

**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) File No. EA-2023-0017
Maintain a High Voltage, Direct Current)
Transmission Line and Associated Converter)
Station)

**GRAIN BELT EXPRESS LLC’S RESPONSE TO MOTION FOR SUMMARY
DISPOSITION**

Pursuant 20 CSR 4240-2.117, Grain Belt Express LLC (“Grain Belt Express”) files this Response to the Motion for Summary Disposition¹ (“Motion”) filed by the Missouri Landowners Alliance (“MLA”)² and states the following.

I. Introduction

1. MLA again asserts in its Motion that once Grain Belt Express filed for “major” modifications to the certificate of convenience and necessity (“CCN”) granted by the Commission, it abandoned that CCN. Accordingly, MLA argues, Grain Belt Express no longer has a valid CCN which might be amended in this proceeding. This is the same argument rejected by the Commission in MLA’s 2021 complaint case—Case No. EC-2021-0059 (“0059 Case”)—where MLA argued Grain Belt Express abandoned its CCN because it announced potential changes to the certificated project. There, the Commission stated that contemplating changes to a certificated project does not amount to abandonment of a CCN or result in a violation of any condition placed upon Grain Belt

¹ Motion for Summary Disposition, EA-2023-0017 (Oct. 28, 2022).

² The Motion was submitted on behalf of MLA, the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, Norman Fishel, Gary and Carol Riedel, and Dustin Hudson. The Motion refers to the group collectively as “MLA.”

Express' CCN.³ The Commission further stated it “has no authority to terminate a CCN.”⁴ Dissatisfied with the Commission’s decision from just over a year ago, MLA is now back to argue the same issue.

2. Moreover, because there are clearly material facts in dispute in this proceeding, summary disposition is inappropriate as a matter of law, and MLA’s motion should be denied.

II. Background

CCN Proceeding

3. On March 20, 2019, the Commission granted Grain Belt Express a CCN to construct and operate the Missouri portion of an approximately 800-mile, overhead, multi-terminal ±600 kilovolt (“kV”) high-voltage, direct current (“HVDC”) transmission line and associated facilities including converter stations and alternating current (“AC”) connector lines (the “Certificated Project”), pursuant to Section 393.170.1, subject to certain conditions.⁵

4. The CCN Order provides that:

If the design and engineering of the project is materially different from how the Project is presented in Grain Belt Express Clean Line LLC’s Application, Grain Belt Express Clean Line LLC must file an updated application with the Commission for further Commission review and determination.⁶

5. The Commission subsequently approved Invenergy Transmission LLC’s (“Invenergy Transmission’s”) acquisition of Grain Belt Express and the Certificated Project in File No. EM-2019-0150, effective September 21, 2019.⁷ Invenergy Transmission closed on its acquisition of Grain Belt Express in early 2020.

³ Report and Order, EC-2021-0059 (Aug. 4, 2021) at pp. 19-20.

⁴ *Id.* at p. 14.

⁵ Report & Order on Remand, EA-2016-0358 (March 20, 2019).

⁶ *Id.* at 52.

⁷ Amended Report and Order, EM-2019-0150 (Sep. 11, 2019).

MLA Complaint Cases

6. The Motion for Summary Disposition continues a pattern of frivolous pleadings by MLA.⁸ Since 2020, MLA has filed four complaint cases at the Commission and a complaint in Circuit Court in Randolph County against Grain Belt Express regarding the Certificated Project. Each of these cases was resolved in favor of Grain Belt Express.⁹ In addition to the four complaint cases and Circuit Court proceeding, MLA has infused irrelevant, unsupported, and inflammatory claims in multiple pleadings in the current case.¹⁰

7. In one of MLA's four complaint cases before the Commission, the aforementioned 0059 Case, MLA argued that by announcing potential changes to the Certificated Project that had not been approved by the Commission in the CCN Proceeding, that Grain Belt Express effectively

⁸ Indeed, given the misleading claims and failure to advise the Commission of directly applicable and recent precedent on the legal theory advanced by MLA, the Motion for Summary Disposition appears to violate Rule 20 CSR 4240-2.080(6).

