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

Opposition to "Request for Waiver of 60-day Notice"

Pursuant to the Commission's Order in this case of September 1, 2022, the Missouri Landowners Alliance (MLA) et al. hereby submit this Opposition to the Request for Waiver of 60-day Notice ("Request for Waiver") filed by Grain Belt Express on August 24, 2022.[1]

Absent a waiver from the Commission, Grain Belt was obligated to file the 60-day Notice.

Grain Belt first argues that because it framed its Application in this case as one seeking an amendment to the earlier CCN, "the notice requirement appears to be inapplicable".[2]

Grain Belt raised a similar argument earlier, in its Notice of Intended Amendment Filing, filed on July 12, 2022 in Case No. EA-2016-0358 (the earlier CCN case). The argument there was that because Grain Belt would be filing the Application to amend its CCN in an existing case, the Notice requirement should not apply.[3]

The Commission promptly nullified that argument, by ruling the next day that the new application must be filed in the instant case, and not in the earlier CCN case.[4]

---

[1] This filing is being submitted on behalf of the MLA, 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 simply as the MLA. The Commission's Order of September 1, 2022 in this case, at paragraph 7, permits entities or persons not yet granted intervention to file a response to Grain Belt's Request for Waiver.
[2] Request for Waiver, pars. 2, 4.
[3] Notice of Intended Amendment Filing, filed July 12, 2022, p. 1.
[4] Notice Regarding Filing, issued July 13, 2022.

So forced to reframe its argument, in its Request for Waiver Grain Belt now contends that the Notice rule should be deemed inapplicable here because the new Application is an amendment to an existing CCN.[5]

That argument is also without merit. Commission Rule 20 CSR 4240-4.017 requires that the Notice must be filed by any person who intends to file a "case". And given the history of the earlier contested Grain Belt cases, Grain Belt knew or should have known that hearings would be held in this case as well.[6]

As provided by Sec. 491.010 RSMo, "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing" is by definition a "contested case." Because this proceeding is obviously a "contested case", it must also be a "case" as well. Accordingly, Rule 20 CSR 4240-4.017 is applicable here.

Grain Belt's arguments for "good cause"

In the event the Commission finds that the 60-day Notice requirement does apply here, Grain Belt asks that this requirement be waived by the Commission for good cause. In this regard, Grain Belt first argues that its Notice was filed as soon as practicable after finalization and public announcement of the modifications to the original Project.[7] But if this argument holds sway, then the Notice requirement is meaningless. Any applicant could simply file revised tariffs, e.g., as soon as they are finalized, and at the same time file a request for waiver of the 60-day notice requirement. The "as soon as practicable" argument hardly constitutes "good cause."

Furthermore, the "as soon as practicable" argument is not supported by the facts here. If Grain Belt was intent on filing its Application in this case on August 24, 2022 (which it did) it

---

[5] Request For Waiver, par. 4.

[6] If for no other reason, hearings will be required in this case in order to provide opposing parties an opportunity to cross-examine the Grain Belt witnesses who filed direct testimony with the Application in this case. See *Jones v. State Dept. of Public Health and Welfare,* 354 S.W. 2d 37, 39-40 (Mo App. 1962).

[7] Request for Waiver, par. 5.

could no doubt have filed the required Notice at least 60 days before that date; i.e., by June 5, 2022.

Commission Rule 20 CSR 4240-4.017 does not require that the 60-day Notice include a detailed description of the project for which an Application will be forthcoming. Instead, other than including a summary of certain communications with the office of the Commission, the Rule merely requires that the Notice "shall detail the type of case and issues likely to be before the commission …."

And as discussed below, prior to June 5, 2022, Grain Belt was well aware of the minimal information which was required for its Notice. Therefore, Grain Belt could have filed its Application on August 24, while still meeting the Commission's Rule regarding the 60-day Notice.

This fact is evident, first, from the testimony of Grain Belt witness Anthony Petti. He sponsored a very complex and detailed 41-page analysis which purports to quantify the reliability and resiliency values of the revised project for the state of Missouri.[8] Based on even a cursory review of that analysis, it is apparent that it must have been based on specific details of the revised project provided by Grain Belt. For example, Mr. Petti's study assumes that 1,500 MW of power would be delivered at the MISO connection under the amended project.[9] Initially, the project was to deliver only 500 MW to Missouri.

Significantly, Mr. Petti testified that his firm was engaged by Grain Belt to conduct this analysis on November 3, 2021 – nine months before Grain Belt filed its Application.[10]

[8] Direct Testimony of Mr. Anthony Petti, EA-2023-0017, p. 5; and study at his Schedule AP-2.
[9] See Mr. Petti's Schedule AP-2, page 20, Section 4.2. The additional 1,000 MW would be delivered into Missouri through an interconnection with Associated Electric Cooperative. See Direct testimony of Mr. Carlos Rodriguez, pp. 21- 22.
[10] Id. at page 5, line 14.

