

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-2016-0358
Current Transmission Line and an Associated Converter)
Station Providing an interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

MISSOURI LANDOWNERS ALLIANCE
MOTION TO COMPEL ANSWERS TO DATA REQUESTS
INVOLVING “JOINT PROSECUTION AND DEFENSE AGREEMENT”

Comes now the Missouri Landowners Alliance (MLA), pursuant to Commission Rule 4 CSR 240-2.090(8), and respectfully requests that the Commission direct Grain Belt Express (GBE) and the Missouri Joint Municipal Electric Utility Commission (MJMEUC) to provide answers to certain data requests submitted to them by the MLA. The data requests in question, and the responses thereto, are attached hereto as Exhibit 1. The first of these data requests (ML.6) was submitted to and answered by GBE. The remaining data requests were submitted to and answered by the MJMEUC.¹

As indicated, in each instance the response was to the effect that the information being sought would not be provided, on the basis of a document signed by GBE and MJMEUC, titled “Joint Prosecution and Defense Agreement” (the Agreement). A copy of the Agreement was provided to the MLA by GBE, and is attached hereto as Exhibit 2.

¹ The MJMEUC subsequently supplemented its response to the MLA to data requests MJM.2, MJM.3 and MJM.25. However, they stated that some of the material responsive to items MJM.2 and MJM.25 is still being withheld pursuant to the Agreement. As to MJM.3, they state they do not believe that any documents are now being withheld.

While the Agreement is quite complex, it seems essentially to state that GBE and MJMEUC have a “mutuality of interest” in obtaining (among other things) this Commission’s approval of GBE’s proposed transmission project, and that the two parties therefore agree that any past and future communications between them “are and shall remain confidential and are and shall continue to be protected from disclosure to any third party by all applicable privileges....” (Agreement, pp. 1 and 2)

The Agreement cannot of course create a privilege which is not otherwise recognized, and so the MLA assumes that the refusals to answer on the basis of the Agreement are founded on either the attorney-client privilege, or attorney work product. However, the apparent intent of the Agreement is to protect communications not only between GBE and its counsel, as well as communications between MJMEUC and its counsel (both of which would fall within the normal application of the rule), but also communications between counsel for GBE and anyone connected with MJMEUC, as well as communications between counsel for MJMEUC and anyone connected with GBE.

In order to properly raise the attorney-client or work product privilege, Missouri Rule of Civil Procedure 57.01(c)(3) provides with respect to written interrogatories, that “If a privilege or the work product doctrine is asserted as a reason for withholding information, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or word product doctrine.”

As indicated from the responses shown at Exhibit 1, neither GBE nor MJMEUC made any attempt to demonstrate why the materials in question would be covered by either privilege, other than their references to the Agreement.

GBE has made no further attempt to do so, beyond its response to data request ML.6 (see Exhibit 1).

In an attempt to clarify the basis for the responses from MJMEUC, the MLA submitted a series of additional data requests asking in essence for further explanations as to their claims that their responses to the data requests were protected by the Agreement. These additional data requests, and the responses from the MJMEUC, are attached as Exhibit 3.

As is apparent, the Agreement is intended to act as a shield against any inquiries into the background, justification, analysis, cost support, benefits or any other aspect of perhaps the single most important issue in this case: the impact of the Transmission Service Agreement (TSA) between GBE and MJMEUC. Grain Belt's Application touts it as the single most significant milestone which GBE has achieved since the Commission rejected its Application in the 2014 case.²

Given the singular importance of the TSA in this proceeding, GBE should not be allowed to join with the MJMEUC in an attempt to prevent legitimate inquiries into important aspects of the TSA. To name several, the following information would certainly be relevant in evaluating the benefits (or detriments) of the TSA: the basis or bases on which GBE was able to convince the MJMEUC that the TSA would be of benefit to member municipal utility systems; the information, if any, provided by GBE regarding the potential detriments to MJMEUC members resulting from the TSA; the

² Application, filed August 30, 2016, par. 4.

underlying reasons why MJMEUC was given an option in the TSA to purchase zero capacity on the proposed line, as opposed to GBE's claim that "MJMEUC has agreed to purchase a minimum of 100 MW and up to 200 MW of firm transmission capacity rights on the Grain Belt Express Project³; the justification provided by GBE to MJMEUC for apparently agreeing to sell capacity to MJMEUC below GBE's own cost; and the part that this contract played in GBE's attempt to convince the Commission that that its proposed line was indeed of benefit to people in Missouri.

The data requests propounded by the MLA are intended to get behind the bare bones of the TSA itself, and allow the MLA to look for answers to the above questions and others which go to the basic issue of the extent to which the TSA might be of any benefit to MJMEUC, and thus potentially to the State of Missouri. Notably, MJMEUC has not objected to any of the material in question on the ground that it is not relevant or not material to the issues that the TSA bring before the Commission in this case.

Legal Discussion

GBE and MJMEUC have cited the case *Lipton Realty, Inc. v. St. Louis Housing Authority*, 705 S.W.2d 565 (Mo. App. 1986), for the proposition that a common interest between parties gives rise to a claim of attorney/client and work-product privilege for communication between those parties where such privilege would not otherwise exist.

