance ("MLA") counsel, and bench questioning by two Commissioners and the Administrative Law Judge ("ALJ"). Record evidence disposes of the Ag. Associations' contention and the related due process claim made under the same issue heading.

Second, the Ag. Associations argue that the Commission's findings relating to employment opportunities created by the Project are unreasonable and misleading because the Commission listed jobs created during construction as "construction jobs." This is an exercise in pedantry and lacks merit—there is no requirement that the Commission list the number of construction industry jobs that will be created, nor is there precedent suggesting that the Commission favor one job industry over another.

As a part of the Ag. Association's second argument, the Ag. Association requests that the Commission modify its Order to require Grain Belt to provide annual report data regarding the county of residence of persons who received jobs that are created by the Project. This is a new argument that was not present in any pre- or post-hearing briefing. Nevertheless, the Ag. Associations provide no basis in law for this requested relief and such data is not necessary to ensure compliance with the terms of the CCN or any other concern that is under the Commission's jurisdiction.

A. There is no Evidence that the Commission or the ALJ Misunderstood the Rationale Behind Grain Belt Express' Carbon Price Assumptions.

The Ag. Associations first contend that the ALJ's decision to sustain a single objection to the Ag. Associations' cross-examination regarding an assumption in Grain Belt Express' witness Mark Repsher's financial modeling was unlawful, unjust, and unreasonable. The Ag. Associations argue that this sustained objection somehow led the Commission to be misinformed about the calculations, and that this violated the Ag. Associations' due process rights. Both of these assertions are baseless.

1. Relevant Facts

Mr. Repsher provided testimony supporting the public benefits associated with development of Grain Belt Express' proposed transmission line. *See generally*, Hearing Exhibit 3, Direct Testimony of Mark Repsher. A report calculating those benefits conducted by Mr. Repsher's employer, PA Consulting, was admitted as evidence with Mr. Repsher's testimony. Hearing Exhibit 3, Schedule MR-2 ("PA Report"). At page 9 of the PA Report, it is noted that, for the purpose of the economic modeling in the PA Report, "PA assumed that a national carbon pricing regime would be implemented in 2026. The carbon price is set at $24.55/short ton in 2026 (nominal dollars) and increases at 2.2% per year, tracking inflation throughout the study period."

Over the course of two days during the evidentiary hearing, Mr. Repsher was cross-examined by both MLA and the Ag. Associations on this issue. During MLA's cross-examination, Mr. Repsher answered a number of questions regarding the basis for the carbon pricing assumption. Of note, Mr. Repsher admitted that the assumption was one that PA Consulting chose to use;[1] he admitted that he was not aware of a federal or Missouri level carbon tax in effect;[2] he admitted that he was not aware of formal rulemaking at the state or federal level to adopt carbon taxes;[3] and he admitted he is not certain what a true carbon price (or tax) will be in 2027 (or in future years).[4]

Mr. Repsher did explain that PA Consulting's use of a carbon pricing assumption was in keeping with electric industry assumptions regarding the future cost of carbon pricing.[5] The use of the assumption is not tied to an assumed passage of any one form of tax on carbon, but instead

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[1] Ev. Hearing T. Vol. VII 311:14-16.
[2] *Id.* at 313:8-12.
[3] *Id.* at 314-16.
[4] *Id.* at 316:19-319:15.
[5] *Id.* at 316:3-25.

represents an array of potential direct or indirect taxes or costs that the electric industry prices into the cost of using carbon fuel sources.[6] As he explained, "Experts everywhere have to make assumptions whether they're in the energy space or otherwise about what they think may happen in the future to help try to understand what the value is of a project for ratepayers."[7]

After myriad redundant questions from MLA's counsel, counsel for Grain Belt finally objected to the line of questioning, which the ALJ sustained:

> [MR. AGATHAN] Q. So at this point the carbon tax figures that you added to your analysis are neither known nor measureable, are they?
>
> MR. SCHULTE: This is probably the twentieth question that is with regard to the future of carbon taxes and the witness has answered that they are not certain because it's the future. I think we can move on.
>
> JUDGE DIPPELL: I agree. I think we understand your point, Mr. Agathen, and I think the witness's testimony says that these are assumptions so.
>
> MR. AGATHEN: Okay, Judge. [8]

