

**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    )

**MOTION FOR DISCOVERY CONFERENCE**

Pursuant to paragraph 3(m) of the Commission’s Order of December 21, 2022, Grain Belt Express LLC (“Grain Belt Express”) hereby files this *Motion for Discovery Conference* (“Motion”) to address the objections and responses raised by Missouri Landowners Association (“MLA”) and the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners (“EMLA” or “Show-Me”) to eight Data Requests (four to MLA and four to Show-Me) submitted to them by Grain Belt Express.

**I. Background**

1. On December 7, 2022, Grain Belt Express issued Data Requests to MLA and Show-Me, MLA 1–14 and Show-Me 1–14 (“December 7th Data Requests”), respectively.
2. On December 26, 2022, MLA and Show-Me provided objections and responses to MLA 1–14 and Show-Me 1–14.
3. Each of the data requests addressed below were discussed by telephone with counsel for MLA and Show-Me on January 13, 2023, pursuant to Rule 20 CSR 4240-2.090(8).
4. MLA and Show-Me provided supplemental responses on January 24, 2023. However, for the reasons discussed below, MLA’s and Show-Me’s responses remain insufficient.

5. Therefore, Grain Belt Express requests a Discovery Conference so that the regulatory law judge may make a ruling on the outstanding issues relating to the data requests discussed below.

## **II. Data Requests at Issue**

6. Data Requests MLA 1–14 and Show-Me 1–14 are identical, except for the fact that they are directed to MLA and Show-Me, respectively. Similarly, MLA’s and Show-Me’s objections and responses to those Data Requests are virtually the same, except where they identify their respective entities. Therefore, for brevity, Grain Belt Express will address the objections and responses together.

7. Grain Belt Express seeks comprehensive responses to MLA 3, MLA 4, MLA 6, MLA 14, Show-Me 3, Show-Me 4, Show-Me 6, and Show-Me 14. These Data Requests and the objections and responses to them are set forth below:

### **MLA 3 and Show-Me 3 (“Data Requests 3”)**

8. Data Requests 3 seek a list of all current members of MLA and Show-Me, respectively.

9. MLA’s objection to MLA 3 states: “The MLA objects to this request as it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to any issue in this amendment proceeding.”

10. Show-Me’s objection to Show-Me 3 states: “SHOW ME objects to this request as it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to any issue in this amendment proceeding.”

11. **Grain Belt Express’ Response:** MLA and Show-Me stated in their respective Motions to Intervene that their respective memberships consist in large part of people who “live

on or in the general vicinity of the proposed route of the Grain Belt transmission line.” MLA’s and Show-Me’s Motions to Intervene further stated:

Most if not all of . . . [their] members joined the organization because of their opposition to the proposed Grain Belt line. Accordingly, most members would be opposed to the Application seeking approval for an amendment or grant of a Certificate of Convenience and Necessity (CCN) to Grain Belt in this proceeding.<sup>1</sup>

12. MLA and Show-Me should not be permitted to rely upon their membership to justify their participation in this docket, and then refuse to provide that information. In *State ex rel. Utility Consumers Council v. Pub. Serv. Comm’n of Mo.*, 562 S.W.2d 688, 694 (Mo. Ct. App. 1978), the Court determined that a Company that relied on proprietary information to carry its burden of proof could not later protect that information from scrutiny by claiming a need to not disclose it. The court in *State ex rel. Arkansas Power & Light v. Mo. Pub. Serv. Comm’n*, 736 S.W.2d 457, 460–461 (Mo. Ct. App. 1987) came to a similar conclusion when it determined that the Commission erred by excluding evidence from the record that had been relied upon in making the Company’s case-in-chief.

13. Similarly, here, MLA and Show-Me rely upon their membership information to justify their standing in this docket, yet refuse to produce relevant membership details.

14. Furthermore, membership information is relevant to the issue of the impact of the transmission line on landowners and the weight of the positions MLA and Show-Me will take in this case. MLA and Show-Me both claim to represent a significant vocal opposition, but there is little evidence to verify that assertion is true. As MLA and Show-Me both rely on the locality and quantity of its membership to justify standing and to amplify the weight of their arguments, Grain

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<sup>1</sup> See Motion to Intervene by Missouri Landowner’s Alliance, ¶ 4 (MLA’s Motion to Intervene); Motion to Intervene by Eastern Missouri Landowners Alliance, ¶ 4 (Show-Me’s Motion to Intervene).

Belt Express has a right to explore who MLA and Show-Me's membership actually consists of to determine if the statements are accurate.