However, it is black-letter law in Missouri that:

for the rule of privilege to apply, the relation of attorney and client must have actually existed between the parties at the time that the communication was made or the advice given.

State ex rel. Great American Insurance Company v. Smith, 574 S.W.2d 379, 386 (Mo. banc 1978). *See also, State v. Pride*, 1 S.W.3d 494, 505 (Mo.App. W. D. 1999); *State v.*

³ Direct testimony of Mark Lawlor, p. 2, lines 16-18

Smith, 979 S.W.2d 215, 220 (Mo. App. S.D. 1998); and *Pipes v. Sevier*, 694 SW2d 918, 925 (Mo. App. W.D. 1985). Therefore, regardless of how this Commission rules regarding the applicability of *Lipton Realty* in general to this case, it is axiomatic that anything in the communications between GBE and MJMEUC, or between counsel for either entity and a party on the other side, which preceded those parties' June 1, 2016 execution of the Joint Prosecution and Defense Agreement is necessarily not protected by any such privilege and is discoverable by the MLA.

In the *Lipton Realty* case, the plaintiff sought a copy of a report written by an attorney for the Housing Authority, which initially was clearly protected by the attorney-client privilege. However, the Housing Authority then turned over the report to the U.S. Department of Housing and Urban Development (HUD). The plaintiff claimed that this disclosure to the third party (HUD) acted as a waiver of the attorney-client privilege. The court disagreed, holding that there is no waiver where the third party shares a common interest in the outcome of the litigation, and where the communication in question was made in confidence. *Id.* at 570.

But there is a compelling difference between the situation in that case, involving a long-standing relationship between the Housing Authority and HUD, which obviously had mutual interests in almost every aspect of their normal business operations, and the situation here where the mutuality of interest was created simply to avoid discovery into important aspects of the TSA. Here, GBE and MJMEUC are essentially trying to throw a protective blanket over all communications between the two related to the TSA. They even claim, for example, that they need not disclose whether the two parties even met before the 2014 case was finalized to discuss the possibility of a sale of capacity on the

proposed line by the MJMEUC. (See response to data request MJM.22 at Exhibit 1).

At that point of course MJMEUC and GBE had not signed any kind of agreement to buy capacity, and there are absolutely no legitimate grounds for their contention that the answer to that question is somehow privileged.

Application of the common-interest doctrine to this case would constitute a vast expansion of that doctrine beyond the holding of the *Lipton Realty* case. A succinct statement of that common-interest doctrine is provided in a case from the U.S. District Court of the Eastern District of Missouri, *Ayers Oil Co. v. American Business Brokers, Inc.*, 2009 WL 4725297 (E.D. Mo. 2009). In that case, at issue was the discoverability of an e-mail from ABB's attorney to the ABB President. The President had then passed on that e-mail to a non-party, one Bill Fecht. The court provided a useful summary of the parameters of the common-interest doctrine:

ABB argues that the disclosure to Fecht did not waive the privilege, because ABB and Fecht had common interests. The common interest doctrine extends the attorney-client privilege to two separate clients, who are represented by separate attorneys, who share an identical legal interest, and who agree to exchange information regarding the matter. *John Morrell & Co. v. Local Union 304A of United Food and Commercial Workers, AFL-CIO*, 913 F.2d 544 555 (8th Cir. 1990); *Green Edge Enters., LLC v. Rubber Mulch, LLC*, No. 4:02 CV 566 TIA, 2006 WL 2623855, at *1 (E.D.Mo. Sept. 12 2006). While a common interest in the outcome of litigation nullifies a waiver, *Lipton Realty, Inc. v. St. Louis Hous. Auth.*, 705 S.W.2d 565, 570 (Mo.Ct.App. 1986), *such a common interest must be an identical interest and a legal interest, as opposed to a merely commercial interest.* *Green Edge Enters.*, 2006 WL 2623855, at *1. A legal interest may be shared by two parties who are asserting common claims against a common adversary in the same litigation. *Transmirra Prods. Corp. v. Monsanto Chem. Corp.*, 26 F.R.D. 572, 576-77 (S.D.N.Y. 1960). [Emphasis added.]

The court found that ABB and Fecht certainly had a common commercial interest in the outcome in the litigation in question, but ABB and Fecht did not share common legal interests “sufficient to extend the protection of the attorney-client privilege to their

communications.” *Id.* The court therefore granted the motion of the plaintiff Ayers Oil Company to compel defendant ABB to produce the e-mail communication in question.

