

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 CERTAIN
DATA REQUESTS SUBMITTED TO GRAIN BELT WITNESS
PRESCOTT HARTSHORNE

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 its witness Mr. Prescott Hartshorne to provide full and complete answers to data request numbers PH.25, PH.26 and PH.27. In support of this Motion, the MLA states as follows:

1. Mr. Hartshorne submitted direct testimony in this case in support of GBE's Application. He is the Director, US Business Development at National Grid USA Service Company, a subsidiary of National Grid plc. He is also the Project Manager for National Grid's investment in Clean Line.¹

2. The three data requests at issue here were submitted by the MLA to GBE and Mr. Hartshorne on January 31, 2017. Including "definitions", the data requests were as follows:

¹ Direct testimony of Prescott Hartshorne, August 30, 2016, p. 1 lines 1-7.

Definitions:

“Bluescape” means Bluescape Resources Company LLC and its affiliates

“Clean Line” means Clean Line Energy Partners LLC

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

Data Requests:

PH.25 Please provide a copy of all documents compiled by or for National Grid USA which address its decisions about whether to make an additional investment in Clean Line at or near the time that Bluescape first invested in Clean Line.

PH.26 Please provide a copy of all internal documents compiled by National Grid USA for distribution to upper management at National Grid USA and/or its parent company National Grid plc addressing in whole or in part the performance, status, progress, problems, profitability, scheduling and/or budget of Clean Line or of the Grain Belt project.

PH.27 Please provide a copy of all documents compiled by or for National Grid USA which quantify the estimated or expected dollar value of any of Clean Line’s transmission projects at any point after said projects are in service, or of any generic transmission project generally comparable to the Grain Belt project.

3. Grain Belt’s Objections to these data requests are attached as Exhibit A, and contest all three data requests on two grounds : (1) that National Grid USA (Mr. Hartshorne’s employer) is not a party to this action, and there is no basis to conduct discovery against a non-party; and (2) that the data requests are not relevant to the subject matter of this case, and not reasonably calculated to lead to the discovery of admissible evidence.

4. Objection that National Grid USA is not a party. The MLA believes that this first objection fails on two different grounds.

First, although National Grid USA is not officially a party to this case, it is one of the principal owners of Clean Line, which is of course the parent company of Grain Belt.² National Grid USA has provided a witness in this case to support the Grain Belt project, which in turn directly supports National Grid USA's own financial interests. Thus National Grid USA has voluntarily inserted itself into these proceedings, offering information which it presumably believes will further its own best interests.

Although National Grid USA may not technically be a party to this case, it should not be allowed to volunteer information in this case through the testimony of a key employee, and then refuse to provide further information which could potentially be damaging to its cause. As a principal owner of a party to the case, National Grid is for all intents and purposes a party itself. This objection is akin to saying that Clean Line need not produce any documents during discovery either, on the ground that Clean Line itself is not a party to this case.

Second, even if National Grid USA is viewed as a totally independent third party here, and even assuming *arguendo* that neither Grain Belt nor Mr. Hartshorne has possession of the documents in question, they must nevertheless be produced if either Grain Belt or Mr. Hartshorne has the "practical ability" to obtain the documents from National Grid USA.

As explained in *Hancock v. Shook*, 100 S.W.3d 786 (Mo banc 2003), a party must produce not only documents in its actual possession, but also documents within its "control", which includes documents where it has the "practical ability to obtain the documents from a nonparty to the action."³ In *Hancock*, the records in question were not

² See e.g., direct testimony of Mr. Michael Skelly, page 19 lines 10-12.

³ *Id.* at 797.

in the possession of a party to the case, but were in the possession of the party's expert witness and veterinarian. Given this relationship, the court noted that the actual party to the case did have "the practical ability to obtain" the records from his veterinarian.⁴

Here, Mr. Hartshorne is a key employee of National Grid USA, and the latter is one of the major owners of Clean Line. Given the close relationships here between Grain Belt, Mr. Hartshorne and National Grid USA, there is no doubt that even if Grain Belt and Mr. Hartshorne do not have actual possession of the documents in question, they have "the practical ability to obtain" the material requested here by the MLA. Thus this first objection to the data requests has no merit.

5. Objections on Grounds of Relevance. All of the material sought in the data requests at issue here is reasonably calculated to lead to the discovery of admissible evidence.

National Grid USA made no additional investment in Clean Line at the time that Bluescape first became an investor in Clean Line.⁵ Data Request PH.25 asked for documents which address the decision by National Grid USA not to do so. It is certainly conceivable that this decision was made by National Grid USA for reasons related to problems with the Grain Belt schedule, its financial solvency, cost overruns, or any number of other reasons which would be relevant to a Commission decision on whether or not to grant the CCN to Grain Belt.⁶ There is obviously a reason why National Grid

⁴ Id.

