

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 ) File No. EA-2023-0017  
Construct, Own, Operate, Control, Manage, and )  
Maintain a High Voltage, Direct Current )  
Transmission Line and Associated Converter )  
Station )

POST-HEARING REPLY BRIEF OF  
THE MISSOURI LANDOWNERS ALLIANCE<sup>1</sup>

Paul A. Agathen  
Attorney for the MLA et al.  
485 Oak Field Ct.  
Washington, MO 63090  
(636)980-6403  
[Paa0408@aol.com](mailto:Paa0408@aol.com)  
MO Bar No. 24756

---

<sup>1</sup>This Brief is submitted by the Missouri Landowners Alliance, the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, Norman Fishel, Gary and Carol Riedel, and Dustin Hudson. For convenience, this group will be collectively referred to here as the MLA.

**Table of Contents**

	<u>Page</u>
1. Introduction .....	3
2. Reply to Initial Brief of Grain Belt Express. ....	3
A. Need for the Amended Project .....	3
B. Public Interest of the Amended Project .....	6
C. Economic Feasibility of the Amended Project .....	7
D. Financial Ability of Grain Belt Express .....	9
E. Qualifications of Grain Belt Express .....	9
Conditions to a CCN .....	9
Compensation for Landowners on the Tiger Connector line.....	9
3. Reply to Initial Brief of the MEC .....	10
4. Reply to Initial Briefs of Associated Industries, Sierra Club, Clean Grid Alliance and Renew Missouri. ....	10
5. Conclusion .....	11

## **1. Introduction**

With minor exceptions noted hereafter, the MLA is confident it addressed all the determinative issues in this case in its Initial Brief (“IB”). It intends to avoid rearguing those same matters again in this Reply Brief. Accordingly, most of the arguments in the Initial Briefs of opposing parties will not be directly addressed here. The MLA respectfully asks the Commission to bear this in mind when considering the arguments in opposing Initial Briefs.

## **2. Reply to Initial Brief of Grain Belt Express.**

### **A. Need for the Amended Project.** (Grain Belt’s IB pp. 11-36)

At pages 18–27 of its Initial Brief, under subsection ii, Grain Belt argues that the amended Project will lead to certain levels of ratepayer savings and social benefits. At pages 27-32, under subsection iii, it then argues that the amended Project will provide certain reliability and resilience benefits.

The arguments under subsection ii rely primarily on the PA Consulting Report sponsored by Mr. Mark Repsher. In fact, except for the first three lines of subsection ii at page 18, Mr. Repsher and/or the PA Consulting Report are cited and relied upon in every page of Grain Belt’s subsection ii.<sup>2</sup> The MLA discussed the deficiencies with this Report at pages 25-26 of its Initial Brief.

Two additional comments are worth noting. In defending the 40 years of projected data used in the PA Consulting Report, Grain Belt states as follows: “It would be discriminatory, arbitrary and capricious not to permit Grain Belt Express to present

---

<sup>2</sup> Grain Belt also relied upon the testimony of Mr. Goggin at pages 21-22 of subsection ii, but the problems with his testimony were addressed at pages 35-38 of the MLA’s Initial Brief.

reasonable assumptions about the future in making its case for the Amended Project.”<sup>3</sup> Notably absent from that claim is any citation to a Commission or judicial decision which supports that sweeping assertion. In fact, the use of such unknown and unmeasurable data runs contrary to the Commission’s normal practice, at least in rate cases.

Second, Grain Belt claims the purported figure of \$17.6 billion in ratepayer benefits derived from the PA Consulting Report “is undisputed.”<sup>4</sup> That claim is inaccurate, considering Mr. Stahlman’s discussion of a variety of flaws in that Report.<sup>5</sup>

The arguments under subsection iii of Grain Belt’s Initial Brief rely to a large extent on the Guidehouse Report sponsored by Messrs. Petti and Baker. Those individuals and/or the Report are cited and relied upon in every page of subsection iii, except for the last two pages where Grain Belt takes issue with Staff’s position on bidirectionality.