Further discussion re the contours of the common-interest doctrine may be found in *Green Edge Enterprises, LLC v. Rubber Mulch, LLC*, 2006 W.L. 2623855 (E.D. Mo. 2006). At issue again was whether the common-interest privilege protected communications between two defendants involved in the litigation. The court there held that

while a client typically waives attorney-client privilege when voluntarily sharing that communication with a third party, no waiver exists “where the third party shares a common interest in the outcome of the litigation and where the communication in question was made in confidence.” *Lipton Realty, Inc. v. St. Louis Hous. Auth.*, 705 S.W.2d 565, 570 (Mo. App. 1986) (citations omitted). This common interest exists where “the parties have an ‘identical (or nearly identical) legal interest as opposed to a merely similar interest.’ ” *J.E. Dunn Constr. Co. v. Underwriters at Lloyd’s London*, No. 05-0092-CV-W-FJG, slip op. at *1 (W.D. Mo. April 25, 2006) (Quoting *F.D.I.C. v. Ogden Corp.* 202 F.3d 454, 462 (1st Cir. 2000)). In addition, “[t]he common interest must be a legal interest, not a commercial interest.” *Id.* (citations omitted). Although a party may believe that the communications are privileged due to common interest, “ ‘a client’s beliefs, subjective or objective, about the law of privilege,’ cannot ‘transform an otherwise unprivileged conversation into a privileged one.’ ” *Id.*

GBE and MJMEUC have not demonstrated, nor can they, anything more than the fact that they have a mutual interest in getting the proposed line approved by this Commission.

Cf., Young vs. Presbyterian Homes, Inc., 2001 WL 753031 (Pa. Ct. of Common Pleas 2001). Citing *Lipton Realty*, the court there upheld the privilege of communications between two defendants. Plaintiff had sued her former employer and her former supervisor for conduct of the supervisor toward her during her employment. The court held that the common-interest doctrine applied because the two defendants were conducting a joint defense, with identical legal issues.

If GBE and MJMEUC were permitted to hide behind their Joint Defense Agreement here, there would be nothing to prevent that tactic from being used in other situations before this Commission. For example, an investor-owned utility and one of its large customers could agree to a special discounted rate, thereby creating a “mutuality of interest,” claim the rate is based on a legitimate cost allocation methodology, and then refuse to divulge to Staff and any other party any of the details as to how or even why the rate was created. If indeed those details are legally protected, the Commission could perhaps reject the proposed rate on the ground that it was not properly justified on the record. Ultimately, a comparable remedy would be warranted here.

If the Commission were to find the common-interest doctrine applicable to this case, there would be virtually no situation in which it would not be applicable between contracting parties. Parties to a contract always have a connected commercial interest in having that contract produce mutual benefit. If the doctrine is applied here, there are virtually no outside limits applicable to the doctrine.

If the MLA is denied access to the information it is seeking here, it will be severely hampered in its ability to challenge the supposed benefits of the TSA. Accordingly, the MLA would be deprived of its right to due process of law, as guaranteed under Amendments V and XIV to the United States Constitution, and Article 1 Section 10 to the Missouri Constitution.

Counsel for the MLA, GBE and MJMEUC have discussed this matter pursuant to Commission Rule 4 CSR 240-2.090(8) prior to the filing of this Motion, but have been unable to resolve their differences.

WHEREFORE, the MLA respectfully requests the Commission to direct GBE and the MJMEUC to fully answer the data requests set forth at Exhibit 1 to this Motion.

Respectfully submitted,

/s/ Paul A. Agathen
Paul A. Agathen
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Washington, MO 63090
Paa0408@aol.com
(636)980-6403
MO Bar No. 24756
Attorney for
Missouri Landowners Alliance

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion was served upon the parties to this case by electronic mail this 30th day of January, 2017.

/s/ Paul A. Agathen
Paul A. Agathen

EXHIBIT 1

ML.6 Please provide a copy of the first version of the TSA [Transmission Service Agreement] which was presented or delivered to MJMEUC by Grain Belt or Clean Line and which eventually led to the version of the TSA dated June 2, 2016.

Response [incorporated by reference to earlier objection]: Grain Belt Express objects to this request as not relevant to the subject matter involved in the pending proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Further, given the Joint Defense Agreement entered into between Grain Belt Express and MJMEUC this request asks for attorney-client privileged communications and privileged work product.

MJM.2 Please provide a copy of all documents, correspondence and communications exchanged between employees, representatives members or agents of MJMEUC on the one hand, and employees, representatives or agents of Grain Belt or Clean Line on the other, related to the MJMEUC Contract.

Response: Objection, calls for communications and documents protected from disclosure by the Joint Prosecution and Defense Agreement which has previously been provided to opposing counsel.

MJM.3 Please provide a copy of all documents, correspondence and communications exchanged between employees, representatives members or agents of MJMEUC on the one hand, and employees, representatives or agents of Grain Belt or Clean Line on the other, related to the analysis or study referenced at page 3 lines 16-18 of the direct testimony of Mr. Lawlor in which the MJMEUC is said to have estimated a \$10 million annual savings to its members.

Response: Objection, calls for materials protected from disclosure by the Joint Prosecution and Defense Agreement which has previously been provided to opposing counsel.

MJM.22 Prior to July 1, 2015 (when the final Report and Order was issued in 2014 Grain Belt case at the MO PSC) did Grain Belt or Clean Line make a presentation to MJMEUC regarding the purchase of capacity on the proposed line?

