

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-2014-0207
Current Transmission Line and an Associated Converter)
Station Providing an interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

**GRAIN BELT EXPRESS CLEAN LINE LLC’S
OPPOSITION TO MLA’S MOTION TO STRIKE TESTIMONY**

For its opposition to the Missouri Landowners Alliance (“MLA”) Motion to Strike Testimony Related to Responses to Grain Belt’s Request for Information (“Motion”), Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”) states the following:

Introduction

In a re-hash of its unsuccessful motion to compel which the Commission denied on September 24, MLA requests that the Commission strike portions of Company witness David Berry’s direct and surrebuttal testimony regarding his levelized cost of energy analysis of Kansas wind generation. The basis of MLA’s Motion, like the previous motion to compel, is that it does not have every item of information that was provided by wind generators in response to the Company’s November 2013 Request for Information (“RFI”). MLA continues to seek data that links highly confidential and sensitive wind speed and pricing information to the precise project locations of identifiable wind generators.

MLA’s Motion must be denied for two reasons. First, the Commission previously ruled on September 24, 2014 in its Order Denying Motion to Compel and Granting Motions for Protective Order that MLA is not entitled to all of the RFI responses. The Commission noted that Grain Belt Express had already provided several hundred pages of documents. In ruling on the motion to compel, the Commission did not conclude that the information contained in the

RFI responses was “inadmissible,” as MLA contends at pages 2 and 4 of this Motion. Rather, it determined that Grain Belt Express had provided more than enough information for MLA to verify or challenge the energy costs estimates presented by Mr. Berry. This finding is dispositive.

Second, Mr. Berry’s levelized cost of energy analysis is based on numerous publicly available sources other than the contents of the RFI responses. The fact that MLA does not possess all of the data in the RFI responses does not inhibit its ability to challenge and verify Mr. Berry’s testimony. For both these reasons, MLA’s Motion should be denied.

Factual Background

A. The MLA Discovery Requests for Confidential and Proprietary Third-Party Wind Data.

MLA’s Data Request 48 to Michael Skelly, President of Grain Belt Express, sought all documents that the Company or its parent company Clean Line Energy Partners LLC (“Clean Line”) received in response to an RFI to wind generators described in Paragraph 16 of the Application. Similarly, MLA’s Data Request No. 94 to David Berry stated: “With reference to page 15 lines 9-11 of your direct testimony, which generators, and how much of each one’s generation, was used to calculate the lowest-priced 4,000 MWs at 2.0 cents per kwh for 25 years?”

In response, Grain Belt Express provided MLA with, among other things: (1) a list of all wind generators that responded to the RFI; (2) its internal credit analysis of those respondents; (3) a list of wind farm projects that responded to the RFI; (4) a map indicating the number of responding wind farms in western Kansas, western Oklahoma and the Texas panhandle by county; (5) proprietary summaries of the RFI’s, including aggregated pricing and wind speed information; and (6) copies of all responses to the RFI with limited redactions relating to the

identity of the respondents and the specific location of the projects. This information was provided to MLA this past summer, with the production concluding in August. The substantive information redacted from the RFI responses was provided in a list of respondents and the map of the project locations.

However, MLA continued to seek information linking confidential wind speed and pricing information to the precise project locations of the wind generators. After several meet and confer calls regarding these issues with counsel for MLA – which culminated in a conference call with Judge Bushmann on August 22, 2014 – MLA filed a motion to compel production of the confidential and trade secret third-party information on August 28.

B. The Commission Denied MLA’s Motion to Compel Production of the Confidential and Proprietary Third-Party Wind Data.

The Commission denied MLA’s motion to compel on September 24, 2014 (“Order”).¹ The Commission stated that while the requested information was “logically relevant because it concerns whether the proposed transmission line is economically feasible,” it found that “the prejudicial effect” on Grain Belt Express and two intervening wind generators “is great, as pricing and wind speed information is the most valuable trade secret of a wind developer.” See Order at 3-4. The Commission also found that the “probative value of the additional information MLA seeks is relatively low.” See Order at 4. Indeed, the Commission recognized that Grain Belt Express previously “provided considerable information in response to MLA’s data requests that will permit MLA to develop close estimates of the wind speed and pricing information

¹ TradeWind Energy, Inc. (“TradeWind”) and Infinity Wind Power (“Infinity”), who are intervenors in this matter, joined Grain Belt Express in its arguments. TradeWind and Infinity objected to data requests seeking information regarding (1) communications between TradeWind and Infinity and prospective purchasers of energy transmitted over the proposed transmission line, and (2) descriptions of pricing calculations included in their RFI responses. They asked that the Commission issue a protective order to prohibiting the disclosure of the requested information. The Commission not only denied MLA’s motion to compel, but also granted Infinity and TradeWind’s motions for protective orders.

necessary to verify or challenge the energy cost estimates presented by Grain Belt Express.” Id. at 4. For that reason, the Commission concluded that the “value of this additional information is outweighed by the prejudicial effects to Grain Belt Express” and thus “den[ied] MLA’s motion to compel disclosure of the requested information.” Id.

Argument

The Commission has already determined that MLA is not entitled to the information linking confidential wind speed and pricing information to the wind generation companies supplying it. At no time, however, did the Commission conclude that the wind speed information contained in the RFI responses was “inadmissible” as MLA contends. As stated previously, the disagreement between MLA and Grain Belt Express does not concern what information was to be produced, but rather how it was to be produced. Indeed, the Commission specifically found that “Grain Belt Express has already provided considerable information ... that will permit MLA to develop close estimates of the wind speed and pricing information necessary to verify or challenge the energy costs estimates presented by Grain Belt Express.” Id.

In particular, the information that Grain Belt Express produced allows MLA to identify the capacity factors, prices, and combination of prices submitted by the wind generators. The only thing MLA cannot do is link confidential wind speed and pricing information to the wind generation companies supplying it. MLA already possesses information necessary to challenge the levelized cost of energy analysis contained in Mr. Berry’s direct and surrebuttal testimony.

Furthermore, Mr. Berry’s analysis is based on numerous publicly available sources other than the contents of the RFI responses. His direct testimony references wind maps prepared by the National Renewable Energy Laboratory and AWS Truepower, as well as a 2012 study conducted by Lawrence Berkeley National Laboratory for the U.S. Department of Energy

Cary J. Kottler
General Counsel
Erin Szalkowski
Corporate Counsel
Clean Line Energy Partners LLC
1001 McKinney Street, Suite 700
Houston, TX 77002
(832) 319-6320
ckottler@cleanlineenergy.com
eszalkowski@cleanlineenergy.com

ATTORNEYS FOR GRAIN BELT EXPRESS
CLEAN LINE LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all parties of record by email or U.S. mail, postage prepaid, this 3rd day of November 2014.

/s/ Karl Zobrist
Attorney for Grain Belt Express Clean Line LLC