⁵ Grain Belt responses to MLA data requests MS.13 and G.72

⁶ Grain Belt did provide a four page document to the MLA in response to a follow-up to an earlier data request, PH.9. However, according to Grain Belt, that document was prepared in early January, 2015, well before the time that Bluescape initially invested in Clean Line. And that document makes no mention of the decision by National Grid about any additional investment in Clean Line at or about the time of the Bluescape investment. Therefore, that still leaves open the possibility that documents responsive to data request PH.25 have not been provided to the MLA.

USA elected not to invest further in Clean Line. Depending on what that reason is, it could well be relevant in this case on a number of different levels.

Data request PH.26 asked for internal documents compiled by National Grid USA which were provided to upper management at National Grid USA or its parent National Grid plc, and which address the performance, status, progress, problems, profitability, scheduling and/or the budget of Clean Line or the Grain Belt project. Clearly, any finding and reports of significant problems with the operations of Clean Line or Grain Belt in any of these respects would be relevant to a Commission decision on whether or not to grant the CCN. Without seeing the documents in question, there is no means to determine if indeed any such problems have been identified by National Grid.

Moreover, Grain Belt supports its case here by emphasizing the many benefits it supposedly receives from synergies with National Grid. For example, Mr. Skelly testified that “National Grid has made and has committed that it will continue to make, its construction management resources available to aid Clean Line and its project companies whenever necessary.”⁷

And Mr. Hartshorne testified that as Project Manager of National Grid’s investment in Clean Line, he has led National Grid’s support of Clean Line’s construction plan activities.⁸ He also discussed how National Grid has “observer rights” to make its specialists available to provide input and feedback to Clean Line management. “For example, National Grid’s construction team has provided support to Clean Line on

⁷ Direct testimony of Mr. Michael Skelly, p. 25 line 23 – p. 26 line 2.

⁸ Direct testimony of Mr. Prescott Hartshorne, p. 2 lines 4-6.

construction management issues, and has advised Clean Line on plans for compliance with North American Electric Reliability Corporation reliability standards.”⁹

Given this relationship between National Grid USA and Grain Belt, data request PH.26 is indeed reasonably calculated to lead to the discovery of admissible evidence in this case. Grain Belt should not be allowed to support its case on the basis of its close working relationship with National Grid, and then refuse to disclose any shortcomings in its operations which have been identified during that process by National Grid USA.

Finally, data request PH.27 in essence asks for documents which quantify the estimated dollar value by National Grid USA of any of Clean Line’s transmission projects. Comparable projections were provided by Grain Belt in the 2014 case, and included as part of HC Exhibit 313 in that proceeding.¹⁰ It would clearly be relevant here if National Grid’s projections now show a significant decrease in the estimated value of the Grain Belt project over the past two years, compared to the estimates shown in Exhibit 313.

6. The MLA respectfully submits that if it is not allowed access to the information being sought herein, it 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.

7. Pursuant to Commission Rule 4 CSR 240-2.090(8), counsel for Grain Belt and the MLA have discussed these issues by telephone on several occasions, and have reached an impasse.

⁹ Id. at p. 7 lines 4-8.

¹⁰ EFIS No. 409. And see discussion of those projections in the HC version of the Initial Brief of the MLA in the 2014 case at pages 15-16, EFIS No. 471 .

WHEREFORE, the MLA respectfully requests the Commission to direct Grain Belt Express and Mr. Prescott Hartshorne to provide a full and complete response to MLA Data Requests PH.25, PH.26 and PH.27.

Respectfully submitted,

/s/ Paul A. Agathen

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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 28th day of February, 2017.

/s/ Paul A. Agathen

Paul A. Agathen

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Control, Manage and Maintain a High)
Voltage, Direct Current Transmission Line)
and an Associated Converter Station)
Providing an Interconnection on the)
Maywood-Montgomery 345kV transmission)
line.)

**GRAIN BELT EXPRESS CLEAN LINE LLC'S
OBJECTIONS TO MISSOURI LANDOWNERS ALLIANCE
3RD SET OF DATA REQUEST TO PRESCOTT HARTSHORNE**

PH.25: Please provide a copy of all documents compiled by or for National Grid USA which address its decisions about whether to make an additional investment in Clean Line at or near the time that Bluescape first invested in Clean Line.

Objection: Grain Belt Express objects to this request as improper because National Grid USA is not a party to this action and there is no basis to conduct discovery against a non-party. Further, 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.

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/s/ Karl Zobrist

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