Response: Objection, calls for materials protected from disclosure by the Joint Prosecution and Defense Agreement which has previously been provided to opposing counsel.

MJM.23 If the answer to the preceding item is “yes”, please provide the following information: (1) date(s) of all such meetings; (2) attendees at each such meeting; (3) copies of all documents and correspondence related to each such meeting (including

emails) whether sent, distributed or presented before, during or after the meeting; and (4) copies of all documents compiled by any employee, agent, representative or member of MJMEUC discussing or addressing the reason or reasons why MJMEUC decided at that time not to purchase capacity on the Grain Belt line, or to enter into any “memorandum of understanding” or similar document related to the purchase of such capacity.

Response: Objection, calls for materials protected from disclosure by the Joint Prosecution and Defense Agreement which has previously been provided to opposing counsel.

MJM.25 If the answer to the preceding item is yes [wherein MJMEUC answered that the TSA agreement with GBE had been approved by the MJMEUC’s Board of Directors or similar entity] please provide the following: (1) the date on which the MJMEUC contract was approved by that board; (2) copies of all documents presented to the board related to the MJMEUC contract; (3) copies of all minutes and notes of the meeting at which the contract was approved, including a record of any vote taken for approval of the contract; and (4) copies of correspondence, including emails, between Grain Belt or Clean Line on the one hand, and any employee or representative of MJMEUC on the other, related to the board approval of the MJMEUC contract.

Response to part (4): Objection, calls for materials protected from disclosure by the Joint Prosecution and Defense Agreement which has previously been provided to opposing counsel.

EXHIBIT 2

JOINT PROSECUTION AND DEFENSE AGREEMENT

This Joint Prosecution and Defense Agreement (“Agreement”), entered into as of June 1, 2016, confirms certain understandings reached between Clean Line Energy Partners LLC and its subsidiaries, including Grain Belt Express Clean line LLC (“Clean Line”), and the Missouri Joint Municipal Electric Utility Commission and its affiliates (“MJMEUC”) (collectively, “Parties”), whose authorized representatives have executed this Agreement, with respect to the joint prosecution, defense and investigation regarding certain cases pending before or to be filed at the Missouri Public Service Commission (“PSC”) and the Federal Energy Regulatory Commission (“FERC”), including any future proceedings in judicial or other administrative forums, that relate to the Parties joint efforts to receive regulatory and other legal approval regarding high-voltage, direct current electric transmission projects, and to oppose efforts by third parties objecting to such projects (such matters collectively referred to as “Regulatory Litigation”).

WHEREAS, the Parties believe and anticipate that the nature of the Regulatory Litigation will present various common legal and factual issues and that the Parties have a mutuality of interest in a joint prosecution, defense, and investigation of the Regulatory Litigation; and

WHEREAS, the Parties wish to continue to pursue their separate but common interests, and to avoid any suggestion of waiver of the confidentiality of communications and documents protected by the attorney-client privilege, the work product doctrine, or any other privilege or protection with regard to any actual or potentially adverse party; and

WHEREAS, it is the intention and understanding of the Parties that past and future communications among them, or among them and any counsel retained by any of them, or among their retained counsel, and any joint interviews of prospective witnesses or any interviews obtained by counsel for one Party hereto with the knowledge, consent and on behalf of the other

Parties, are and shall remain confidential and are and shall continue to be protected from disclosure to any third party by all applicable privileges, except as set forth herein; and

WHEREAS, in order to pursue a joint prosecution, defense, and investigation effectively the undersigned have also each concluded that, from time to time, their interests will be best served by sharing documents and information, including but not limited to factual investigations and materials, mental impressions, memoranda, financial reports, feasibility studies and assessments, litigation strategies and other information, including the confidences of each Party, all of which will hereafter be referred to as the "Shared Information"; and

WHEREAS, it is the purpose of this Agreement to ensure that any exchange and/or disclosure of the Shared Information contemplated herein does not diminish in any way the confidentiality of the Shared Information and does not constitute a waiver of any privilege or protection otherwise available.

IT IS THEREFORE AGREED as follows:

1. Shared Information may be disclosed to or transferred among the Parties orally or in writing or by any other appropriate means of communications. The Parties intend that no claim of work-product, attorney-client, joint-defense or any other privilege or protection be waived by reason of such disclosure of Shared Information.

2. The Parties agree that, except as specified below, all Shared Information received from each Party or its counsel or other agents and representatives shall be held in strict confidence by the receiving Party and by all persons to whom such confidential information is revealed by the receiving Party pursuant to this Agreement. The Shared Information may be shared by the receiving Party with its own officers, directors, employees, attorneys, accountants, experts and representatives working on the Regulatory Litigation and may be used by such

persons in connection with the Regulatory Litigation and conducting such other activities that are necessary and proper to carry out the purposes of this Agreement. The Shared Information shall not be used by the receiving Party for any other purpose without the prior written consent of the Party providing the information.