The MLA discussed the problems with the Guidehouse Report at pages 23-25 of its Initial Brief. The flaws in that Report, as discussed therein, refute the arguments presented by Grain Belt in subsection iii of its Initial Brief.

But even if one assumed that the PA Consulting Report and the Guidehouse Report have accurately quantified the supposed benefits of the amended project, the bigger hurdle is that those benefits will only materialize if the project can be financed and built. This of course will only happen if Grain Belt can sell a substantial portion of its unsold capacity. For phase I of the project, this means selling approximately 70–75 % of

---

<sup>3</sup> IB p. 20, par. 36.

<sup>4</sup> IB p. 27, par. 50.

<sup>5</sup> Exh. 107, Stahlman Rebuttal, p. 4 lines 17-23.

the 2500 MW to be delivered to Missouri.<sup>6</sup> At present, at best they have sold only the 200 MW to the MEC.<sup>7</sup>

At page 11 of its Initial Brief, Grain Belt lists the following factors which supposedly show it is capable of selling such a large amount of the line's capacity at rates which have yet to be agreed upon with Grain Belt: the initial contracts with the MEC; expressed demand from municipalities; the executed MOUs; demand from commercial and industrial customers; the carbon emission reduction goals and/or net-zero equivalent targets of local utilities; and demand outside Missouri.

This list is unconvincing. As discussed at section 3 below, the initial contracts with the MEC are not relevant to the approval of the amended project. Also, the only references in this case of any expressed demand from specific municipalities are those which have already committed to buy some of the capacity purchased by the MEC.<sup>8</sup> To rely upon them again amounts to double-counting. The MOU's are of course already expired.<sup>9</sup> And as mentioned in the MLA's Initial Brief at pages 10-11, Grain Belt is unable to sell retail service to commercial and industrial customers in Missouri. The emission goals referred to by Grain Belt were addressed by the MLA at pages 9-10 of its Initial Brief. And to the extent that Grain Belt must resort to shipping power to other states, it is clearly wielding a double-edged sword regarding the benefits of the amended project to Missouri.

---

<sup>6</sup> See Tr. Vol. 9, p. 410, lines 5-17 (testimony of Ms. Rolanda Shine).

<sup>7</sup> See MLA's IB p. 8.

<sup>8</sup> See Exh. 700HCC, Twitty Rebuttal, p. 4 lines 6-9.

<sup>9</sup> See MLA's IB, p. 9, 1<sup>st</sup> par.

With respect to the Integrated Resource Plans (IRPs) of Evergy and Ameren, Grain Belt stated that the most important argument supporting the need for the Project is as follows:

There are no similar projects on the market or in development that will offer Missouri utilities and other load interests direct access to a geographically diverse supply of high-capacity renewable energy via a permanently uncongested path (at scale), the ability to address sustainability, reliability and capacity needs cost effectively, that will be available on the timeline set forth in each utility IRP and during the critical hours when this capacity is most needed.<sup>10</sup>

In support of this argument, Grain Belt relies solely on pages 19 and 24-25 of Mr. Goggin's Rebuttal Testimony.<sup>11</sup> The MLA submits that this testimony does not begin to support this "most important" argument from Grain Belt.

Under the subject of "need", Grain Belt also addresses the issue of "phasing" for the amended project. (Grain Belt's IB, pp. 33-36). Aside from what the MLA stated about this issue in its Initial Brief (pp. 18-20), the following finding by the Commission in the previous CCN case is also relevant:

By building a single transmission project of 4,000 MW that serves the renewable energy needs of wholesale customers in both MISO and PJM, the Grain Belt Project would achieve an economy of scale that is significantly less expensive than a project that served the needs of Missouri alone.<sup>12</sup>

**B. Public Interest of the Amended Project.** (Grain Belt's IB pp. 36-46)

Grain Belt's arguments on this issue largely duplicate the arguments it made regarding the issue of "need" in section II.A of its Brief. As such, those arguments have

---

<sup>10</sup> IB p. 15, par. 28.

<sup>11</sup> Id. f.n. 45.

