

485 Oak Field Ct.
Washington, MO 63090
August 27, 2014

Data Center
Missouri Public Service Commission
200 Madison St.
Jefferson City, MO 65101

FILED

AUG 28 2014

Missouri Public
Service Commission

Re: Case No. EA-2014-0207

Dear Sir or Madam:

Enclosed for filing with the Commission is a Motion of the Missouri Landowners Alliance to Compel Responses to Discovery Requests. I do not have Exhibits 1, 3 and 4 to this motion in electronic form, and thus this material is all being delivered for filing only in hard-copy form.

Please note that Exhibits 1, 3 and 4 are being filed in a separate, sealed envelope, marked "Highly Confidential". The Exhibits themselves also bear that same notation. I ask that they be treated accordingly.

Please let me know if you have any questions about this filing.

Yours truly,



Paul A. Agathen
(636)980-6403
Paa0408@aol.com

FILED

AUG 28 2014

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

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-2014-0207
Current Transmission Line and an Associated Converter)	
Station Providing an interconnection on the Maywood-)	
Montgomery 345 kV Transmission Line)	

Motion of the Missouri Landowners Alliance
To Compel Responses to Discovery Requests

COMES NOW the Missouri Landowners Alliance (Alliance), and respectfully asks the Commission to direct Grain Belt Express Clean Line LLC (Grain Belt) to produce full and complete documents and answers to two discovery requests submitted to Grain Belt by the Alliance. In support of this Motion, the Alliance states as follows:

1. The Alliance is requesting the Commission to direct Grain Belt to fully and completely answer discovery requests from the Alliance regarding two separate but related items: (1) the responses provided to Grain Belt from potential wind farm developers pursuant to a "Request for Information" (RFI) distributed to wind farm developers by Grain Belt; and (2) a request from the Alliance for an explanation of how Grain Belt calculated a figure of 2.0 cents/kwh as the lowest-priced 4,000 MWs of generation submitted in response to the RFI.

Issue No. 1: Responses to the Request For Information

2. As Grain Belt witness Mr. Berry states in his direct testimony, in January of this year Grain Belt completed a RFI to potential wind farm developers which could supply energy to the project at the Kansas converter station. (Direct testimony of Mr.

Berry, p. 15, l. 3-5) This same RFI was cited by Grain Belt in its Application in this case in support of the project's feasibility and cost of energy from the Kansas wind farms.

(Application, paragraphs 16 and 20) Mr. Berry stated that they received responses to the RFI from 14 different wind developers, with information on 26 potential wind farms.

(Direct testimony of Mr. Berry, p. 15, l. 5-6)

3. The responses from the wind farm developers were submitted on a form supplied by Grain Belt. This form requested (among other things) the following information from the wind developer: the name and address of the developer; the location of the wind farm project (city, county and state); the projected annual capacity factor of the wind turbines; the number and years in service of any meteorological towers ("Met Towers") at the project site; the average estimated wind speed at the site, and a description of how the wind speed was determined; the busbar price of the energy at the wind farm; and any supplemental information which the developer wished to include in support of the other information provided on the form. See Exhibit 1 hereto, which consists of copies of the responses from the 26 wind farms to Grain Belt, as submitted by Grain Belt to the Alliance. (Exhibit 1 is considered by Grain Belt to be "Highly Confidential", and is being filed with the Commission in a separate sealed envelope marked as such).

4. On June 4, 2014, the Alliance submitted its First Set of Data Requests to Grain Belt witness Mr. Michael Skelly. Item 48 of that set of data requests asked for a copy of all the documents which Grain Belt had received in response to its RFI to the wind developers. A copy of that data request, and Grain Belt's initial response, are shown at Exhibit 2 hereto.

5. After subsequent discussions between Grain Belt and the Alliance, Grain Belt provided copies to the Alliance of the responses to the RFI from the 26 wind farms; however, certain information on the RFI forms was redacted by Grain Belt on the copies provided to the Alliance. (See e.g., page 1 of Exhibit 1) Grain Belt also provided the Alliance with a multi-state map of the area near its Kansas converter station, and a list of the names of the wind developers which responded to the RFI. These two documents are shown respectively at Exhibits 3 and 4 hereto. Both are considered confidential by Grain Belt. Accordingly, Exhibits 3 and 4 are also being filed with this Motion in the separate sealed envelope, with Exhibit 1.