⁹ See *Missouri Landowners Alliance and Gary Mareschal v. Grain Belt Express, LLC, et al.*, PSC Case No. EC-2020-0408, Motion to Withdraw Complaint (Jan. 12, 2021) (voluntarily dismissed due to lack of evidence); *Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners, and John G. Hobbs v. Grain Belt Express LLC, et al.*, PSC Case No. EC-2021-0034, Report & Order, p. 13 (Jan. 20, 2021) (the Commission saw “no basis” for the relief sought); *Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners, and John G. Hobbs v. Grain Belt Express LLC, et al.*, PSC Case No. EC-2021-0059, Report & Order, p. 20 (Aug. 4, 2021) (Commission found that complainants “failed to meet their burden of proof.”); *Missouri Landowners Alliance, et al., v. Grain Belt Express LLC, et al.*, 20RA-CV01317, Judgment of Dismissal, p. 7 (June 1, 2021) (the Circuit Court of Randolph County dismissed the declaratory action, finding “there is no cause of action before this Court authorizing it to grant the relief requested by Plaintiffs” and that Plaintiffs “fail to allege the essential elements for declaratory relief.”); *McElwee v. Grain Belt Express LLC*, PSC Case No. EC-2022-059 (voluntarily dismissed by Complainant).

¹⁰ In addition to the Motion for Summary Disposition, MLA's Opposition to Request for Waiver of 60-Day Notice (filed October 11, 2022) claimed, without any support, that Grain Belt Express was attempting to “skirt the Commission Rules” and that the “public trust in the Commission ... will certainly be put to the test” (pp.9-10). Additionally, even though Grain Belt Express has explicitly *not* requested expedited treatment of its Application (see Application at ¶ 110), MLA's Suggestions Regarding Procedural Schedule (filed November 17, 2022) claimed that “Grain Belt certainly deserves no sympathy in its efforts to expedite a decision in this proceeding,” citing to a series of events which mostly occurred while Grain Belt Express was under previous ownership and which were largely outside of Grain Belt Express' control.

abandoned the CCN that was granted to it and thus no longer had authority to exercise the right of eminent domain.¹¹

8. The Commission rejected MLA’s arguments, stating in its conclusions of law and decision that it “has no authority to terminate or revoke a CCN.”¹²

9. Likewise, the Commission stated that there is no statutory provision for a public utility to abandon a CCN.¹³ Therefore, the Commission found that the “authority conferred in the [CCN] for the originally certificated Project remains valid.”¹⁴

10. The Commission also considered whether Grain Belt Express had somehow violated the terms of its CCN under MLA’s theory that Grain Belt Express materially changed the Project’s design and engineering without filing for approval from the Commission.¹⁵

11. The Commission found that MLA’s argument failed on two fronts. First, the Commission found that several of the proposed changes did not represent material changes such that any amendment to the CCN was necessary.¹⁶ Second, the Commission stated that MLA did not show that Grain Belt Express had taken any concrete actions to make material changes to the Project or point to any instance where Grain Belt Express was “currently building anything that would require them to apply to the Commission for additional authorization.”¹⁷

¹¹ Report and Order, EC-2021-0059 (Aug. 4, 2021) at p. 2-3.

¹² *Id.* at pp. 14-15.

¹³ *Id.* at p. 15.

¹⁴ *Id.* at pp. 15-16.

¹⁵ *Id.* at p. 16-20.

¹⁶ *Id.* at p. 19-20.

¹⁷ *Id.* at p. 19.