<sup>12</sup> Exh. 306, Report and Order on Remand, p. 26, par. 82.

already been addressed by the MLA in its Initial Brief and/or in the preceding section of this Reply Brief.

In particular, the testimony and analysis from Dr. Loomis, discussed by Grain Belt at pages 42-45, was addressed at length by the MLA at pages 26-31 of its own Initial Brief. As indicated, the MLA agrees with Staff that the Loomis study should be given no weight by the Commission.<sup>13</sup>

Grain Belt also contends that the MLA et al. presented no affirmative evidence of how landowners will be harmed by the amended Project.<sup>14</sup> But it would hardly require any additional evidence to realize that the 40-mile Tiger Connector line will indeed cause additional harm to landowners.

Moreover, as the applicant in this case Grain Belt has the burden of proving that the amended project is in the public interest. The party not carrying the burden of proof is under no obligation whatsoever to present countervailing evidence of its own.<sup>15</sup>

C. **Economic Feasibility of the Amended Project.** (Grain Belt’s IB pp. 46-52)

The issue of economic feasibility was addressed by the MLA in its Initial Brief at pages 12-18. Those arguments are all applicable to Grain Belt’s presentation regarding this factor and will not be repeated here.

One issue which the MLA had not anticipated is Grain Belt’s argument, repeated several times, that the Project is economically feasible because the supposed dollar savings to ratepayers, and even the reductions in emissions, somehow counter-balance the cost of the project. For example, Grain Belt contends that “The \$17.6 billion in

---

<sup>13</sup> MLA IB p. 26, last par.

<sup>14</sup> IB p. 37, par. 71.

<sup>15</sup> *Beaman v. Lowe’s Home Centers*, 601 S.W.3d 330, 331 (Mo App. 2020) (noting the basic precept that “no evidence is needed to find against the party who bore the burden of proof ....”)

savings for Missouri residents provides more than enough headroom to cover the costs of Phase I ....”<sup>16</sup>

If one will pardon the cliché, Grain Belt is comparing apples to oranges. Even if savings to ratepayers and the general public are assumed to exceed the cost of the project, that fact does not impact the ability of the Project to sustain itself economically. The argument may have a place elsewhere in Grain Belt’s brief, but the savings to the public cannot somehow cover the costs incurred by Grain Belt in building and maintaining the Project. Those costs can only be covered by revenue from the Project. Grain Belt’s argument would be logical only if it is totally reimbursed by the public for the emissions reductions and all other savings supposedly attributable to the line. At this point, Grain Belt has not sought to go that far.

Referring to the previous CCN case, Grain Belt also “urges the Commission to reaffirm its prior findings with respect to economic feasibility.”<sup>17</sup> However, the Commission found in that case that “it is the 3500 MW portion of the project to be sold in PJM that demonstrates the financial viability of the project overall ....”<sup>18</sup> Reaffirming that finding would leave Grain Belt at a loss to support the economic feasibility of Phase I of the project.

Several of Grain Belt’s argument regarding economic feasibility concern its differences with Staff.<sup>19</sup> The MLA will trust in Staff’s response to those issues.

---

<sup>16</sup> IB p. 51, par. 99. See also IB p. 47, par. 91; p. 50, par. 98; p. 51, par. 100.

<sup>17</sup> IB p. 47, par. 90.

<sup>18</sup> Exh. 306, Report and Order on Remand, p. 44, 1<sup>st</sup> full par.

<sup>19</sup> IB p. 46, par. 88; p. 50, par. 97; p. 51, par. 100.



Finally, regardless of Grain Belt's evidence about economic feasibility, its case here is already doomed by its failure to provide credible and objective evidence that there is a need for the project.

**D and E. Financial Ability and Qualifications.** (Grain Belt's IB pp. 52-54.)

The MLA has taken no position on these two issues.

**Conditions to a CCN.** (Grain Belt's IB pp. 54 – 62)

If the Commission approves a CCN for the amended Project, the MLA takes no issue with the Conditions listed by Grain Belt at paragraph 108 of its Initial Brief, except that subparagraph d at page 56 should be modified to reflect the MLA's position on compensation to landowners on the Tiger Connector line, as discussed immediately below.

