

**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)	Case No. EA-2016-0358
Voltage, Direct Current Transmission Line)	
and an Associated Converter Station)	
Providing an Interconnection on the)	
Maywood-Montgomery 345 kV)	
Transmission Line.)	

**MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION'S
REPLY BRIEF**

The Missouri Joint Municipal Electric Utility Commission’s (“MJMEUC’s”) members, which at a minimum include the thirty-five MoPEP cities¹, Kirkwood, Hannibal, Columbia and Centralia (and their hundreds of thousands of citizens), have decided they need the Grain Belt project because it is in the best interest of their very large public. Those opposing the Grain Belt project have advanced basically two arguments against MJMEUC’s evidenced need and public interest,² but both fail because: 1) the interrelated contracts between Grain Belt, MJMEUC, Infinity Wind, MoPEP, Kirkwood and Hannibal bind all these entities to perform once the project is built so that low-cost renewable energy will be provided to Missouri customers, and 2) the benefits of the project to the hundreds of thousands of citizens of MJMEUC’s members are

¹ Exhibit 475, Schedule DK-1: Albany, Ava, Bethany, Butler, Carrollton, Chillicothe, El Dorado Springs, Farmington, Fayette, Fredericktown, Gallatin, Harrisonville, Hermann, Higginsville, Jackson, Lamar, La Plata, Lebanon, Macon, Marshall, Memphis, Monroe City, Odessa, Palmyra, Rock Port, Rolla, Salisbury, Shelbina, St. James, Stanberry, Thayer, Trenton, Unionville, Vandalia and Waynesville.

² Staff does not refute MJMEUC’s evidence of need and public interest because Staff’s Initial Post-Hearing Brief does not even mention MJMEUC or its evidence. Therefore, MJMEUC will reply in this one brief to the arguments advanced by Missouri Landowners Alliance (“MLA”) and the substantially similar arguments advanced by Show Me Concerned Landowners (“Show Me”) in their respective Initial Post-Hearing Briefs.

unquestionably quantified in the hundreds of millions of dollars over the twenty-plus year life of these contracts, while the number of objecting landowners must be fewer by several orders of magnitude and their harm remains unquantified and even uncertain.

The evidence before this Commission includes no fewer than five contracts which confirm that Kansas wind energy is needed by and will be used by customers in Missouri once Grain Belt is built.

MJMEUC and MLA agree with this Commission that its proper focus in this matter is to consider “aspects of the [Grain Belt] Project related to the *effect on Missouri utilities and consumers* rather than...Kansas wind developers or utilities and consumers from other states.”³

But, in order to argue there is no need for Grain Belt because there is no firm commitment to serve Missourians with Kansas wind energy, both MLA and Show Me⁴ disregard MJMEUC’s status as a body corporate and politic of the State of Missouri, organized as a joint municipal utility commission pursuant to §393.700 et seq. Revised Statutes of Missouri. MLA and Show Me brush aside the fact that MJMEUC serves the hundreds of thousands of citizens of its sixty-eight Missouri municipalities and its advisory member, a rural electric cooperative with more than 21,000 customers.

³ MLA Initial Post-Hearing Brief at page 5 and MJMEUC Initial Post-Hearing Brief at page 7, both citing page 21 of *Report & Order*, EA-2014-0207, Issued July 1, 2015. Emphasis added.

⁴ Show Me initially argues that this Commission has no jurisdiction to consider Grain Belt’s application for a CCN because Grain Belt seeks to “slice and dice” by submitting only to a state CCN and not also to state regulation of its rates. Show Me Initial Post-Hearing Brief, pages 1-9, 14-16, 29 and 32. Show Me’s jurisdictional argument disregards the Federal Energy Regulatory Commission’s authority over Grain Belt’s rates. *Application*, filed Aug. 30, 2016, paragraph 16 and *Grain Belt Express Clean Line LLC, Order Conditionally Authorizing Proposal and Granting Waivers*, 147 FERC ¶61,098, No. ER14-409-000 (May 8, 2014). The filed rate doctrine requires “that interstate power rates filed with FERC or fixed by FERC must be given binding effect by state utility commissions.” *Kansas City Power & Light Co. v. Missouri PSC*, 2016 Mo. App. LEXIS 886 *32, citing *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 962 (1986).

In addition to disregarding MJMEUC's and its members' status as Missouri utilities and consumers, MLA and Show Me hyper-focus on the Transmission Service Agreement between Grain Belt and MJMEUC which gives MJMEUC the option to purchase up to 200 MW of firm transmission capacity, and they argue that the option does not evidence real need by real Missourians. MLA and Show Me conveniently ignore the four interrelated contracts that have been subsequently executed by these *Missouri utilities and consumers* to actually purchase that Kansas wind energy transmitted over Grain Belt.