3. Shared Information that is exchanged in written or in document form and is intended to be kept confidential may, but need not, be marked "Confidential" or with a similar legend. If such information may become the subject of an administrative or judicial order requiring disclosure of such information by a Party, the Party may satisfy its confidentiality obligations under this Agreement by notifying the Party that generated the information and by giving such Party an opportunity to protect the confidentiality of the information, including permitting such Party a reasonable opportunity to intervene and be heard and otherwise cooperating fully with such Party in any proceeding relating to the disclosure of Shared Information.

4. Each Party shall take all necessary and appropriate measures to insure that any person who is granted access to any Shared Information or who participates in work on common projects or who otherwise assists such Party in connection with the Regulatory Litigation, is familiar with the terms of this Agreement and complies with such terms as they relate to the duties of such person.

5. The Parties intend to protect from disclosure all information and documents shared among the Parties to the greatest extent permitted by law regardless of whether the sharing occurred before the execution of this Agreement and regardless of whether the writing or document is marked "Confidential." Notwithstanding the foregoing, nothing in this Agreement shall obligate one Party to share or communicate any material with the other Parties hereto.

6. The confidentiality obligations of the Parties under this Agreement shall remain in full force and effect whether the Parties cease to have interests in common or whether the Regulatory Litigation is resolved (either in whole or with respect to less than all of the Parties) by final judgment, determination or settlement. This Agreement shall not apply to Shared Information that is now or hereafter becomes public knowledge without violation of this Agreement.

7. This Agreement shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, a waiver of any right or defense, or an estoppel by a Party or by any other person.

8. Any waiver or modification of this Agreement must be in writing and signed by the Parties.

9. The existence of this Agreement is itself confidential and will not be disclosed to a third party, except when necessary to assert a privilege.

10. This Agreement shall not be rendered void by virtue of one or more of the provisions hereof being held unenforceable, but shall remain in full force and effect as to the remaining provisions.

11. This Agreement shall be governed by Missouri law, and may be executed in counterparts, including by signature transmitted by facsimile. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

12. Nothing in this Agreement shall be construed to affect, constrain or inhibit the separate representation of each Party by its respective Counsel. An attorney-client relationship between a Party and Counsel for any other Party shall not be created by any action taken under

this Agreement. Neither a Party nor its Counsel shall have the authority to waive a privilege without the consent of the other Party.

13. Each Party has the right to terminate this Agreement at any time. Termination shall be effective upon receipt of written notice to the other Party. Termination of this Agreement shall not operate as a waiver or authorize violation of the Agreement. The terminating Party is obligated to maintain the confidentiality of information shared under this Agreement.

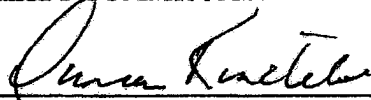
IN WITNESS WHEREOF, the Parties hereto enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the entities or individuals on whose behalf it is indicated that the person is signing.

CLEAN LINE ENERGY PARTNERS LLC



Name: Jaysuree Desai
Position: COO

**MISSOURI JOINT MUNICIPAL ELECTRIC
UTILITY COMMISSION**



Name: Duncan Kincheloe
Position: President and General Manager

EXHIBIT 3

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-2016-0358
Current Transmission Line and an Associated Converter)
Station Providing an interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

**Grain Belt Express response to Missouri Landowners Alliance
Third Set of General Data Requests To Grain Belt Express**

Definitions: for purposes of these data requests the following words and phrases are defined as indicated:

“Bluescape” means Bluescape Resources Company LLC and its affiliates “Clean Line” means Clean Line Energy Partners LLC

“Grain Belt” means Grain Belt Express Clean Line LLC

“Identify” with respect to a person means to provide, to the extent available, the person’s name, employer, and business address.

“MJMEUC” means the Missouri Joint Municipal Electric Utility Commission

“National Grid” means National Grid plc, and any and all of its subsidiaries.

“TSA” means transmission service agreement.

Data Requests

~~G.62: Just prior to Bluescape making its initial investment in Clean Line, was National Grid entitled to make an additional investment in Clean Line which it opted not to make?~~

~~RESPONSE: Please see Mr. Berry’s response to MLA request DB.72. As stated there, National Grid did not have such an option. For purposes of clarification, National Grid did have the right to invest alongside Bluescape on the same terms and conditions; however,~~

National Grid did not have an independent right to make an additional investment.

G.63: If the answer to the preceding item is yes, what was the dollar amount of the investment in Clean Line which National Grid was entitled to make at that time?

RESPONSE: Not applicable

G.64: Please provide a copy of all documents and correspondence exchanged between National Grid and Clean Line regarding the possibility of National Grid making an additional investment in Clean Line at or near the time that Bluescape first invested in Clean Line.

RESPONSE: See EA-2016-0358.GRX response to MLA-15.Skelly.Attachment 01.HC.

G.65: Pursuant to the provisions referred to in the response to data request No. PH.13 (directed to Mr. Hartshorne), please state the dollar amount which National Grid would presently be required to pay for the acquisition of (a) Clean Line; and (b) Grain Belt.

RESPONSE: There is no set price for any of these rights.

