

**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)

**RESPONSE TO MOTION REGARDING LATE-FILED EXHIBIT 307
AND MATTERS RELATED THERETO**

Grain Belt Express LLC (“Grain Belt Express”) hereby files this Response the Motion Regarding the MLA’s Late-Filed Exhibit 307 and Matters Related Thereto (“Motion”) filed by the Missouri Landowners Alliance (“MLA”).

I. Statement of Facts

1. MLA seeks admission of two responses issued by Grain Belt Express and verified by Invenergy LLC employee Brad Pnazek in response to MLA’s requests for admission.

2. The requests and responses at issue (“Admission 6” and “Admission 7”, collectively, “Admissions”) are included below:

6. Mr. Brad Pnazek is the Vice President of Transmission Development for Invenergy. He is responsible, among other things, for the development of the Grain Belt Express transmission line project.

RESPONSE: Admit.

7. During the “zoom conference” on January 25, 2023 concerning the Environmental Impact Statement being prepared for the Grain Belt line by or for the U.S. Department of Energy, Mr. Pnazek make a statement to the effect that Invenergy has not yet decided whether or not the Grain Belt line is a merchant project.

RESPONSE: Admit. See Grain Belt Express’ Response to MLA DR No. G43 for clarification.

3. Grain Belt Express' Response to MLA DR No. G43 (marked as MLA Exhibit 307)

is reproduced below:

G43. During the DOE zoom conference referenced in the preceding item, did Mr. Brad Pnazak made a statement to the effect that Invenenergy has not yet decided whether or not the Grain Belt line is a merchant project?

Objection: Grain Belt Express objects to this request as it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence in this amendment proceeding, as the DOE's EIS process is outside the scope of this proceeding.

Response: Without waiving the foregoing objection, the following statement made by Grain Belt Express in paragraph 85 of its Application remains accurate. That paragraph states "there is no change in Invenenergy Transmission and Grain Belt Express bearing the financial risk of the Project and the cost of the Project will continue to be recovered through a merchant business model and not through SPP or MISO regional cost allocation."

4. During the evidentiary hearing, while Grain Belt Express witness Shashank Sane was on the stand, counsel for MLA sought to read the Admissions into the record. Counsel for MLA did not attempt to lay foundation through cross examination for the Admissions or introduce the Admission for impeachment purposes. Mr. Sane was not the signatory to the Admissions—Brad Pnazek was.

Argument

5. MLA provides that it has satisfied "every requirement for admission into the record of" the Admissions. It has not.

6. First, on the foundational level, MLA failed to lay foundation for the proposed admission. Counsel for MLA did not first establish that Mr. Sane was either familiar with the Admissions or otherwise competent to testify to the contents. And second, the Admissions should not be admitted because their probative value is outweighed by the prejudice and possibility of confusion it creates.

7. MLA argues that *Felton v. Hulser* permits it to read requests for admission into the record in the present circumstance. It does not.

8. *Felton v. Hulser*, 957 S.W.2d 394 (Mo. Ct. App. 1997) relates to a personal injury lawsuit between Jason Felton and Jerry Hulser.¹ During the trial, before Mr. Hulser took the stand, counsel for Mr. Felton requested to read the requests for admissions.² The *Felton* court found that a “party has the right to introduce admissions into evidence by reading them to the jury, unless there exists a valid objection for not doing so.”³ The *Felton* court then determined that there were no valid objections proffered.

9. *Felton* is materially different from this case for a few critical reasons—the admission at issue in *Felton* was by Mr. Hulser, who was testifying during the trial, and who could contradict or further explain the context of the admission. Further, in the context of a trial, parties can freely introduce direct testimony during the proceeding, so there would have been an opportunity for Mr. Hulser or other witnesses to explain the admission.

10. Here, the Admissions at issue were provided by Brad Pnazek. Mr. Pnazek was not offered as a witness at the evidentiary hearing, nor did MLA request his presence. As the admission was also not included in pre-filed testimony or raised in cross-examination, and because Commission rules do not allow Grain Belt Express to present additional direct testimony during the hearing, there was no reasonable opportunity for Grain Belt Express to give context to the Admissions through testimony. Further, as the Admissions were not foundationally supported at the time they were introduced, there was no opportunity for Grain Belt Express to offer a

¹ *Id.* at 396.

² *Id.*

³ *Id.* at 398.

competent witness to address the Admissions or to confirm that no witness was qualified to address the Admissions.

11. Further, Admission 7 has no probative value. Mr. Pnazek’s comments were offered outside the record of this proceeding and were misstatements. Grain Belt Express has made commitments on the record that confirm and clarify that it intends to develop the Project through a merchant business model (a.k.a. “shipper-pays model”) and the capital costs will not be recovered through SPP or MISO regional cost allocation. Application at ¶ 85; Direct Testimony of Rolanda Shine at p. 9:12-15; Surrebuttal Testimony of Rolanda Shine at p. 13:15-21; Surrebuttal Testimony of Shashank Sane at p. 24:17–26:6. Off-the-record misstatements from a non-witness are of no probative value in this case. The sworn testimony of Rolanda Shine and Shashank Sane is the most reliable and relevant evidence on the issue that Admission 7 purports to address.

WHEREFORE, Grain Belt Express respectfully requests the Commission deny MLA’s Motion.

Respectfully submitted,

/s/ Andrew O. Schulte

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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 16th day of June, 2023.

/s/ Andrew O. Schulte

Andrew O. Schulte