And according to Grain Belt witness Mr. Andrew Burke: “Beginning in March 2022, Grain Belt Express conducted an extensive, methodical, multi-level public outreach and information collection process to determine the Proposed Route for the Tiger Connector.”[11] So three months before Grain Belt could have filed a timely Notice, it must necessarily have decided that the converter station would be moved from Ralls to Monroe County, and must also have known the location in Callaway County where the Tiger Connector would connect to the transmission system in Missouri. One could hardly determine the route of a line without knowing its two terminal points.

Also, as Grain Belt witness Mr. Carlos Rodriguez explained, in order for the Tiger Connector to connect to the transmission system in Missouri, four interconnection requests were required to be submitted to MISO for connections near the McCredie substation in Callaway County.[12] Those four requests were submitted to MISO in April of 2019 – well over a year before Grain Belt filed its Application.[13]

Similarly, an interconnection request from Grain Belt to Associated Electric Cooperative Incorporated (AECI) was submitted two months later for connection of the Tiger Connector at the Callaway County McCredie substation.[14] In fact, in December, 2021 Grain Belt and AECI executed an Interconnection Agreement for this connection. The total cost to Grain Belt for this one interconnection in Missouri was over $98 million, which demonstrates a clear and early commitment by Grain Belt to build the Tiger Connector line.[15]

[11] Direct Testimony of Andrew Burke, EA-2023-0017, p. 5 lines 12-14.
[12] Direct Testimony of Carlos Rodriguez, EA-2023-0017, p. 20 line 13 – p. 21 line 2; p.12 lines 11-18.
[13] Id. p. 20, line 15.
[14] Id. p. 22, lines 8-11.
[15] Id. p. 22, lines 14-17.

Mr. Rodriguez also explained that the MISO requests would allow for interconnection of 1,500 MW for the Tiger Connector, while the AECI request was for approximately 1,000 MW.[16] Obviously, the total of 2,500 MW was designed to accommodate the newly-proposed 2,500 MW converter station in Missouri. And Grain Belt recognizes that this upgrade and change in location of the Missouri converter station constitute "material changes" to the original project.[17]

Furthermore, more than two years ago Grain Belt announced in a press release that it would be increasing the capacity delivered to Missouri from 500 MW to 2,500 MW – which it has now confirmed in its Application.[18]

Based on the foregoing events, occurring well in advance of June 5, 2022, Grain Belt had at least the minimal information which is required for filing a valid 60-day Notice under the Commission's Rules. In fact, in reviewing the Notice of Intended Amendment Filing which Grain Belt actually submitted on July 12, 2022, that same document could have been filed with little or no change by June 5, and still have satisfied the Commission's requirements for Notice of the amended project.

Grain Belt chose instead to delay its filing, and assume that the Commission would grant them a waiver of those Rules. That decision hardly comports with Grain Belt's supposed commitment to "the interest of transparency"[19]

And significantly, pursuant to the Commission order in the last CCN case, Grain Belt has been filing an annual "Notice of Compliance" with the Commission. Three such filings have been made to date: on April 15, 2020, April 16, 2021, and April 19, 2022.[20]

---

[16] Id. p. 21, line 2; p. 22 line 10.
[17] Testimony of Shashank Sane, p. 4 lines 1-19.
[18] Press Release p. 1. This press release was the subject of Commission case no. EC-2021-0059, and was attached to the Complaint in that case as Exhibit 1. The press release was issued on August 25, 2020. Complaint, par. 5; Grain Belt's Initial Brief, par. 8.
[19] Grain Belt's "Notice of Intended Amendment Filing", p. 1.
[20] See entries for Case No. EA-2016-0358 at EFIS 771, 773 and 774.

The substance of the annual filings is included as an Exhibit A to each filing, which in each instance states in part that the report "provides a general progress update for the benefit of the Missouri Public Service Commission ("Commission") and the public."[21]

Actually, as Grain Belt notes, the Commission only required that those annual reports address one narrow subject: "the impacts of Grain Belt's facilities on other nearby facilities in Missouri."[22] But for the most part, Grain Belt used these "general progress updates" to discuss matters totally unrelated to what the Commission had asked for.

For example, the last filing included reference to such matters as the opening of field offices; continuing dialogue with various officials; the number of transmission towers which had been designed; rather detailed summaries of four complaint cases at the Commission in which Grain Belt had prevailed; and numerous other subjects covering eight full pages of Exhibit A on matters not sought by the Commission.

Notably absent, however, was any mention in the "progress updates" of any reference to Grain Belt's plans for the major revisions to the revised project. They made no reference anywhere of the plan to increase the capacity of the DC line from 4,000 to 5,000 MW; of or the five-fold increase in the capacity of the Missouri converter station, allowing for a like increase in the power delivered to Missouri; or of the relocation of the converter station from Ralls County to Monroe County; or of the on-going plans to build a new 40-mile AC line through parts of Monroe, Audrain and Callaway counties.

[21] See, e.g., annual filing of April 19, 2022, Exhibit A page 1, par. 1, EFIS 774.
[22] See first paragraph of Exhibit A from last annual filing.