12. Critically, the Commission noted that Grain Belt Express' representations that it would not make material changes without seeking Commission authority contradicted MLA's contention that Grain Belt Express had violated its CCN.¹⁸

III. Statement of Law Regarding Summary Disposition

13. Commission Rule 20 CSR 4240-2.117(1)(E) provides that the Commission may grant a motion for summary disposition:

if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest.¹⁹

14. The summary disposition rule provides “for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.”²⁰

15. While the Commission is not obligated to incorporate the standards for a motion for summary judgment in civil cases, generally, “Summary judgment is appropriate when the moving party has demonstrated, on the basis of facts as to which there is no genuine dispute, a right to judgment as a matter of law.” *Almat Builders & Remodeling, Inc. v. Midwest Lodging, LLC*, 615 S.W.3d 70, 77 (Mo. Ct. App. 2020). “Once the movant has made a prima facie showing of lack of genuine issue of material fact, and thereby entitlement to judgment as matter of law, the burden shifts to the non-movant, to show that one or more of the material facts shown by the movant to be above any genuine dispute is, in fact, genuinely disputed.” *Id.* “A ‘genuine issue’ exists where the record contains competent materials that evidence two plausible, but contradictory, accounts of the essential facts.” *Id.* “A ‘genuine issue’ is a dispute that is real, not

¹⁸ *Id.*

¹⁹ 20 CSR 4240-2.117(1)(E).

²⁰ *Id.* (“Purpose”).

merely argumentative, imaginary or frivolous.” *Id.* “To put a fact in genuine dispute, the non-movant may not rely on a general denial, but, instead, must support that denial with specific references to the discovery, exhibits or affidavits that demonstrate the specific facts showing that there is a genuine issue for trial.” *Id.*

IV. Argument

16. MLA’s Motion is rife with misinformation, outright misrepresentations, and has no merit as a matter of fact or law. Starting with the most egregious misrepresentation, MLA states:

Once Grain Belt decided to make these changes, as described in its verified Application to Amend, it necessarily conceded that it was no longer seeking to build the project approved in the Original CCN case.²¹

17. MLA does not provide a citation for this assertion, and one cannot be found in its statement of facts. MLA did not provide a citation because the assertion is patently false. Nowhere in Grain Belt Express’ Application to Amend its Existing Certificate of Public Convenience and Necessity (“Application”) did Grain Belt Express in any way state, or even suggest, that it is no longer seeking to build the Certificated Project. On the contrary, Grain Belt Express confirmed that it continues to pursue the Certificated Project.²²

18. Disturbingly, this is no mere inadvertent error by MLA, as MLA expressly acknowledged that Grain Belt Express did affirm that it is not abandoning its CCN.²³

²¹ Motion at p. 10 (emphasis added).

²² See Application at ¶ 17 (“The Certificated Project remains viable, feasible and in the public interest, and Grain Belt Express is continuing to develop the Certificated Project.”) *and id.* at ¶ 104 (“To be clear, Grain Belt Express affirms that it continues to actively develop the Certificated Project under the existing CCN and has not abandoned or otherwise relinquished its existing CCN by filing this Application to Amend or by any other means. Because “[t]he Commission has no authority to terminate a CCN,” the existing CCN remains in full effect during the pendency of the Commission’s review of this Application.”).

²³ Motion at p. 10 (“Grain Belt gratuitously states near the end of its Application to Amend that it has not abandoned its existing CCN for the project.”).

19. From this fiction, MLA draws several faulty conclusions that can be summarized as follows: first, MLA states Grain Belt Express has the absolute right to unilaterally abandon the Certificated Project and that it has expressly done so by applying to amend its CCN. Second, because Grain Belt Express has purportedly abandoned the Certificated Project, the CCN for that Certificated Project automatically terminates. And third, because MLA views the CCN as dead, there is nothing that Grain Belt Express can amend and thus, the amendment case should be dismissed.

20. MLA has grudgingly acknowledged the faults in its case—notably the fact that Grain Belt Express has stated that it has not abandoned its CCN²⁴ and that the Commission rejected the same argument in 2021.²⁵ Undeterred, MLA has decided it does not like those facts and has chosen not to apply Commission precedent.

21. MLA’s Motion fails in many regards. First, MLA’s “Undisputed Statement of Facts” does not prove up the arguments it later makes. Second, the facts that MLA relies on in its legal argument are procedurally deficient and not accurate, or, at the very least, are heavily disputed. Third, MLA fails to present non-frivolous factual and legal arguments to support its Motion.