15. The Commission also must be able to ascertain the weight it should give to MLA's and Show-Me's positions in this Docket. The membership size of MLA and Show-Me will not only demonstrate the weight of their position, but it will also serve as useful comparison to the total number of landowners' properties crossed by the Amended Project. As a reference, according to Grain Belt Express' records, approximately 600 Missouri landowners will be affected by the Project.<sup>2</sup> Full and complete responses to Data Requests 3 will allow the Commission to properly consider and assign appropriate weight to their positions. Therefore, MLA and Show-Me should be ordered to provide comprehensive responses to these Requests.

#### **MLA 4 and Show-Me 4 (“Data Requests 4”)**

16. Data Requests 4 seek a list of MLA's and Show-Me's members who live or own property within 2,000 feet of the centerline of the proposed route of the transmission line. These Requests are again the result of assertions in MLA's and Show-Me's respective Motions to Intervene, which state that their respective memberships “live on or in the general vicinity of the proposed route of the Grain Belt transmission line.”<sup>3</sup>

17. MLA's objection to MLA 4 states:

The MLA objects to this request as it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to any issue in this amendment proceeding. Further, the MLA's records do not indicate the distance of the members' homes or property from the centerline of the proposed route of the line. Therefore, this item

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<sup>2</sup> Grain Belt Express calculated 600 landowners by taking the total number of parcels Grain Belt Express believes will be necessary to cross in Missouri and then removing duplicate landowners. For example, if one parcel was owned by John Doe, and a second parcel was owned by John Doe and Jane Doe, two distinct landowners were counted. Notably, 600 landowners is approximate and subject to change.

<sup>3</sup> MLA's Motion to Intervene, ¶ 4; Show-Me's Motion to Intervene, ¶ 4.

requests that the MLA create a study or analysis not currently in existence, and which would be unduly burdensome to compile, if it could be compiled at all.

18. MLA's response to MLA 4 states:

Without waiving the foregoing objection, without attempting to measure the distance of members' property to the centerline of the proposed route, the MLA believes that the following members live or own property within 2,000 feet of the centerline:



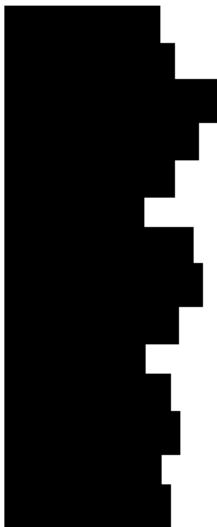
This information has been redacted by the Public Service Commission in accordance with Section 105.1500.3(2), RSMo (Supp. 2022).

19. Show-Me's objection to Show-Me 4 states:

SHOW ME objects to this request as it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to any issue in this amendment proceeding. Further, SHOW ME's records do not indicate the distance of the members' homes or property from the centerline of the proposed route of the line. Therefore, this item requests that SHOW ME create a study or analysis not currently in existence, and which would be unduly burdensome to compile, if it could be compiled at all.

20. Show-Me's response to Show-Me 4 states:

Without waiving the foregoing objection, without attempting to measure the distance of members' property to the centerline of the proposed route, SHOW ME believes that the following members live or own property within 2,000 feet of the centerline:



This information has been redacted by the Public Service Commission in accordance with Section 105.1500.3(2), RSMo (Supp. 2022).

21. **Grain Belt Express' Response:** Grain Belt Express reincorporates its arguments to Data Requests 3 regarding the locality and size of MLA's and Show-Me's respective

membership groups is relevant to their standing arguments and to the weight of the positions that they intend to take in this case.

22. Additionally, MLA and Show-Me had no trouble stating that their membership consists, in large part, of people who live on or in the general vicinity of the proposed route.<sup>4</sup> Yet now, when called for specifics, they claim that they do not have such records. MLA and Show-Me cannot rely on statements of purported fact to justify standing but then deny Grain Belt Express the ability to test the veracity of those statements.<sup>5</sup> MLA and Show-Me cannot have it both ways.

23. For clarity, Grain Belt Express is not requesting a study or analysis. Grain Belt Express is only requesting a portion of MLA's and Show-Me's respective membership rolls consisting of individuals who live within 2,000 feet of the proposed transmission line. MLA and Show-Me were incorporated for the sole purpose of opposing the Grain Belt Express transmission line in Missouri. Presumably, therefore, MLA and Show-Me would have collected the requested information to be able to confirm to the Commission, as they have generally claimed, the extent of their membership whose property rights will be affected by the Project.<sup>6</sup> Again, this is information that Grain Belt Express assumed would be readily available given MLA's and Show-Me's stated organizational purposes.