6. The information redacted on the RFI forms included, among other things, all material which would allow the Alliance to identify the location or even the approximate location of specific wind farms. (See, e.g., pp. 89, 90 and 94 of Exhibit 1) Also redacted by Grain Belt was certain information which described how the data collected from the Met Towers was converted by the wind developer into projected wind speeds at the wind farm. (See, e.g., pp. 15 and 85)

7. In addition to the information on the actual RFI forms, Exhibit 1 includes additional documents provided by the wind developers to Grain Belt – presumably material referenced in Part E of the RFI forms. (See pp. 149-255 of Exhibit 1). Parts of this additional material were also redacted. (See, e.g., pp. 150 and 213 of Exhibit 1)

8. The Met Towers referred to in Part C of the RFI forms are instrumentation towers used to collect data regarding wind speeds at the site of the tower. In most if not all instances, the data from the Met Towers was used by the wind farm developers to

calculate a projected average wind speed at the site of the wind farm. (See, e.g., p. 3 of Exhibit 1) The estimated average wind speed at the site of the wind farm is a critical factor in calculating the projected annual capacity factor of the wind turbines, which in turn is a critical factor in calculating the project's estimated busbar cost of energy. (See direct testimony of Mr. Berry, p. 15, l. 3 – p. 16, l. 17)

9. Grain Belt later offered to also indicate on the map depicted at Exhibit 3 a range of the wind speeds which were provided in various geographic areas by the wind developers. However, this latest information still would not provide the specific location of each prospective wind farm (and thus the location of the met towers), nor would it provide the projected wind speed for each separate wind farm. In short, Grain Belt still would not be providing all of the relevant data which it had gathered from the prospective wind developers.

10. Grain Belt refers to and relies on the responses to its RFI to support its position that energy from the Kansas wind farms will be relatively low in cost. (See, e.g., direct testimony of Mr. Berry, pp. 15-16).

11. Without knowing the location of the individual wind farms and Met Towers, the Alliance is unable to effectively verify or challenge Grain Belt's conclusions regarding the projected wind speeds, capacity factors and busbar costs of the wind farms responding to the RFI.

12. The projected cost of energy from the wind farms is a key factor in this proceeding.

13. Counsel for the Alliance has not designated any other person pursuant to Commission rule 4 CSR 240-2.135(5)(D) who would be given access to any of the highly confidential information discussed herein.

14. For the reasons set forth in the preceding paragraphs, allowing Grain Belt to withhold the redacted information from the RFIs will result in the denial to the Alliance of its right to due process under Amendment XIV to the United States Constitution, and Article I Section 10 to the Missouri Constitution.

Issue No. 2: Explanation of Grain Belt's cost calculation for energy from the wind farms.

15. Speaking with reference to the responses to the RFIs, Mr. Berry stated in his direct testimony as follows: "... generators provided indicative power purchase agreement pricing, which is their own calculation of their levelized cost of energy. The lowest-priced 4,000 MW of new wind generation was an average of 2.0 cents per kwh flat for 25 years." (Direct testimony, p. 15, l. 8-11)

16. In data request No. 94 directed to Mr. Berry on July 14, 2014, the Alliance made the following request: "With reference to page 15 lines 9-11 of your direct testimony, which generators, and how much of each one's generation, was used to calculate the lowest-priced 4,000 MWs at 2.0 cents per kwh for 25 years?"

17. On August 4, Grain Belt responded as follows:
"Response: The parties are working to negotiate an arrangement by which Grain Belt Express can provide additional information to MLA without violating confidentiality agreements with wind generators concerning extremely sensitive, proprietary, competitive, and highly confidential information. Once such an agreement is finalized, Gran Belt Express intends to provide information responsive to this request."

18. As discussed in paragraphs 1-9 above, the parties have not reached an agreement regarding disclosure of all of the information in the responses to the RFIs. And Grain Belt still has not provided the information asked for in the data request cited in paragraph 16. Grain Belt did subsequently offer to designate an area, covering parts of eight counties in Kansas, where the prospective wind farms were located, along with the range of the wind speeds of the unspecified number of wind farms making up the lowest-cost 4,000 MW of power. However, this additional information still would not allow the Alliance to adequately verify or challenge the cost calculation derived from the responses of the wind farms.

19. Absent a full response to data request No. 94 to Mr. Berry, the Alliance cannot verify or challenge Grain Belt's contention that 4,000 MW of power can be produced from the wind farms at an average cost of 2 cents per kwh.

