

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

**In the Matter of the Application of Grain)
Belt Express Clean Line LLC for 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

**REPLY OF GRAIN BELT EXPRESS TO THE RESPONSES OF MISSOURI
LANDOWNERS AND SHOW-ME CONCERNED LANDOWNERS TO OBJECTIONS
TO EXHIBITS OFFERED AT LOCAL PUBLIC HEARINGS**

Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”) submits this Reply to the Responses of Missouri Landowners Alliance (“MLA”) and Show-Me Concerned Landowners (“Show-Me”) to the Objections of Grain Belt Express, filed on December 27, 2016, to exhibits offered at the December 7-8 local public hearings conducted in Monroe City, Hannibal, Marceline and Moberly:

1. Pursuant to its Order Setting Local Public Hearings and Directing Notice issued on October 19, 2016, the Commission held a four public hearings on December 7, 8, 13, and 14 in or adjacent to the counties where the Company’s proposed transmission line would be constructed.

2. Both supporters and opponents of the Grain Belt Express Project testified at these eight local public hearings. A major opponent of the Project is Block Grain Belt Express Missouri Corp., a non-profit organization, a number of whose members testified at these hearings.

3. Prior to the local public hearings, the regulatory law judge made clear that parties to the case who intended to testify at the evidentiary hearing could not also testify or offer evidence at the local public hearings. The local public hearings have traditionally been a means for members of the public who had not joined a Commission proceeding to present testimony to Commissioners. This is why local public hearings are conducted. And, as the Commission has long recognized, local public hearings are not a vehicle for either a party, a member of the public, or an organization which has chosen not to intervene in the proceedings to circumvent the law and its evidentiary standards, as well as rules of the Commission.¹

4. This is particularly true in this proceeding, where responses filed by MLA to the Company's discovery requests have revealed that Block Grain Belt Missouri Corp. ("Block") and MLA are represented by the same counsel and have coordinated their efforts to oppose the Application of Grain Belt Express. See Ex. 1, Response to Data Request 2(b), MLA Responses to 3d Set of Data Requests from Grain Belt Express (verification signed Dec. 23, 2016; response filed Dec. 29, 2016). Indeed, the objections filed by counsel for MLA to the Company's Third Set of Data Requests assert a joint attorney-client privilege between MLA and Block. Because of this relationship and coordination between MLA and Block the Commission should be especially vigilant that the evidentiary standards in this case are not circumvented.

5. Responding to the Objections of Grain Belt Express on December 27 to certain exhibits offered at the December 7-8 local public hearings, counsel for MLA and Block concedes that the Company's evidentiary objections are well taken, based on the undeniable fact that they are hearsay and were not shown to be relevant to the Grain Belt Express Project's transmission

¹ See Order Regarding Objections and Motion to Strike at 2-3, In re Application of Union Elec. Co. for Permission, Approval and a Certificate of Public Convenience and Necessity to Construct a Utility Waste Landfill at Labadie Energy Center, No. EA-2012-0281 (Aug. 28, 2013).

line proposal or its route. MLA's plea is simply that the Commission should apply "a more lenient standard" when considering the Company's objections. See MLA Response at 1 (Dec. 29, 2016). A similar plea to ignore the rules of evidence is made by intervenor Show-Me. See Response of Show-Me Concerned Landowners at 2 (Dec. 31, 2016). Neither MLA nor Show-Me cite any Commission order, judicial decision or other legal precedent to support their positions.

6. Hearsay to which another party objects is not admitted into evidence and is not considered competent and substantial evidence upon which the Commission can base its decision. State ex rel. Rice v. PSC, 220 S.W.2d 61, 64 (Mo. en banc 1949); State ex rel. Marco Sales, Inc. v. PSC, 685 S.W.2d 216, 218 (Mo. App. W.D. 1984). In another application seeking a certificate of convenience and necessity, the Commission sustained a variety of hearsay objections and rejected the novel "lenient standard" advocated by counsel for MLA, Block and Show-Me. See Order Regarding Objections and Motion to Strike at 2-5, In re Application of Union Elec. Co. for Permission, Approval and a Certificate of Public Convenience and Necessity to Construct a Utility Waste Landfill at Labadie Energy Center, No. EA-2012-0281 (Aug. 28, 2013). In that case the Commission sustained objections to a number of newspaper articles, as well as letters from third parties. Id. at 10-11. It also sustained objections to several government reports and orders that were not shown to be relevant to the specific coal ash issues raised by the application. Id. at 8-9.

7. Consistent with these decisions, the rules of evidence should be applied here without any deviation from the principles of law that govern Commission proceedings. The objections filed by Grain Belt Express should be sustained.

WHEREFORE, Grain Belt Express respectfully requests that the Commission sustain the objections to the exhibits offered into evidence at the December 7-8, 2016 local public hearings.

Respectfully submitted,

/s/ Karl Zobrist

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Attorneys for Grain Belt Express Clean Line LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record in this case on this 3rd day of January 2017.

/s/ Karl Zobrist

Attorney for Grain Belt Express Clean Line LLC

EXHIBIT 1

**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)	Case No. EA-2016-0358
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 345kV transmission)	
line.)	

