

**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) File No. EA-2014-0207
Current Transmission Line and an Associated)
converter Station Providing an Interconnection on the)
Maywood-Montgomery 245 kV Transmission Line.)

MOTION FOR PROTECTIVE ORDER OF INFINITY WIND POWER

Infinity Wind Power (Infinity), pursuant to 4 CSR 240-2.090, Missouri Supreme Court Rule 56.01(c), and 4 CSR 240-2.135(2),(6), hereby moves the Public Service Commission of the State of Missouri (MPSC or Commission) for a protective order prohibiting disclosure of Infinity’s commercially sensitive business information to any party to this proceeding. Any disclosure of the information that is the subject of this Motion will irreparably harm the competitive interests of Infinity and subject it to litigation. The Commission’s rules governing the designation of confidential information are not sufficient to protect Infinity’s interest. Rather, the dissemination of the information, even if confidentially designated, is competitively and legally harmful to Infinity. In support of its Motion, Infinity states the following:

1. On Saturday, September 6, 2014, the Missouri Landowners Alliance (Alliance) issued to Infinity in the above-captioned matter, a discovery request (DR) consisting of eight questions seeking disclosure of Infinity’s proprietary, highly confidential and commercially sensitive business information (DRs 1.1-1.8). A copy of the Alliance’s DR is attached as **Attachment A**. Specifically, the Alliance seeks information regarding wind speed, competitive pricing information, and documents between Infinity and its prospective energy purchasers. The information sought is not only Infinity’s trade secret information, which includes confidential

research, development, and commercial data, but is also the confidential algorithmic/modeling data of Infinity's vendors, and as such should not be disclosed.¹

2. Much of the information sought by the Alliance in DRs 1.1-1.8 is also the subject of an ongoing discovery dispute between Grain Belt Express Clean Line LLC (Grain Belt) and the Alliance over the Alliance's DRs 48 and 94, issued to Grain Belt witnesses Skelly and Berry, respectively.² The information sought in DRs 48, 94, as well as much of the information sought in DRs 1.1-1.8, was provided to Grain Belt under confidential seal in response to a request for information (RFI) issued to wind generators by Grain Belt on or around November 2013.

3. Grain Belt has objected to providing the Alliance additional information requested in DRs 48 and 94 on the basis that such information is sensitive competitive information of potential wind developers, such as Infinity, and it is irrelevant to this proceeding. The Alliance used the information contained in Grain Belt's confidential response to these DRs to identify the entities that submitted information in response to the RFI and is now asking those entities who are parties to this docket for the same information. It is unclear why the Alliance has now issued duplicative discovery in this matter to the intervenor wind generators it knows, only by virtue of Grain Belt's responses to DRs 48 and 94, to have responded to Grain Belt's RFI, especially since the subject matter of the DRs issued to Infinity is also the subject of the discovery dispute currently pending before the Commission.

4. Throughout the course of discovery in this matter, Grain Belt has kept Infinity apprised of the ongoing discussions with the Alliance and has obtained approval from Infinity to

¹ Missouri Supreme Court Rule 56.01(c)(7).

² *Motion of the Missouri Landowners Alliance to Compel Responses to Discovery Requests*, filed by the Alliance on or about Sept. 2, 2014. See also, *Grain Belt Express Clean Line LLC's Opposition to Missouri Landowners Alliance's Motion to Compel Discovery*, filed Sept. 8, 2014, and *Tradewind Energy, Inc.'s Motion for Protective Order*, filed Sept. 8, 2014.

provide redacted aggregate information to the Alliance to assist the Alliance in the prosecution of its case. Infinity has and continues to support the efforts of Grain Belt to protect this information and hereby incorporates the arguments and authorities cited by Grain Belt in its *Opposition to Missouri Landowners Alliance's Motion to Compel Discovery*. However, in light of the recent DRs issued to Infinity, Infinity must launch its own efforts to protect disclosure of the information sought in DRs. 1.1-1.8, and by extension DRs 48 and 94.

5. DRs 1.1-1.8 not only seek the same information sought in DRs 48 and 94, but also seek disclosure of commercially sensitive documents between Infinity and its prospective energy purchasers.³ The disclosure of such information will competitively disadvantage Infinity by publicizing highly protected pricing information. Even if the information is disclosed under the confidential protections imposed on this docket, it still goes into the hands of some of Infinity's competitors and contract counter-parties who are involved in this docket. None of the information sought by the Alliance in DRs 1.1-1.8, 48, or 94 is publically available, nor does it have a bearing on the Commission's determination regarding Grain Belt's CCN application in this matter.

6. As noted previously, some of the information sought by the Alliance is also the confidential, commercially-sensitive algorithmic/modeling data of Infinity's vendors who were engaged by Infinity to conduct specific studies on behalf of Infinity. Portions of the studies, including the algorithmic/modeling data of the vendors, was used by Infinity in its response to the November 2013 RFI.⁴ Infinity is subject to confidentiality agreements with regard to the vendors' information and as such, is not at liberty to disclose the information sought by the Alliance. Said disclosure will subject Infinity to potential litigation for violation of the

³ See DRs 1.1-1.3.

⁴ See Drs 1.4-1.5

confidentiality agreements. Such exposure is unreasonable in light of the fact that the information requested is not relevant to the issues being decided in this docket.

7. As stated, the information sought by the Alliance in DRs 1.1-1.8 (and DRs 48, 94) is not relevant to the Commission's determination in this matter. In determining whether evidence is legally relevant, the Commission must weigh "the probative value of the evidence against the dangers to the opposing party of unfair prejudice, confusion of the issues, undue delay, waste of time, cumulativeness, or violations of confidentiality. Evidence is legally relevant if its probative value outweighs its prejudicial effect."⁵ Here, the probative value to the Commission, if any, does not outweigh the prejudicial effect to Infinity.