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<sup>4</sup> MLA's Motion to Intervene, ¶ 4; Show-Me's Motion to Intervene, ¶ 4.

<sup>5</sup> See *Utility Consumers Council*, 562 S.W.2d at 694; *Arkansas Power & Light*, 736 S.W.2d at 460–461.

<sup>6</sup> MLA's Articles of Incorporation state its purpose is to “intervene with the Missouri Public Service Commission in opposition to Grain Belt Express transmission lines; to solicit members and collect funds to support our efforts . . . .” See MLA's Articles of Incorporation, attached hereto as Exhibit 1, which was provided in response to MLA 9. Show-Me's Bylaws state its purpose “is to represent landowners and other citizens who object to Grain Belt Express Clean Line LLC (GBE) and its application to the Missouri Public Service Commission for a Certificate of Convenience and Necessity for a high voltage direct current electric transmission line crossing the State of Missouri which certificate will give GBE the power of eminent domain to condemn and take real property or easements across real property.” See Show-Me's Bylaws, pages 1–2, attached hereto as Exhibit 2, which was provided in response to MLA 9.

24. The Commission should also give no weight to MLA's and Show-Me's argument that it "would be unduly burdensome to compile" the information, "if it could be compiled at all." First, the information must exist given the assertions noted above. But even if the information has not already been collected, and the referenced assertions are nothing more than mere speculation, then Grain Belt Express simply requests that it be collected. No study or analysis is required. Regardless, to the extent there is any burden, it is minimal compared to its relevance and probative value to this proceeding. If MLA and Show-Me have no evidence to support whether their membership actually lives on or in the general vicinity of the proposed route, MLA and Show-Me must remove those statements from their pleadings.

25. Finally, as set forth above, MLA's and Show-Me's responses state that they "believe[]" three MLA members and fourteen Show-Me members live on or own property within 2,000 feet of the centerline of the proposed transmission line. Their *belief* indicates the list is not complete and accurate. If the list of names provided is not complete and accurate, then MLA and Show-Me should provide a complete and accurate list to the best of their knowledge.

26. Alternatively, a comprehensive response to Data Requests 3 would allow Grain Belt Express to run its own assessment to verify which members live within 2000 feet of the centerline of the proposed transmission line, based on the land records Grain Belt Express is using to correspond with landowners. However, for the reasons stated above, if MLA and Show-Me cannot provide the response themselves, then they will have failed to carry the burden to support their own alleged facts as set forth in their respective Motions to Intervene and must remove such statements from their Motions to Intervene and future pleadings in this case.

### **MLA 6 and Show-Me 6 (“Data Requests 6”)**

27. Data Requests 6 seek meeting minutes, recordings, and/or transcripts for the prior three-year period if MLA and Show-Me take meeting minutes or hold membership meetings.

28. MLA’s objection to MLA 6 states: “The MLA objects to this request as it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to any issue in this amendment proceeding.”

29. MLA’s response to MLA 6 states: “Without waiving the foregoing objection, the only record potentially responsive to this request would be the results of annual elections of officers, which results have been the same over the prior three-year period.”

30. Show-Me’s objections to Show-Me 6 states: “SHOW ME objects to this request as it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to any issue in this amendment proceeding.”

31. Show-Me’s response to Show-Me 6 states: “Without waiving the foregoing objection, the only record potentially responsive to this request would be the results of annual elections of officers, which results have been the same over the prior three years.”

32. **Grain Belt Express’ Response:** MLA and Show-Me state in their respective Motions to Intervene that their “members have interests which are different from that of the general public and those interests could be adversely affected” by Grain Belt Express’ Application.<sup>7</sup> The documents sought via Data Requests 6 would reflect the scope and extent of the interests of MLA’s and Show-Me’s membership, which is directly relevant to their participation and weight of their arguments in this docket.

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<sup>7</sup> MLA’s Motion to Intervene, ¶ 7; Show-Me’s Motion to Intervene, ¶ 7.



33. Furthermore, MLA’s and Show-Me’s responses to Data Requests 6 conflict with their responses to MLA 11 and Show-Me 11 (“Data Requests 11”). MLA’s and Show-Me’s responses to Data Requests 6 state the only records responsive to Data Requests 6 pertain to the results of annual elections of officers. However, responses to Data Requests 11 state that participation in MPSC matters is approved by their officers and/or Board of Directors. If the only records responsive to Data Requests 6 pertain to the results of annual elections of officers, how did those officers meet to approve participation in this case, or for that matter, how did they approve the numerous formal complaints and litigation brought against Grain Belt Express over the last three years?<sup>8</sup> MLA’s and Show-Me’s participation in this docket—as well as its participation in Case Nos. EC-2020-0408, EC-2021-0059, and EC-2021-0034; and Randolph County District Court Case No. 20RA-CV01317<sup>9</sup>—are acts requiring officer or Board approval.