A. MLA’s Undisputed Facts Do Not Show That Grain Belt Express Has Abandoned Its CCN.

22. MLA’s Undisputed Material Facts section (“SOF”) (Motion at pp. 2-7) meanders through the design and engineering details of the Certificated Project and how the Application, if approved, would change some of those details. But MLA’s SOF does not allege facts that could possibly lead a reasonable person to conclude that Grain Belt Express has abandoned its CCN.

²⁴ Motion at p. 10.

²⁵ Motion at p. 8.

23. Crucially, MLA's legal argument is premised on the idea that there was some overt act by Grain Belt Express to declare it has abandoned its Certificated Project and signaled to the Commission that it would not build the Certificated Project.

24. MLA's SOF contains no direct assertion that Grain Belt Express has publicly announced it is abandoning the Certificated Project or filed something with the Commission stating that it has abandoned the Certificated Project.

25. The SOF does not allege facts that Grain Belt Express has stopped pursuing the Certificated Project (by, perhaps, renegeing on easement agreements, canceling construction contracts, halting interconnection agreements, etc.).

26. Instead, the SOF merely lists changes proposed in the Application to amend the CCN. Essentially, MLA has merely stated what an amendment application is.

27. At best, it appears MLA's SOF is designed to highlight the differences between the design and engineering details of the Certificated Project and the design and engineering details that would exist in the Amended Project, if approved. But MLA never actually gets to the substantive facts it would need to prove—that Grain Belt Express did something that undisputedly shows it has abandoned its CCN.

28. It should also be noted that MLA excluded from the SOF relevant facts necessary for the Commission to determine if there are disputed facts. Critically, the SOF does not advise the Commission that the Application includes several express commitments indicating that Grain Belt Express has not only not abandoned the Certificated Project, but that it continues to actively

pursue it.²⁶ Given that MLA’s entire case is built on the false allegation that Grain Belt Express has expressly abandoned its CCN, the decision to omit these statements borders on duplicity.

B. MLA’s Argument Alleges Facts That Are Not in Its Statement of Facts and Are Fabricated.

29. Procedurally, motions for summary disposition are to include “with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts.”²⁷

30. As stated in the previous section, MLA’s SOF falls short of alleging facts supporting its assertion that Grain Belt Express has specifically abandoned its CCN for the Certificated Project. However, within the argument section of MLA’s Motion, MLA adds critical alleged “facts” it then relies upon to support its arguments.

31. To distinguish itself from the 0059 Case, MLA states that:

relevant facts have changed significantly [because] ... as evidenced by and described in their Application to Amend, Grain Belt has publicly confirmed its decision to build a project significantly different from the one approved by the Commission.²⁸

²⁶ See Application at ¶ 17 (“The Certificated Project remains viable, feasible and in the public interest, and Grain Belt Express is continuing to develop the Certificated Project.”) *and id.* at ¶ 104 (“To be clear, Grain Belt Express affirms that it continues to actively develop the Certificated Project under the existing CCN and has not abandoned or otherwise relinquished its existing CCN by filing this Application to Amend or by any other means. Because ‘[t]he Commission has no authority to terminate a CCN,’ the existing CCN remains in full effect during the pendency of the Commission’s review of this Application.”); Direct Testimony of Aaron White at pp. 14-15 (“Grain Belt Express continues to develop the certificated Project. There are no material changes to the HVDC portion of the Project, which constitutes the great majority of the currently certificated Project. Accordingly, Grain Belt Express has been and continues to develop the certificated Project.”).

²⁷ 20 CSR 4240-2.117(1)(B).

²⁸ Motion at p. 8.

32. Later, MLA states that: “Once Grain Belt decided to make these changes, as described in its verified Application to Amend, it necessarily conceded that it was no longer seeking to build the project approved in the Original CCN case.”²⁹

33. MLA’s SOF does not include any facts suggesting that Grain Belt Express stated that it is no longer building the Certificated Project or that it has conceded that it has abandoned its right to continue to build the Certificated Project. In fact, MLA later acknowledges that the Application states the exact opposite.³⁰ Yet, MLA makes no effort to prove up its claim that Grain Belt Express has expressly abandoned the Certificated Project.