8. The Alliance has acknowledged that Grain Belt has allowed access to redacted information responsive to the Alliance's discovery requests.⁶ Grain Belt provided to the Alliance, among other things, ranges of wind speeds in various geographical areas and aggregate pricing information identified in the RFI.⁷ As such, the Alliance has sufficient information within the redacted, aggregate data to conduct its analyses and fully prosecute its case, and does not need the sensitive, proprietary and highly confidential, company-specific trade secret information of the wind farm generators in order to do so.

9. Alternatively, the release of this information will have a negative impact on future negotiations of Infinity by providing competitive advantage to others to the detriment of Infinity and its customers, and will also subject Infinity to litigation by its vendors for breach of

⁵ Jackson v. Mills, 142 SW 3d 237, 240 (MO. App. W.D. 2004).

⁶ *Motion of the Missouri Landowners Alliance to Compel Responses to Discovery Requests*, ¶5.

⁷ *Motion of the Missouri Landowners Alliance to Compel Responses to Discovery Requests*, ¶9. See also, *Grain Belt Express Clean Line LLC's Opposition to Missouri Landowners Alliance's Motion to Compel Discovery*, p. 5.

confidentiality, as previously noted. Because the prejudicial effect of disclosing this information greatly outweighs its probative value, the information is not legally relevant.

10. The Commission should note that, as highlighted by Grain Belt and TradeWind, the Alliance has been provided hundreds of pages of aggregate information relating to DRs 48 and 94.⁸ The data contained therein is also responsive to DRs 1.1-1.8, and there is no relevant purpose for the disclosure of the company-specific information sought by the Alliance. Clearly, the Alliance has actively participated in the discovery process of this proceeding pursuant to the Commission's rules and orders. The Alliance has issued approximately 485 discovery questions,⁹ and has been granted access to voluminous amounts of information in this proceeding, including highly confidential information. The Alliance has sufficient data to fully prosecute its case and the Commission should not be persuaded otherwise.

11. On a final note, the wind generators who chose to seek intervention in this matter did so to in an attempt to provide the Commission with general wind resource information to assist the Commission in making its determination in this matter. Any directive by the Commission to disclose commercially sensitive, trade secret information will have a chilling effect on interventions and participation by industry in the future, and the Commission should reject any attempt by the Alliance to force disclosure. Ultimately, the information is not relevant to this proceeding, and as such, Infinity respectfully requests the Commission grant this motion for protective order and also deny the Motion to Compel filed by the Alliance on DRs 48 and 94.

⁸ *Grain Belt Express Clean Line LLC's Opposition to Missouri Landowners Alliance's Motion to Compel Discovery*, pp. 2-3, 5. *Tradewind Energy, Inc.'s Motion for Protective Order*, ¶6.

⁹ This figure is approximate and based on a review of the multiple "sets" of discovery questions issued by the Alliance.

12. In conclusion, a protective order is necessary to protect the confidential, proprietary, and trade secret information of Infinity and its vendors from disclosure to any party to this proceeding.

WHEREFORE, Infinity Wind Power respectfully requests the Commission issue a protective order in this proceeding that prohibits the discovery sought by the Alliance in DRs 1.1-1.8, and by extension, DRs 48 and 94, because the information sought is trade secret, commercially sensitive, proprietary and highly confidential, company-specific information, the release of which will irreparably harm the competitive interests of Infinity and subject it to litigation.

Respectfully submitted,

/s/ Terri Pemberton

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ATTORNEYS FOR INFINITY WIND POWER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the parties to this proceeding by email or U.S. Mail, postage prepaid, this 11th day of September 2014.

/s/ Terri Pemberton

Terri Pemberton

Attorney for Infinity Wind Power

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

Missouri Landowners Alliance First Set of Data Requests
to Infinity Wind Power

Definitions:

“Document” includes all of the items listed in Missouri Rule of Civil Procedure 58.01(a)(1).

“Grain Belt” means Grain Belt Express Clean Line LLC

“the proposed line” means the HVDC transmission line being proposed by Grain Belt in this case.

“RFI” is the Request for Information issued by Grain Belt on or about November 18, 2013 to prospective wind developers in the general vicinity of the western converter station of the proposed line.

Data Requests:

1.1 Please provide a copy of all documents, including emails, sent from Infinity Wind Power to prospective purchasers of energy to be generated by Infinity Wind Power and transmitted over the proposed line.

1.2 Please provide a copy of all documents, including emails, sent to Infinity Wind Power from prospective purchasers of energy to be generated by Infinity Wind Power and transmitted over the proposed line.

1.3 Other than any entity mentioned in documents responding to the preceding item, please list all entities with which Infinity Wind Power has discussed the purchase or possible purchase of energy to be generated by Infinity Wind Power and transmitted over the proposed line. In addition, please provide the date(s) on which such discussions were held.

1.4 In your response to the RFI, please describe in detail how you calculated the Annual Capacity Factor provided in Part A of the RFI form.

1.5 In your response to the RFI, please describe in detail how you calculated the “average wind speed for the Project Site” in Part C of the RFI form.

1.6 Please state whether you provided a figure for “Pricing at Project’s busbar” in Part D of the RFI form.

1.7 If the answer to the preceding item is yes, please list all components which you included in that figure, and state whether the figure you provided included any amount for a profit margin above the costs of production.

1.8 Please state whether your response to the RFI was intended to indicate your willingness to sell energy for 25 years for the amount you listed as your “Pricing at Project’s busbar”, without conditioning such a contract on the continued availability of the Production Tax Credit for at least some of those years.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon the parties to this case by email or U.S. Mail, postage prepaid, this 6th day of September, 2014.

/s/ Paul A. Agathen

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