**Compensation for landowners on the Tiger Connector line.** (Grain Belt's IB pp. 58 – 62)

The MLA's arguments in favor of its proposed options for compensation to landowners on the Tiger Connector line are set forth at pages 20-23 of its Initial Brief.

The only argument from Grain Belt not addressed there is its contention that the MLA's proposal should be rejected because "[l]andowner compensation is a function of private negotiations between the transmission developer and the individual landowners."<sup>20</sup>

However, that argument is undermined by the very case granting Grain Belt the CCN. At page 52, par. 8 of the Report and Order on Remand in the last CCN case, Grain Belt was ordered to comply with the Missouri Landowner Protocol. And that Protocol

---

<sup>20</sup> Id. p. 61, par. 120.

included a provision that Grain Belt shall make easement payments equal to 110% of the fair market value of the easement property.<sup>21</sup>

Based on this precedent, landowner compensation is indeed an appropriate subject for Commission consideration when balancing the interests of all stakeholders.

### **3. Reply to Initial Brief of the MEC.**

The only issues to be decided here concern the benefits or lack thereof resulting from the amendments to the CCN granted in the last case. Nevertheless, several times the MEC cites its original contract with Grain Belt, relied upon by the Commission in the previous CCN case, as support for approval of the amendments being proposed in this proceeding.<sup>22</sup> Other parties, including Grain Belt, have taken the same tactic.<sup>23</sup>

However, the initial contract between the MEC and Grain Belt will remain in effect regardless of how this case is decided.<sup>24</sup> Accordingly, the benefits accruing to the MEC and its customers from that contract are irrelevant to the proposed amendments to the original CCN.

### **4. Reply to Initial Briefs of Associated Industries, Sierra Club, Clean Grid Alliance, and Renew Missouri.**

The MLA submits there is nothing of significance in any of the Initial Briefs of these four parties which had not already been addressed above in response to Grain Belt's Initial Brief, and/or in the MLA's Initial Brief. Therefore, and meaning no disparagement of the work of these other parties, nothing would be added by separately addressing their four briefs here.

---

<sup>21</sup> Exh. 19, Chandler Direct, p. 15, lines 15-17.

<sup>22</sup> See IB of the MEC, pp. 4-5, 7-8, and in particular footnote 40 at p. 8.

<sup>23</sup> IB of Renew Missouri, pp. 2-3; IB of Clean Grid Alliance, pp. 2, 6. IB of Grain Belt, p. 11 par. 18, and p. 12 par. 20 – 21.

<sup>24</sup> See the MLA's IB, p. 6.

Accordingly, the absence of a reply here to any argument made by these four parties should not be taken as a concession to what they have stated.

**5. Conclusion.**

Nothing in the Initial Briefs of Grain Belt and its allies has demonstrated that the amended project would meet the Tartan criteria for need and economic feasibility. Their arguments depend, instead, on hope and conjecture that unidentified end-use utilities will eventually purchase an interest in the Project. Their case is founded, in other words, on the continuation of nine years of wishful thinking.

WHEREFORE, the MLA again respectfully asks the Commission to reject in total the Application filed in this case by Grain Belt on August 24, 2022. If the Commission chooses not to do so, the MLA again respectfully asks the Commission to at least adopt the MLA's positions on the issue of "phasing", and on Grain Belt's proposed change to the payment schedule for landowners on the Tiger Connector line.

Respectfully submitted,

/s/ Paul A. Agathen  
Paul A. Agathen  
Attorney for the MLA et al.  
485 Oak Field Ct.  
Washington, MO 63090  
(636)980-6403  
[Paa0408@aol.com](mailto:Paa0408@aol.com)  
MO Bar No. 24756

Certificate of Service

A copy of this Post-Hearing Reply Brief was served by electronic mail this 14th day of July, 2023, to counsel for all parties.

/s/Paul A. Agathen  
Paul A. Agathen