After MLA's counsel concluded his cross examination, counsel for the Ag. Associations returned to the subject of the carbon pricing assumption. Mr. Repsher testified again on the basis of the assumption, noting that the inclusion of a "carbon shadow price" reflects the practices of the vast majority of utilities to hedge against a future risk of regulation that increases the cost of carbon directly or indirectly.[9] Mr. Repsher further justified the inclusion of a carbon pricing assumption because assumptions about carbon pricing already drive decisions made by utilities (because they also use carbon pricing assumptions)—and therefore a carbon pricing assumption

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[6] *Id.*
[7] *Id.* at 318:22-25.
[8] *Id.* at 320:6-16.
[9] Ev. Hearing T. Vol. IX 352:5- 353:20.

needed to be added to show an apples-to-apples comparison between a modeled future with the transmission line versus a modeled future without the transmission line.[10]

During the Ag. Association's questioning, counsel for the Ag. Associations challenged many aspects of the carbon pricing assumption that the ALJ allowed. These included questions on the assumed winner of the 2024 presidential election;[11] whether the assumption relied on a globally, federally, or state imposed tax regime;[12] whether Missouri, Kansas, Illinois or Indiana was expected to propose a carbon tax;[13] and whether a federal carbon tax would be challenged in the courts.[14] In response to the question: "Is the assumption you've built in, is it just for the Illinois program or would it be for a broader cap and trade regime?"[15] Mr. Repsher responded, "It would be for a carbon regime that covers all generators within the U.S."[16] At no point did Mr. Repsher contend that the carbon pricing assumption was based on any particular tax or regulation, let alone a federal cap and trade program.

Counsel for the Ag. Associations later asked: "But you would stand today **on the assumption in the model that there would be a cap and trade system** that would dynamically affect your overall conclusion by 2027?"[17] Grain Belt Express' counsel objected to that question, stating that the question misstated the testimony because the model does not assume that there will be a federal cap and trade system.[18] The ALJ sustained the objection, stating, "I believe the

[10] *Id.* at 355-57.
[11] *Id.* at 360:9-23.
[12] *Id.* at 361:7-362:9.
[13] *Id.* at 362:10-363:19
[14] *Id.* at 364:5-17.
[15] *Id.* at 363:21-23.
[16] *Id.* at 363:24-25.
[17] *Id.* at 365:9-12 (emphasis added).
[18] *Id.* at 365:21-24.

question asks for facts that the witness has testified don't exist. He has not testified that he assumed a carbon [cap and trade] tax."[19]

After prompting counsel for the Ag. Associations to move on with the next question, the ALJ noted that, "We talked for a long time yesterday about a carbon tax. The witness testified, the witness has prefiled testimony. I don't know how much more we need to testify about whether there's going to be, whether there was or whether there's assumptions about an official carbon tax."[20] Counsel for the Ag. Associations then shifted questioning to other elements of the PA Report, including the basis for other modeling assumptions and exclusions.[21] The ALJ never sustained an additional objection on the subject or otherwise ordered that no more questions could be asked related to the carbon pricing assumptions.

After cross-examination concluded, Chairman Rupp asked additional questions regarding the carbon pricing assumption, and Mr. Repsher explained that inclusion of carbon taxes in carbon pricing analyses generally favor renewables;[22] that Ameren also has carbon tax assumptions in their IRP;[23] and that utilities using carbon tax or carbon shadow price assumptions typically peg starting years between 2025 to 2030.[24] During Commissioner Holsman's questioning, Mr. Repsher re-confirmed that the carbon pricing assumption did not assume a single specific carbon tax, but instead recognizes the fact "that today when someone like Ameren is looking at their future, they are assuming there will be some carbon constrained future they have to deal with."[25] Finally, the ALJ asked if the inclusion of a carbon tax was preferred "proxy value to evaluate the regulatory

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[19] *Id.* at 366:20-24.
[20] *Id.* at 369:5-10.
[21] *See generally id.* at 370-375.
[22] *Id.* at 376:25-377:3.
[23] *Id.* at 377:15-18.
[24] *Id.* at 378:7-379:2.
[25] *Id.* at 382:14-24.

risk associated with the continued utilization of carbon intensive resources" and Mr. Repsher responded "yes".[26]

Counsel for MLA and the Ag. Associations both declined opportunities for further cross-examination questions based on questions from the bench.[27]

2. There is no Evidence that the Commission Misunderstood the Carbon Price Assumption or that Additional Cross-Examination Would Have Led to a Different Understanding.