G.66: Please provide the following information with respect to the MLA's data request ML.6 (directed to Mr. Lawlor), and your objection thereto: (a) identify the individual primarily responsible for preparation of the TSA in question; (b) identify the people with Clean Line or Grain Belt who were given access to the document in question; (c) identify the people outside of Clean Line, Grain Belt and MJMEUC who were given access to the document in question; and (d) a complete explanation of why production of the document is protected by the Joint Prosecution and Defense Agreement.

RESPONSE: (a) John Rosenkild.

(b) David Berry, Cary Kottler, Jayshree Desai, John Rosenkild, Erin Szalkowski, Mark Lawlor.

(c) Michael Gergen, David Pettit.

(d) MJMEUC and Grain Belt Express have a common interest in the Application being approved by the Missouri Commission. This common interest was recognized during the course of negotiations of the transmission service agreement (TSA) between MJMEUC and Grain Belt Express. Because of Missouri's recognized common interest doctrine is applicable to MJMEUC and Grain Belt Express, iterations of the TSA (in addition to being irrelevant to the case) are protected under the attorney work product doctrine and as

attorney-client privileged communications. The Joint Prosecution and Defense Agreement between MJMEUC and Grain Belt Express makes explicit Missouri's common interest doctrine between the parties.

**BEFORE THE MISSOURI
PUBLIC SERVICE COMMISSION**

Response provided by: Penny Speake
Title: Attorney of Record
Company: MJMEUC
Address: 1808 Interstate 70 Dr. SW
Columbia, MO 65203
Company Response No.: MJM.44
Date of Response: December 23, 2016

Question:

With respect to the documents withhold in response to data request number MJM.2 on the basis of the Joint Prosecution and Defense Agreement, please provide the following information: (a) the number of documents withhold; (b) a description of the general nature of each such document; (c) identify the individual primarily responsible for preparation of each such document; (d) identify the people at MJMEUC who were given access to each such document; (e) identify the people outside of Clean Line, Grain Belt and MJMEUC who were given access to each document; and (f) a complete explanation of why production of each such document is protected by the Joint Prosecution and Defense agreement.

Response:

See the attached Privilege Log.

**BEFORE THE MISSOURI
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 Express Clean Line LLC for a Certificate of Convenience)
 And Necessity Authorizing it to Construct, Own, Operate,) Case No.: EA-2016-0358
 Control, Manage and Maintain a High Voltage, Direct)
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 Montgomery 345kV Transmission Line)

PRIVILEGE LOG FOR
MISSOURI JOINT MUNICIPAL ELECTRIC COMMISSION
(MJMEUC)

No.	DR Responsive to	Type	Date of Documents	Author	Recipient/ CC	Subject Matter	Privilege
1	MJM.22 MJM.23	email	8/6/14 - 10/3/14	Glotfelty	Kincheloe/ Grotzinger, Healy	Grain Belt Express (GBX) presentation with wind energy pricing at intermediate converter station in MISO.	Work Product
				Kicheloe	Glotfelty		
				Glotfelty	Kincheloe/ Grotzinger, Healy		
				Kincheloe	Glotfelty/ Grotzinger, Healy		
				Kincheloe	Glotfelty/ Grotzinger, Healy		
				Kincheloe	Glotfelty/ Grotzinger, Healy		
				Glotfelty	Kincheloe/ Grotzinger, Healy		
				Kincheloe	Glotfelty/ Grotzinger, Healy		

				Glotfelty	Kincheloe/ Grotzinger, Healy		
				Kincheloe	Glotfelty/ Grotzinger, Healy		
				Glotfelty	Kincheloe/ Grotzinger, Healy		
2	MJM.2 MJM.6	email	10/7/14 – 3/6/15	Glotfelty	Kincheloe	GBX seeking MJMEUC participation in open solicitation process	Work Product
				Kincheloe	Glotfelty, Grotzinger, Healy		
				Glotfelty	Kincheloe, Grotzinger, Healy, Landon, Elbert,		
				Glotfelty	Kincheloe		
				Kincheloe	Glotfelty		
				Rivera	Grotzinger/ Clean Line Open Solicit., Rosenkild, Kincheloe, Glotfelty		
				Rivera	Grotzinger/ Clean Line Open Solicit., Glotfelty		
				Rivera	Grotzinger/ Clean Line Open Solicit., Kincheloe		
3	MJM.2 MJM.6	email	12/17/15 – 1/15/16	Lawlor	Kincheloe, Grotzinger	MJMEUC response to	Work Product

				Grotzinger	Lawlor, Kincheloe,	GBX Term Sheet; mention of future meeting and confidentiality agreement		
				Lawlor	Grotzinger, Kincheloe			
				Grotzinger	Lawlor, Kincheloe			
				Lawlor	Grotzinger, Kincheloe			
				Grotzinger	Lawlor, Kincheloe			
				Lawlor	Grotzinger, Kincheloe			
				Grotzinger	Lawlor			
				Lawlor	Grotzinger			
				Grotzinger	Lawlor			
4	MJM.2 MJM.6	email	1/21/16	Lawlor	Grotzinger	MJMEUC edited Term Sheet	Work Product	
				Grotzinger	Lawlor/ Kincheloe			
				Lawlor	Grotzinger/ Kincheloe			
				M. Lawlor	Grotzinger/ Kincheloe			
5	MJM.2 MJM.6	email	1/28/16 – 2/6/16	Lawlor	Grotzinger, Kincheloe, Desai	GBX and MJMEUC edits to Term Sheet by GBX	Work Product	
				Desai	Lawlor, Grotzinger, Kincheloe			
				Desai	Grotzinger, Kincheloe/ Lawlor			
				Grotzinger	Desai, Kincheloe/ Lawlor			
				Lawlor	Grotzinger,			