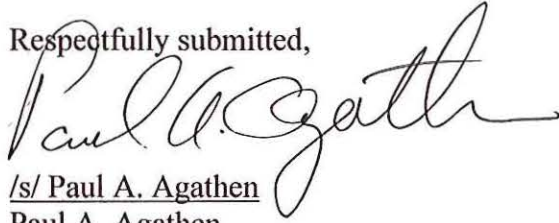
20. For the reasons set forth in paragraphs 15-19, allowing Grain Belt to withhold the information requested in data request No. 94 will result in the denial to the Alliance of its right to due process under Amendment XIV to the United States Constitution, and Article I Section 10 to the Missouri Constitution.

21. Counsel for the Alliance and Grain Belt have complied with the requirements of Commission Rule 4 CSR 240-2.090(8) in attempting to resolve these discovery disputes.

WHEREFORE, the Alliance respectfully asks the Commission (1) to direct Grain Belt to provide copies to the Alliance of the responses to the RFI discussed above, with none of the information redacted; (2) to direct Grain Belt to respond to Data Request No.

94, set forth in paragraph 16 above; and (3) to grant such other relief as is appropriate under the circumstances.

Respectfully submitted,

A handwritten signature in black ink that reads "Paul A. Agathen". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

/s/ Paul A. Agathen

Paul A. Agathen

Mo Bar No. 24756

485 Oak Field Ct.

Washington, MO 63090

(636)980-6403

Paa0408@aol.com

EXHIBIT 1

Exhibit 1 to this Motion to Compel consists of the 261 pages of responses to Grain Belt's Request for Information, preceded by a letter of transmittal from counsel for Grain Belt to counsel for the Alliance. The responses are designated by Grain Belt as "Highly Confidential", and accordingly Exhibit 1 is being filed by the Alliance with this Motion to Compel under seal with the Commission, in a separate envelope marked "Highly Confidential".

Missouri Public Service Commission Case No. EA-2014-0207

MLA Data Request No. 48 in First Set of Data Requests
Directed to Michael Skelly

Data Request No. 48: Please provide a copy of all documents which Grain Belt or Clean Line received in response to the Request for Information (RFI) referred to at page 7, paragraph 16 of the Application.

Response From Grain Belt: Grain Belt Express will produce for inspection copies of the documents responsive to this request under conditions that will protect the highly confidential, proprietary and trade secret information contained in certain of these documents. Such information includes sensitive pricing data and confidential reports of specific wind speeds. Disclosure of such specific information would not only jeopardize the financial interests of the companies who have provided such information to Grain Belt Express, but also those companies' competitive position in the power industry.

Source: None

Attachment: None

Response by: Dave Berry

EXHIBITS 3 AND 4

Exhibit 3 to this Motion consists of a map which has been designated by Grain Belt as “Highly Confidential”. Accordingly, it is being filed with the Commission under seal, along with Exhibit 1 to this Motion.

Exhibit 4 to this Motion consists of a single page with a list of names of the wind developers which responded to the RFI. It has also been designated by Grain Belt as confidential, and accordingly it is being filed with the Commission under seal, along with Exhibits 1 and 3.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

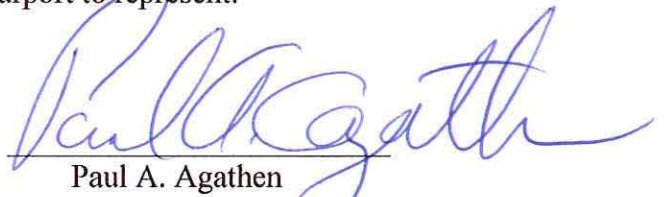
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AFFIDAVIT OF PAUL A. AGATHEN

STATE OF MISSOURI)
) SS
COUNTY OF FRANKLIN)

Paul A. Agathen, being first duly sworn on his oath states:

1. My name is Paul A. Agathen.
2. I hereby swear and affirm that the facts stated in the foregoing Motion are true and correct to the best of my information and belief, and that Exhibits 1 – 4 to this Motion truly and accurately represent the documents they purport to represent.


Paul A. Agathen

Subscribed and sworn before me this 27th day of August, 2014.


Notary Public



JEANNA TOBBEN
My Commission Expires
April 28, 2015
Franklin County
Commission #11178910

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document, including Exhibit 2, was served upon the parties to this case by email or U.S. Mail, postage prepaid, this 27th day of August, 2014. Exhibits 1, 3 and 4 are being filed with the Commission under seal.

/s/ Paul A. Agathen

Paul A. Agathen

Attorney for the Missouri Landowners Alliance

Paa0408@aol.com

(636)980-6403