Given that two Commissioners and the ALJ asked questions that acknowledge the carbon price assumption was just that—an assumption, there was simply nothing left for the Ag. Associations to explore on cross-examination – and therein lies the fallacy of the Ag. Associations' position. The Ag. Associations argue that: "whether or not Mr. Repsher's work is accurate, whether the underlying assumptions are sound, and whether his conclusions would change if such assumptions were untrue necessarily matter to the outcome of this case." Application for Rehearing at 8. The Ag. Associations fail to provide any logic for how that was meant to be shown.

By the time questioning of Mr. Repsher concluded, the Commission knew that the carbon price assumption was theoretical; that it was not tied to a specific state, federal, or international tax or regulation affecting the price of carbon; that it was not tied to some future tax or regulation; that it was not tied to an assumption of a federal party being in power; that it was based on another form of cap and trade policy; and that it had a tendency of favoring renewable energy development (because it raised the predicted price of carbon-based fuels).

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[26] *Id.* at 390:3-18.
[27] *Id.* at 393:3-7.

Neither the Ag. Associations, MLA, nor any other party have ever raised any suggestion that use of a theoretical carbon price assumption undermines the entire report or that using the assumption was unreasonable. Nor have the Ag. Associations or MLA rationalized why it was improper for PA Consulting to use the same type of price assumption as other utilities.

There is no reason to believe that the Commission somehow missed the nuance of the carbon price assumption, nor is there any fair reading of the Order to suggest that the Commission misunderstood the testimony it heard. The facts, as established through the exhaustive testimony on this issue, support the Commission's findings that the numbers contained in the PA Report are reliable. The Ag. Associations fail to point to any evidence or show of proof that they were on the verge of a bombshell question that would change how the Commission viewed the PA Report in cross-examination.[28] Nor can the Ag. Associations show that the Commission prevented them from asking such bombshell question. Finally, the Ag. Associations do not provide that, but for reliance the PA Report, that its decisions would have differed.

Therefore, the Commission's reliance of the PA Report was reasonable, and no evidence or argument supports a finding that its opinion would have changed based on further redundant questioning from Ag. Associations' counsel.

3. Ag. Associations' Due Process Rights Were Not Infringed.

Hearing commissioners, like a trial judge, have "wide discretion in determining the scope of cross-examination." *Mueller v. Ruddy,* 617 S.W.2d 466, 478 (Mo. Ct. App. 1981) *citing Cash v. Bolle,* 423 S.W.2d 743, 746 (Mo. 1968) ("law is well settled that the extent and scope of cross-

[28] It should also be noted that the Ag. Associations did not include an offer of proof in their Application for Rehearing or in the post-hearing briefing.

examination in a civil action is discretionary")*; Heinen v. Police Pers. Bd. of Jefferson City*, 976 S.W.2d 534, 542 (Mo. Ct. App. 1998).

A hearing commissioner's discretion in limiting cross-examination will not be disturbed "unless an abuse of discretion is clearly shown." *Minze v. Missouri Dep't of Pub. Safety*, 541 S.W.3d 575, 579 (Mo. Ct. App. 2017). An abuse of discretion occurs when the ruling is "clearly against the logic of the circumstances and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration." *Id.*

On the specific issue that drew the sustained objection, counsel for the Ag. Associations asked whether Mr. Repsher stood on an assumption in the PA Report that "there would be a cap and trade system" in 2027. This assumption is not in the PA Report or in Mr. Repsher's testimony. The ALJ was entirely correct to sustain the objection; in fact, allowing such a question could be reversible error. *Cline v. William H. Friedman & Assocs., Inc.*, 882 S.W.2d 754, 762 (Mo. Ct. App. 1994) (trial court committed reversible error in allowing cross-examination questions that injected false issues). Ag. Associations have no right to use cross-examination to "covertly raise suspicions, and prejudice jurors by reciting, as fact, matters not properly entered as evidence." *Anderson v. Wittmeyer*, 895 S.W.2d 595, 601 (Mo. Ct. App. 1995).

While the ALJ also admonished counsel for the Ag. Associations for beating a dead horse on the carbon pricing issue, it is important to note that the ALJ did not order counsel to move off the subject. The ALJ's order on the objection in no way restricted or prevented Ag. Associations' counsel from continuing his questions relating to the carbon price assumptions. The Ag. Associations' counsel had several options after the single objection was sustained, including: rephrasing his question to remove the false assumption; asking different questions on the same

subject matter; and, if further constrained, seeking to make an offer of proof. Counsel for the Ag. Associations elected not to pursue any of these options.