34. As provided in Attachment A to this Response, Grain Belt Express has provided undisputed facts that clearly confirm that it has not abandoned the CCN and has not taken any measures to cease planning and construction around the Certificated Project. *See* Response to MLA’s Statement of Facts and Statement of Additional Facts at ¶¶ 31-35.

35. Procedurally, because MLA did not include these specific allegations in its SOF, they should be disregarded. However, to the extent they are considered, they are meritless and contradicted by the Application and the material provided in Attachment A to this Response.

C. MLA’s Legal Arguments Are Spurious, Misleading, and Show Complete Disregard for the Commission’s Recent Dispositive Ruling in MLA’s Previous Case

i. *Applicable Law on CCN Abandonment*

36. A party moving for summary disposition must prove it is entitled to relief as a matter of law.

²⁹ Motion at p. 10.

³⁰ *Id.* (“Grain Belt gratuitously states near the end of its Application to Amend that it has not abandoned its existing CCN for the project.”) *citing* to Application at ¶ 104.

37. MLA requested that the Commission find that Grain Belt Express' CCN is a legal nullity through a theory of unilateral abandonment and, thus, there is no certificate to amend. Incredibly, MLA asserts that there "appears to be no case law on this proposition one way or the other."³¹

38. MLA cannot credibly suggest that it has forgotten the Commission's decision from last year in the 0059 Case. The Commission there provided clear guidance on these issues:

- The Commission has no authority to terminate or revoke a CCN.³²
- "[T]here is no statutory provision for a public utility to abandon a CCN."³³
- An announcement to build something different than what is authorized in a CCN does not void the original grant of authority in the CCN Order.³⁴
- Grain Belt Express did not violate the condition requiring it to obtain further Commission approval for "material changes in the design and engineering" because it was not "currently building anything that would require them to apply to the Commission for additional authorization."³⁵

³¹ *Id.*

³² Report and Order, EC-2021-0059 (Aug. 4, 2021) at p. 14 *citing State ex rel. City of Sikeston v. Public Service Com'n of Missouri*, 82 S.W.2nd 105 (1935); *see also id.* at p. 15 ("Section 393.170, RSMo does not provide a mechanism for the Commission to revoke a CCN once it has been granted.").

³³ *Id.* at p. 15.

³⁴ *Id.* ("Since there is no provision for Respondents to affirmatively relinquish their CCN, prior to a two-year expiration due for inaction, the CCN Order's original grant of authority continues.")

³⁵ *Id.* at 19-20. The Commission's decision in EC-2021-0059 does not suggest that a violation of a CCN, if proven, would result in a revocation of a CCN.

ii. *Defects in Legal Arguments by MLA*

39. MLA's basic argument is that, by filing to amend a CCN, the original CCN is destroyed, and therefore there is nothing to amend. Under this logic, nothing could ever be amended because the thought of amending the base document would destroy the document itself.

40. Such a notion is absurd and unfounded in Commission precedent. It is also contradicted by the words of the CCN Order itself, that expressly required Grain Belt Express to file an "updated application with the Commission for further Commission review and determination" if the design and engineering was materially different than what was approved in the CCN Order.³⁶ Further, the Commission's decision in the 0059 Case confirms that it is entirely proper for Grain Belt Express to seek the authority necessary to implement proposed changes to the Project.³⁷

41. Ostensibly recognizing the Commission is not likely to void Grain Belt Express' CCN based on recent precedent, MLA advances a theory that Grain Belt Express has "unilaterally abandoned its CCN." MLA misrepresents the holding in *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 687 S.W.2d 162 (Mo. 1985) to support the proposition that a CCN can be abandoned. Even a cursory reading of *Union Electric* reveals no such holding.