**RESPONSE OF THE MISSOURI LANDOWNERS ALLIANCE TO
THIRD SET OF DATA REQUESTS FROM
GRAIN BELT EXPRESS**

Data Request 1.

"Attachment 3 to Response 4 - MLA minutes" produced by Missouri Landowners Alliance in Response to GBX Request No. 4 are minutes from a meeting of Block. Section II of these minutes reflect a discussion regarding "forming two independent groups" and a discussion of the "Ex Parte Law." The minutes further provide that "A motion was made to create a separate group which would have the sole purpose of intervening with the case at the Missouri Public Service commission, and keep Block Grain Belt Express Missouri completely independent of the group to intervene. Motion was seconded and approved."

a. Please provide a complete explanation as to the reasoning and purpose behind establishing two "completely independent" groups.

RESPONSE: Objection. The MLA was formed as a separate group on the advice of counsel, and thus the answer is protected by the attorney-client privilege. Notwithstanding that objection, the MLA was formed as a separate group due to counsel's mistaken belief that parties to a

Commission case were not allowed to comment publicly on issues being litigated before the Commission.

Data Request 2.

At the December 14, 2016 public hearing in Polo, Jennifer Gatrel speaking on behalf of Block offered into evidence GBX data request responses to MLA involving easements. Counsel for GBX asked Ms. Gatrel if she represented MLA. Ms. Gatrel responded that she did not and that she represented Block, explaining that the two entities were completely separate. Counsel for GBX asked if there was coordination between Block and MLA. Ms. Gatrel responded: "limited."

a. Please explain the extent and nature of the coordination effort between Block and MLA. RESPONSE: Block encouraged people to contribute to the MLA to support the MLA's involvement in the Grain Belt case at the PSC. Block has also suggested that members of the public visit the MLA's website. But the two groups have separate Boards, and generally act independently of each other. Communication between representatives of the two deal with administrative and procedural matters, such as the Block group assisting with printing of responses to data requests in this case, Block members performing research on the internet to assist with MLA's efforts against the proposed line, public meeting preparation and coordination in order to save costs, spreading the word to Block members of matters dealing with the Commission proceedings, and pleading the MLA's message with a goal of recruiting new MLA members and new donations to the MLA.

b. Please produce all written communication between counsel for MLA and any representative, officer, or director of Block, including but not limited to e-mails, reports, analysis, or other materials related to this case.

RESPONSE: Counsel for the MLA has also been retained as counsel for Block, beginning before the outset of this case. Thus any such communications are protected by the attorney-client privilege and/or attorney work product.

c. Please produce all written communication between any officer, director or representative of MLA and any officer, director or representative of Block, including but not limited to e-mails, reports, analysis, or other material dealing related to this case.

RESPONSE: The MLA objects to this question to the extent that it asks for material protected by the attorney-client privilege and attorney work product, which would include all communications concerning this case to which counsel was a party. It further objects on the ground that communications between Block and the MLA would not be relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Finally, it objects on the ground that compliance with this request would be unduly burdensome, in that it would require that all officers of the MLA do a complete search of all of their emails since the outset of this case, all of which are comingled with emails related to all other subjects, the bulk of which relate to the person's normal course of business.

d. Did MLA counsel or any director, officer or other representative of MLA assist in drafting letters, comments or position papers, or in supplying materials or analysis for any testimony and/or exhibits that any representative of Block provided in any local public hearing conducted in this case? RESPONSE: To the extent that this question calls for a response regarding communications between counsel for the MLA and Block, with representatives of Block, counsel objects on the ground that such communications and related materials would be protected by the attorney-client privilege. To the knowledge of the MLA's president, no director, officer or other representative of MLA assisted in any such efforts on behalf of

representatives of Block, and if they did, such efforts were not at the urging or with the knowledge of the MLA.

e. If the answer to subpart (d) above is yes, please produce the information that was supplied to any representative of Block. RESPONSE: Not applicable.

f. Regarding any assistance provided to representatives of Block, as stated in subpart (d), please describe the nature of such support or assistance. RESPONSE: Not applicable.

g. Has there at any time been a financial relationship between MLA and Block? If so, please describe that relationship in detail. RESPONSE: The only such relationship is that described in response to item 2.a above.

h. Is MLA aware of any communication by Block which would constitute a violation of the Ex Parte Law if such communication had come from MLA? RESPONSE: The MLA objects on the ground that the question calls for a legal conclusion.

/s/ Karl Zobrist

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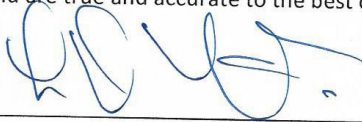
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Data Request was served upon the party to which it was directed by email or U.S. Mail, postage prepaid, this 22nd day of December 2016.

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

VERIFICATION OF RESPONSE

The answers provided to this set of data requests have been collected from a number of sources and are true and accurate to the best of my knowledge and belief.

Signed:  _____

Name: Louis Donald Lowenstein

Position: President, MLA

Date: 12-23-16