Even if the ALJ's later admonishment of Ag. Associations' counsel could be read as an order to limit further cross examination on the carbon price assumption, it was reasonable. Again, the ALJ has broad discretion to limit the permissible scope of cross-examination. *Anderson v. Wittmeyer*, 895 S.W.2d 595, 601 (Mo. Ct. App. 1995). Given that the Commission was entering its second day of hearing redundant and repetitive cross-examination on the carbon price assumption, it was reasonable for the ALJ to advise Ag. Associations' counsel to move on.

As recited above, at this stage, the Commission was well informed about the nature of the carbon price assumption and that it was not based on specific regulatory actions. It does not shock the conscience or work against the logic of the circumstances for the ALJ to limit further repetitive questioning.

Given that Ag. Associations' due process rights were not violated and given that the ALJ acted reasonably in sustaining the objection to a question that included misstatements of fact, the Ag. Association is not entitled to rehearing on this point.

B. The Commission's Findings of Fact and Conclusions of Law Are Valid and Reasonable, Regardless of Whether The Jobs Created By the Project Are Construction or Otherwise.

The Ag. Associations next assert that the Commission's findings of fact and conclusions of law are unreasonable and warrant rehearing because the Report and Order states that "the Project will support 5,747 construction jobs statewide over a three-year period and a significant number of construction jobs in the Missouri counties it crosses" (Application for Rehearing at p. 10, citing paragraph 130 of the Report and Order), when in fact the 5,747 jobs is rather the *total* number of

jobs projected to exist during construction, not merely *construction* jobs. Ag. Associations claim that the Commission's characterization of that particular number as exclusively referring to construction jobs is therefore somehow misleading.

The Ag. Associations' argument is merely a distinction without a difference. Ag. Associations claim that the distinction is significant, yet they make no effort to explain what they believe to be the legal or factual significance of this distinction.

The fifth Tartan Factor requires that the Commission assess whether the Project promotes the public interest. In holding that the Project does promote the public interest, the Commission found, *inter alia*, that, "The Project advances the public interest through its impact on local economic, fiscal, and employment benefits, citing to both construction jobs and long-term positions on a statewide and county-specific basis,[29]…and stated that "these jobs are estimated to result in total worker earnings for Missouri of $586,118,331 during the three-year construction period and $8,113,077 during the operation phase of the Project."[30]

A review of Dr. Loomis' Schedule DL-2 (the Economic Impact Analysis of the Grain Belt Express Transmission Project on the State of Missouri) shows that the total employment impact of the Project was broken down into direct, indirect, and induced jobs during both the *construction phase* and the *operations phase* of the Project.[31] Table 5.2 of Schedule DL-2 shows total "Construction" jobs for the State of Missouri as 5,747, although the narrative preceding Table 5.2 is clear that the numbers represent jobs during the construction phase.

[29] Report & Order at ¶ 130.
[30] Id at p. 61.
[31] See Section V of DL-2 generally and Tables 5.1 and 5.2.

The fact that the Commission used the phrase "construction jobs" as opposed to "jobs during construction" is immaterial to its ultimate conclusion that the total employment impact of the Project promotes the public interest. The Commission utilizes the Tartan Factors to evaluate the public interest as a whole, and there is no legal or factual basis for specifically delineating construction jobs versus gas station revenues or hospitality industry earnings during the construction phase.

Moreover, even if the Commission's phraseology is not as precise as the Ag. Associations seem to prefer, it does not make the Commission's findings of fact and conclusions of law unreasonable and worthy of rehearing, as suggested by the Ag. Associations.

Finally, the Ag. Associations request that the Commission modify the annual reporting condition on page 75 of the Report & Order to require Grain Belt Express to provide the county of residence of employees in jobs created by the Project. The Ag. Associations have provided no rationale for this requested relief and no such rationale exists in the record of the case. Simply stated, the addition of county-level data is unnecessary to ensure compliance with the terms of the CCN. Further, given that the jobs number referenced by the Commission includes jobs provided by third parties who benefit from the nearby construction activity (suppliers, contractors, hospitality and food service workers), Grain Belt Express would not have access to those employees' records.

II. Conclusion

WHEREFORE, for the reasons set forth above, Grain Belt Express respectfully requests that the Commission deny the Ag. Associations request for rehearing, and for any such further relief as the Commission may deem just and reasonable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties listed on the official service list by email, this 17th day of November, 2023.

/s/ Andrew O. Schulte
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