					Desai, Kincheloe		
6	MJM.6	email	2/16/16 – 2/18/16	Lawlor Kincheloe Lawlor Kincheloe Grotzinger Lawlor Kincheloe Lawlor	Kincheloe, Grotzinger Lawlor, Grotzinger/ Buchheit Kincheloe, Grotzinger/ Buchheit Lawlor, Grotzinger/ Buchheit Kincheloe Grotzinger/ Kincheloe, Buchheit Lawlor Kincheloe/ Grotzinger, Buchheit	Scheduled meeting to discuss GBX future presentations to MJMEUC members	Work Product
7	MJM.9	email	2/22/16	Grotzinger	Bourne, Selby/ Kincheloe, Buchheit, Lissik, Gilzow, Loethen	MoPEP presentation to MoPEP services and rates committee regarding GBX opportunity	Work Product
8	MJM.6 MJM.23	email	3/13/16	Lawlor	Kincheloe, Grotzinger	GBX Fact Sheet for MPA members	Work Product
9	MJM.23	email	5/10/16	Buchheit	MPUA members/ Kincheloe, Gilzow, Lissik, Loethen, Grotzinger	MPUA Update Memo with GBX update	Attorney- Client Privilege and Work Product
10	MJM.6 MJM.9 MJM.25	email	5/23/16	Buchheit	MPUA members/ Grotzinger,	Memorandum to MJMEUC members	Work Product

					Williams, Lissik, Kincheloe, Gilzow, Loethen	regarding GBX opportunity	
11	MJM.23 MJM.25	email	5/26/16	Lawler	Gilzow, Kincheloe, Grotzinger	GBX draft press release regarding contract with MJMEUC	Work Product
12	MJM.2 MJM.25	email	5/27/16 – 5/31/16	Gilzow Gilzow Lawler	Lawlor/ Lawson, Kincheloe Lawlor/ Lawson, Kincheloe Gilzow/ Lawson, Kincheloe	Proposed mutual news release	Work Product
13	MJM.2	email	4/19/16 – 5/31/16	Grotzinger Lawlor Lawlor McGoldrick Berry Grotzinger	Kottler, Lawlor/ Healy, McGoldrick Grotzinger, Kottler/ Healy McGoldrick Grotzinger, Kottler/ Healy McGoldrick Lawlor, Grotzinger, Kottler/ Healy Rosenkild, Gergen, Pettit, McGoldrick, Healy, Grotzinger/ Kottler, Lawlor Berry,	Edits and discussions of transmission service agreement provisions	Attorney- Client Privilege and Work Product

					Rosenkild, Gergen, Pettit, McGoldrick, Healy/ Kottler, Lawlor		
				Berry	Grotzinger, Rosenkild, Gergen, Pettit, McGoldrick, Healy/ Kottler, Lawlor		
				Grotzinger	Berry, Rosenkild, Gergen, Pettit, McGoldrick, Healy/ Kottler, Lawlor		
				Berry	Grotzinger, Rosenkild, Gergen, Pettit, McGoldrick, Healy/ Kottler, Lawlor		
				McGoldrick	Berry, Grotzinger, Rosenkild, Gergen, Pettit, Healy/ Kottler, Lawlor		
				Berry	McGoldrick, Grotzinger, Rosenkild, Gergen, Pettit, Healy/ Kottler, Lawlor		

14	MJM.2	email	2/22/16	M. Lawlor	Kincheloe, Grotzinger/ Skelly	Correspondence regarding AECI system, 1022 authority, and open solicitation form	Work Product
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**BEFORE THE MISSOURI
PUBLIC SERVICE COMMISSION**

Response provided by: Penny Speake
Title: Attorney of Record
Company: MJMEUC
Address: 1808 Interstate 70 Dr. SW
Columbia, MO 65203
Company Response No.: MJM.45
Date of Response: December 23, 2016

Question:

With respect to the documents withheld in response to data request number MJM.3 on the basis of the Joint Prosecution and Defense Agreement, please provide the following information: (a) the number of documents withheld; (b) a description of the general nature of each such document; (c) identify the individual primarily responsible for preparation of each such document; (d) identify the people at MJMEUC who were given access to each such document; (e) identify the people outside of Clean Line, Grain Belt and MJMEUC who were given access to each document; and (f) a complete explanation of why production of each such document is protected by the Joint Prosecution and Defense Agreement.

Response:

See response to MJM.44.