34. Both MLA’s and Show-Me’s Bylaws require records of these actions. Yet neither MLA nor Show-Me have provided records of these actions, and appear to claim that no such records exist, apart from officer election results.<sup>10</sup>

35. Finally, information from the prior three-year period is relevant because it encompasses the period in which MLA’s and Show-Me’s officers and Boards of Directors approved participation in Case Nos. EC-2020-0408, EC-2021-0059, and EC-2021-0034; and Case

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<sup>8</sup> See MPSC Case Nos. EC-2020-0408, EC-2021-0059, and EC-2021-0034; Randolph County District Court Case No. 20RA-CV01317.

<sup>9</sup> Show-Me was not a party to EC-2020-0408.

<sup>10</sup> MLA’s Bylaws require that its Secretary “shall keep or cause to be kept a record of all meetings of the Board of Directors and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose.” See MLA’s Bylaws, page 6, attached hereto as Exhibit 3. MLA’s Bylaws also require that: “The corporation shall keep as permanent records minutes of all meetings of its Board of Directors, a record of all actions taken by the Directors without a meeting, and a record of all actions taken by committees of the Board of Directors.” See MLA’s Bylaws, p. 6. Finally, Show-Me’s Bylaws require that the secretary shall “keep an accurate record of the proceedings of the meetings of the Board.” See Show-Me’s Bylaws, p. 5, attached hereto as Exhibit 2.

No. 20RA-CV01317.<sup>11</sup> If MLA and Show-Me violated their own Bylaws in prior cases before the Commission, it establishes a pattern of activity that is directly relevant to the present case. Again, the information sought in Data Requests 6 for the last three years will demonstrate the scope and extent of the interests of MLA's and Show-Me's membership, which is directly relevant to their participation and weight of their argument in this docket.

#### **MLA 14 and Show-Me 14 (“Data Requests 14”)**

36. Data Requests 14 seek information regarding how many members have contributed money to MLA and Show-Me in the previous 36 months, previous 24 months, and previous 12 months.

37. MLA's objection to MLA 14: “The MLA objects to this request as it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to any issue in this amendment proceeding.”

38. Show-Me's objection to Show-Me 14: “SHOW ME objects to this request as it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to any issue in this amendment proceeding.”

39. **Grain Belt Express' Response:** Per another Data Response, membership in the MLA and Show-Me organization might not appear meaningful because individuals become members simply by filling out a form in person or through the internet.<sup>12</sup> However, the organizations consider members active unless a member formally takes action to cancel

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<sup>11</sup> Notably, EC-2020-0408; EC-2021-0059; EC-2021-0034 were dismissed. *See* Notice of Dismissal of Complaint and Order Cancelling Evidentiary Hearing, EC-2020-0408 (Jan. 13, 2021) (MLA voluntarily withdrew its complaint); Report and Order, EC-2021-0059, p. 20 (Aug. 4, 2021) (denying complaint brought by MLA and Show-Me); Report and Order, EC-2021-0034 (Jan. 20, 2021) (denying complaint brought by MLA and Show-Me).

<sup>12</sup> See MLA's Response to MLA 12, attached hereto as Exhibit 4, and Show-Me's Response to Show-Me 12, attached hereto as Exhibit 5.

membership. So, a “member” who has not actively supported the group, attended events, or is otherwise interested in group activities is considered a member unless they unilaterally take formal action to leave the group. As a result, MLA’s and Show-Me’s total membership is not, itself, demonstrative of the level of current interest in opposing this CCN Amendment. The information requested will therefore demonstrate MLA’s and Show-Me’s members’ actual level of activity and interest in the docket, as opposed to mere conclusory representations, which is directly relevant to their standing to participate, the weight of their position, and the scope and extent of their interests in this docket.

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WHEREFORE, Grain Belt Express respectfully requests the Commission hold a Discovery Conference to address the discovery issues discussed above, and to direct MLA and Show-Me to provide a full and complete answer to each of those data requests within 30 days of the Commission Order. When selecting a date for the Discovery Conference, Grain Belt Express respectfully requests that a Discovery Conference on February 27, 2023 and February 28, 2023 be avoided due to the travel schedule of its attorneys.

Respectfully submitted,

/s/

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ATTORNEYS FOR GRAIN BELT EXPRESS LLC

**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 15th day of February, 2022.

/s/ \_\_\_\_\_  
Andrew O. Schulte