42. *Union Electric* involved the appeal of a decision by the Commission to deny Union Electric's rate recovery of amounts dedicated to the construction of a nuclear power plant. *Id.* at 163. In 1975, Union Electric received a certificate of convenience and necessity from the

³⁶ Report & Order on Remand, EA-2016-0358 (March 20, 2019) at p. 52.

³⁷ Report and Order, EC-2021-0059 (Aug. 4, 2021) at 19 ("Respondents may actually desire to make the proposed changes contained in the press release and website, but Respondents did not begin construction of an unauthorized project when they issued the press release. Respondents testified that they have not abandoned their CCN and they continue to pursue the Commission certificated Project. Complainants' primary evidence of Respondents' public announcement of changes to the Project, the press release, expressly acknowledges that Respondents will seek the authority necessary to implement proposed changes to the Project.").

Commission to commence construction of two nuclear reactor power plants in Callaway County, Missouri. *Id.* By 1981, Union Electric decided to abandon the construction of one of the plants, and Union Electric cited slackening consumer demands and high cost of borrowed funds in its decision to abandon construction. *Id.* Despite abandoning the construction of the project, Union Electric applied to charge costs expended on the abandoned plant to ratepayers. *Id.* The Commission precluded recovery of amounts associated with the abandoned plant. *Id.* On appeal, the Missouri Supreme Court ruled that the Commission was within its authority to disallow cost recovery *on construction* that was “definitely abandoned.” *Id.* at 163.

43. Absent from *Union Electric* is any reference to abandonment or avoidance of a CCN. It is merely a case about whether rates for an abandoned plant could be passed to ratepayers.³⁸

44. MLA also cites to *State ex rel. Transp. Delivery Co. v. Pub. Serv. Comm'n*, 382 S.W.2d 823 (Mo. App. 1964), a case that references, in dicta, the possibility that a party had abandoned a common carrier certificate to transport petroleum through lack of use. *Id.* at 826-27. The court concluded the abandonment argument “lacked merit” because “authority has been continuously exercised and in good standing with the Commission” and the certificate “has never been dormant.” *Id.* at 827.

45. Neither case supports the broad proposition that a utility can abandon authority granted to it through a CCN.

46. MLA next attempts to artificially squeeze the facts of this case into the *Union Electric* fact pattern, by asserting that Grain Belt Express unilaterally abandoned its CCN.³⁹ MLA

³⁸ It should be noted that counsel for MLA represented Union Electric in that matter, and should therefore be of the fact that he has misrepresented the holding in that case. *See id.* at 163.

³⁹ While Grain Belt continues to dispute the relevance of *Union Electric*, to the extent abandonment is considered holistically, in that case, the utility apparently confirmed it abandoned construction for cost and demand reasons.

states that Grain Belt Express has decided to build the Amended Project to the exclusion of the Certificated Project. MLA goes so far as to misleadingly claim that Grain Belt Express “conceded [in its verified application] that it was no longer seeking to build the project approved in the Original CCN case.”

47. As provided above, this is an outright fabrication. Grain Belt Express has never declared or conceded that it has abandoned the Certificated Project (as Union Electric apparently did in that case) or the underlying CCN. On the contrary, Grain Belt Express reaffirmed that it has not abandoned the Certificated Project in the Application and in Aaron White’s Direct Testimony. There is no version of the truth that squares Grain Belt Express’ circumstances with even a wildly expanded (and wrong) reading of *Union Electric*.

48. MLA did not even attempt to apply the *Transportation Delivery* case. It cannot. Just last year the Commission confirmed the CCN was in good standing, and no credible evidence exists that there has been any sort of lapse from misuse.⁴⁰

49. MLA has offered no meaningful new arguments for the Commission’s consideration in this Motion, and therefore the Commission should come to the same conclusion it did a year ago—Grain Belt Express has not abandoned its CCN by proposing changes to the Certificated Project.