**BEFORE THE MISSOURI
PUBLIC SERVICE COMMISSION**

Response provided by: Penny Speake
Title: Attorney of Record
Company: MJMEUC
Address: 1808 Interstate 70 Dr. SW
Columbia, MO 65203
Company Response No.: MJM.48
Date of Response: December 23, 2016

Question:

Please provide a complete explanation of why the information requested in data request MJM.22 is protected by the Joint Prosecution and Defense Agreement.

Response:

Objection, calls for a legal conclusion. Subject to said objection, the materials listed in MJM.22 would constitute Work Product pursuant to Federal Rule 26(b)(3)(A). Had it not been shared with individuals from Grain Belt Express (GBX), it would not be discoverable under the Work Product doctrine. The law behind the Joint Prosecution and Defense Agreement provides that even though the materials were shared with GBX, they remain protected under the Work Product doctrine.

**BEFORE THE MISSOURI
PUBLIC SERVICE COMMISSION**

Response provided by: Penny Speake
Title: Attorney of Record
Company: MJMEUC
Address: 1808 Interstate 70 Dr. SW
Columbia, MO 65203
Company Response No.: MJM.49
Date of Response: December 23, 2016

Question:

With respect to the documents withheld in response to subpart (3) of data request number MJM.23 on the basis of the Joint Prosecution and Defense Agreement, please provide the following information: (a) the number of documents withheld; (b) a description of the general nature of each such document; (c) identify the individual primarily responsible for preparation of each such document; (d) identify the people at MJMEUC who were given access to each such document; (e) identify the people outside of Clean Line, Grain Belt and MJMEUC who were given access to each document; and (f) a complete explanation of why production of each such document is protected by the Joint Prosecution and Defense Agreement.

Response:

See response to MJM.44.

**BEFORE THE MISSOURI
PUBLIC SERVICE COMMISSION**

Response provided by: Penny Speake
Title: Attorney of Record
Company: MJMEUC
Address: 1808 Interstate 70 Dr. SW
Columbia, MO 65203
Company Response No.: MJM.50
Date of Response: December 23, 2016

Question:

With respect to the documents withheld in response to subpart (4) of data request number MJM.23 on the basis of the Joint Prosecution and Defense Agreement, please provide the following information: (a) the number of documents withheld; (b) a description of the general nature of each such document; (c) identify the individual primarily responsible for preparation of each such document; (d) identify the people at MJMEUC who were given access to each such document; (e) identify the people outside of Clean Line, Grain Belt and MJMEUC who were given access to each document; and (f) a complete explanation of why production of each such document is protected by the Joint Prosecution and Defense Agreement.

Response:

See response to MJM.44.

**BEFORE THE MISSOURI
PUBLIC SERVICE COMMISSION**

Response provided by: Penny Speake
Title: Attorney of Record
Company: MJMEUC
Address: 1808 Interstate 70 Dr. SW
Columbia, MO 65203
Company Response No.: MJM.51
Date of Response: December 23, 2016

Question:

Please provide a complete explanation of why the responses to subparts (1) and (2) of data request MJM.23 are protected by the Joint Prosecution and Defense Agreement.

Response:

Objection, calls for a legal conclusion. Subject to said objection, the materials listed in MJM.23 would constitute Work Product and Attorney-Client privileged materials pursuant to Federal Rule 26(b)(3)(A). Had these materials not been shared with individuals from Grain Belt Express (GBX), they would not be discoverable under the Work Product and the Attorney-Client privilege doctrines. The law behind the Joint Prosecution and Defense Agreement provides that even though the materials were shared with GBX, they remain protected under these doctrines.

**BEFORE THE MISSOURI
PUBLIC SERVICE COMMISSION**

Response provided by: Penny Speake
Title: Attorney of Record
Company: MJMEUC
Address: 1808 Interstate 70 Dr. SW
Columbia, MO 65203
Company Response No.: MJM.52
Date of Response: December 23, 2016

Question:

With respect to the documents withheld in response to subpart (4) of data request number MJM.25 on the basis of the Joint Prosecution and Defense Agreement, please provide the following information: (a) the number of documents withheld; (b) a description of the general nature of each such document; (c) identify the individual primarily responsible for preparation of each such document; (d) identify the people at MJMEUC who were given access to each such document; (e) identify the people outside of Clean Line, Grain Belt and MJMEUC who were given access to each such document; and (f) a complete explanation of why production of each such document is protected by the Joint Prosecution and Defense Agreement.

Response:

See response to MJM.44.

**BEFORE THE MISSOURI
PUBLIC SERVICE COMMISSION**

Response provided by: Penny Speake
Title: Attorney of Record
Company: MJMEUC
Address: 1808 Interstate 70 Dr. SW
Columbia, MO 65203
Company Response No.: MJM.53
Date of Response: December 23, 2016

Question:

Please provide the following information with respect to the TSA requested in the MLA's data request ML.6 to Grain Belt Express (directed to Mr. Lawlor): (a) identify the people with MJMEUC who were given access to the document in question; and (b) identify the people outside of Clean Line, Grain Belt and MJMEUC who were given access to the document in question.

Response:

(a) See response to MJM.44. (b) None.