The MLA obviously cannot speak for the Commission. However, it assumes "the public" in the affected counties would have found the information concerning the Tiger line to be of more interest than the fact that Grain Belt hired a new Community Relations contractor.[23]

One further issue on this topic is Grain Belt's request to build the line in two phases: the first being the Kansas and most of the Missouri portions of the line, and the second being the remaining section in Missouri and the Illinois segment.[24]

In the absence of discovery, at this point the MLA cannot determine exactly when Grain Belt decided to construct the revised project in two phases. However, the date when that decision was made is not even relevant for purposes of ruling on Grain Belt's Request for Waiver.

That is true for several reasons. First, the Commission only required Grain Belt to file an updated application for further review by the Commission if Grain Belt was seeking materially different changes in "the design and engineering of the project."[25] Dividing construction into two phases clearly does not constitute a change in either the design or the engineering of the project. Accordingly, Grain Belt was not even required to mention the "phasing" proposal in its Application to amend the existing CCN.

Moreover, in its Notice of Intended Amendment Filing, Grain Belt stated that its Application would address the following proposals: the 25 percent increase in the capacity of the line; the five-fold increase in the capacity delivered to Missouri; relocation of the Missouri converter station; and the addition of the 40-mile Tiger Connector.[26] No mention was made of any proposal to build the line in two phases.

---

[23] Exhibit A, p. 2 of April 15, 2022 report.
[24] Grain Belt's Application, par. 19.c, filed August 24, 2022.
[25] Report and Order on Remand in EA-2016-0358, par. 6, p. 52.
[26] Notice of Intended Amendment Filing, pp. 1-2.

More importantly, under the Commission's Rule, Grain Belt was obligated in its Notice to detail the issues likely to come before the commission in the Application for the revised project.[27] Yet in Grain Belt's Notice of Intended Amendment, it made no mention whatsoever of its proposal to build the line in two phases.[28] It follows that Grain Belt did not believe that phasing of the project would be an issue in the case, and that the subject therefore need not be mentioned in its Notice. Accordingly, as discussed above, all of the information which was required for the Notice was known to Grain Belt at least 60 days before it filed its Application.

Moving on, Grain Belt next argues that its untimely Notice satisfied "the spirit" of the Commission's rule because it was provided 43 days in advance of the filing of the Application.[29] But if an applicant is essentially left to decide on its own when the Notice will be filed, the Rule will become arbitrary, and subject to potential manipulation for every application filed with the Commission. The Commission obviously decided to require a period of 60 days for the notice for a good reason. Just as obviously, it determined that 43 days did not satisfy the purpose for which the Rule was enacted. Clearly, Grain Belt could have best satisfied the spirit of the Rule by filing a timely Notice.

Finally, Grain Belt contends that good cause is demonstrated by the fact that it had no communication with the Office of the Commission within 150 days prior to the filing of the Notice. That argument totally ignores a basic purpose of the Notice Rule.

The MLA's position in this regard is supported by the Commission's treatment of the 60-day Notice requirement in Grain Belt's last CCN case, File No. EA-2016-0358. There, Grain Belt initially elected not to file any Notice at all before submitting its Application. When the

[27] Rule 20 CSR 4240-4.017.
[28] Notice of Intended Amendment Filing, p. 2.
[29] Request for Waiver, par. 5.

Commission challenged this omission, Grain Belt sought to side-step the Rule by seeking a "good cause" exemption.[30]

The Commission first held that Grain Belt was indeed obligated to file the 60-day Notice, stating in part as follows:

To interpret this term in such a way as to exempt Grain Belt from this section of the rule would subvert the section's purpose by allowing some entities to avoid the protections of the notice requirement based solely on whether they have previously received a certificate from the Commission.[31]

As to Grain Belt's request for a "good cause" waiver, the Commission observed as follows:

> Furthermore, waiver of the rule is not appropriate in these circumstances. Grain Belt was evidently well aware of the requirements of the regulations as it filed a 60-day notice in its previous application proceeding, File No. EA-2014-0207, which was a highly contentious case involving many parties regarding a similar request for a certificate of convenience and necessity.[32]

The same logic applies in the instant case as well.

Moreover, and directly to the point here, in the last case the Commission made this important pronouncement regarding the very reason for the Notice Rule: "The purpose of this rule is to promote the public trust in the Commission by regulating communications between the Commission and potential parties to contested cases."[33]

If Grain Belt is permitted to skirt the Commission Rules here, that trust will certainly be put to the test among the many landowners whose property is being adversely affected by Grain Belt's project.

---

[30] Order Denying Waiver and Directing the Secretary to Reject Application, issued July 12, 2016, File No. EA-2016-0358
[31] Id. page 2.
[32] Id.
[33] Id.

Any hint of impropriety could have been avoided here if Grain Belt had simply filed a timely 60-day Notice.

For the foregoing reasons, the MLA respectfully asks the Commission to deny Grain Belt's Request for Waiver of 60-day Notice.

Respectfully submitted,

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

Certificate of Service

A copy of this pleading was sent by electronic mail this 11th day of October 2022, to all parties on the Commission's official service list in this case.

/s/Paul A. Agathen
Paul A. Agathen