V. Grain Belt Express Has Demonstrated That It Continues to Develop the Certificated Project; Thus, There Are Material Facts in Dispute and Summary Disposition is Inappropriate

50. As noted in the Application and the Direct Testimonies of Shashank Sane, Aaron White, Jen Stelzleni, and Carlos Rodriguez, Grain Belt Express has made significant progress on

⁴⁰ See Response to MLA’s Statement of Facts and Statement of Additional Facts at ¶¶ 31-35.

the development of the Certificated Project since its acquisition in 2020, including easement acquisitions, initiating eminent domain proceedings, pursuing interconnection agreements, engaging in construction activities and entering into agreements with material suppliers and environmental consultants.⁴¹

51. While the purpose of the Application is to seek approval for material changes to the Certificated Project, Grain Belt Express confirms that it is continuing to develop the Certificated Project consistent with the CCN Order and that the Certificated Project remains viable, feasible and in the public interest.⁴²

52. On several occasions, the Application explicitly states that Grain Belt Express has not abandoned the Certificated Project and is continuing to develop the Project. *See* Amendment Application at ¶ 18 (“The Certificated Project remains viable, feasible and in the public interest, and Grain Belt Express is continuing to develop the Certificated Project. For the HVDC portion of the line (which excludes the Tiger Connector, discussed in greater detail below), no material changes to the route, right-of-way, or facility design are anticipated as a result of the requested amendments. Development for the HVDC route is ongoing, consistent with the CCN Order.”); ¶ 104 (“To be clear, Grain Belt Express affirms that it continues to actively develop the Certificated Project under the existing CCN and has not abandoned or otherwise relinquished its existing CCN by filing this Application to Amend or by any other means.”)

⁴¹ For more detail on Grain Belt Express’ progress, *see* Application at pp. 5-6; Direct Testimony of Shashank Sane at pp. 9-10 (providing an overview of progress made); Direct Testimony of Aaron White at pp. 13-14 (addressing material suppliers); Direct Testimony of Jen Stelzleni at pp. 6-7 (addressing environmental consultants); Direct Testimony of Carlos Rodriguez at pp. 15-19 (addressing the SPP interconnection) and pp. 23-28 (addressing the PJM interconnection).

⁴² Application at 7; Response to MLA’s Statement of Facts and Statement of Additional Facts at ¶ 31.

53. The Direct Testimony of Aaron White also confirms that “Grain Belt Express continues to develop the certificated Project. There are no material changes to the HVDC portion of the Project, which constitutes the great majority of the currently certificated Project. Accordingly, Grain Belt Express has been and continues to develop the certificated Project.”⁴³

54. Grain Belt Express has taken the significant steps to continue to develop the Certificated Project.⁴⁴

55. Grain Belt Express has not made any business or managerial decisions to halt development or construction of the Certificated Project.⁴⁵

56. Grain Belt Express has not made any business or managerial decisions to abandon its authority granted in EA-2016-0358.⁴⁶

VI. Response to MLA’s Statement of Facts and Statement of Additional Facts

57. Grain Belt Express has separately attached its response to MLA’s Statement of Facts to this Response as Attachment A. Grain Belt Express has included additional statements of fact in Attachment A to fill out the Commission’s review of this dispute.

VII. Conclusion

58. MLA’s Motion lacks any basis in fact or law. The undisputed facts do not support a theory that Grain Belt Express has unilaterally abandoned its CCN. Further, MLA has failed to establish a legal basis for its request that the Commission void Grain Belt Express’ CCN because

⁴³ Direct Testimony of Aaron White at pp. 14-15.

⁴⁴ Response to MLA’s Statement of Facts and Statement of Additional Facts at ¶ 32.

⁴⁵ *Id.* at ¶ 34.

⁴⁶ *Id.* at ¶ 35.

1) there is no legal precedent for Grain Belt Express to abandon its CCN; 2) there is no legal precedent for the Commission to void a CCN; and 3) under the novel theory of abandonment, there is no reasonable interpretation of the Application that justify the conclusion that Grain Belt Express has definitely abandoned its CCN.

WHEREFORE, Grain Belt Express requests that the Commission deny MLA's Motion for Summary Disposition and take such other action as it determines the law requires.

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 28th day of November, 2022.

/s/ Andrew O. Schulte

Andrew O. Schulte