First, MJMEUC's Power Purchase Agreement with Infinity Wind "absolutely" causes MJMEUC to be "obligated to take that power and pay for it, assuming the Grain Belt Express Line is built and is available for service."⁵ Indeed, Infinity Wind is contractually obligated to provide that Kansas wind energy to its Missouri customers or forfeit its payments of significant security which escalate over the 20 year life of the contract.⁶ Second, the thirty-five MJMEUC cities which form the MoPEP group, with MJMEUC board approval, committed in December 2016 to purchase 60 MW of Kansas wind energy delivered over Grain Belt.⁷ Third, the City of Kirkwood contracted in March of 2017 to purchase 25 MW,⁸ and fourth, the City of Hannibal contracted in March of 2017 to purchase 15 MW of Kansas wind energy delivered over Grain Belt.⁹

The evidence is undisputed that, once Grain Belt is operational, no less than 100 MW of Kansas wind energy will be delivered to Missouri customers who have chosen to be legally

⁵ Tr. 1001:10 – 23 (Chairman Hall's questions to MJMEUC's Duncan Kincheloe).

⁶ In-Camera Tr. 1211:6 – 1212:16 (Chairman Hall's questions to Infinity's Matt Langley but no specific quotations cited here so no need to handle as "HC" material).

⁷ Tr. 1004:3 – 1005:3 (Re-direct exam of MJMEUC's Duncan Kincheloe and Exhibit 478).

⁸ Tr. 990:13 – 991:7 (MLA Cross-exam of MJMEUC's Duncan Kincheloe) and Tr. 1005:4 – 12 and Exhibit 479 (Re-direct exam of MJMEUC's Duncan Kincheloe).

⁹ Tr. 991:8 – 16 (MLA Cross-exam of MJMEUC's Duncan Kincheloe) and Tr. 1005:13 – 21 and Exhibit 479 (Re-direct exam of MJMEUC's Duncan Kincheloe).

bound to take it and pay for it. So, suggestions that MJMEUC (or any of the MoPEP cities or Kirkwood or Hannibal) might choose to breach the legal obligations memorialized in these contracts in favor of “a more attractive alternative”¹⁰ such as solar energy or a re-negotiated deal with Illinois Power Marketing are refuted by the evidence before this Commission. Indeed, MLA’s allegation that MJMEUC’s Duncan Kincheloe testified to a fiduciary duty to evaluate the “alternatives which might be used *in lieu of* the existing Grain Belt contract” is simply misleading.¹¹ Mr. Kincheloe declined to entertain MLA counsel’s premise that a contract in direct competition with the Grain Belt TSA even could be considered, so Mr. Kincheloe agreed only that “an essential function of MJMEUC is to stay abreast of power supply opportunities and to present those opportunities to our members.”¹² Responding to questions from the Commission, Mr. Kincheloe emphasized that Grain Belt and Illinois Power Marketing are “two different considerations...two independent decisions” and that MJMEUC’s obligations under the TSA with Grain Belt and the PPA with Infinity are not at all “connected to what happens with [any] Illinois Power Marketing contract in the future.”¹³

Further, despite MLA’s argument to the contrary, the “early termination options” in the TSA, the PPA and the MoPEP, Kirkwood and Hannibal contracts do not release those parties from providing, taking and paying for Kansas wind energy delivered to Missourians. If Grain Belt is built, the parties to those five contracts are legally bound to perform. Only if Grain Belt is not built because the requested CCN is denied will the parties to these five contracts then be released from their obligations.¹⁴ MLA seeks to dilute the evidentiary value of these five

¹⁰ MLA Initial Post-Hearing Brief, page 11.

¹¹ MLA Initial Post-Hearing Brief, page 8.

¹² Tr. 985:13 – 986:6.

¹³ Tr. 997:6 – 998:16 (Chairman Hall’s questions to MJMEUC’s Duncan Kincheloe).

¹⁴ Tr. 1006:9 – 25 (Re-direct examination of MJMEUC’s Duncan Kincheloe).

interrelated contracts on the question of need in Missouri for Kansas wind delivered over Grain Belt by advocating for an amendment to the TSA between Grain Belt and MJMEUC which “remov[es] the ‘opt out’ protection for the amount of the capacity which member cities have already agreed to purchase.”¹⁵ Given that the “opt out” protection is triggered only if Grain Belt is not built, MLA would have this Commission attempt to require the thirty-five MoPEP cities, Kirkwood and Hannibal, who together have contracted to take and pay for 100 MW, to pay for that 100 MW even if the Commission denies the CCN and Grain Belt is not built. This cannot be.

Emphasizing the fact that at least 4 years will pass after a CCN is granted and Grain Belt becomes operational and able to provide Kansas wind energy to Missourians, MLA cites to a recent decision from the Missouri Court of Appeals-Western District to caution this Commission against granting the requested CCN based on MJMEUC’s predicted future need.¹⁶ But, the Court of Appeals decision cited by MLA affirmed the grant of the CCN in that case, holding that “in matters of public convenience and necessity there must be consideration of the future [and that] [c]onsideration of the future should be ‘part of a comprehensive evaluation of whether the public convenience and necessity would be served.’”¹⁷ The elected officials of MJMEUC’s city members have prudently assessed their need for low-cost renewable energy and, within months of that low-cost renewable energy becoming available, the thirty-five MoPEP cities, Kirkwood and Hannibal, have contracted now to meet that need in 2021 by taking Kansas wind energy

¹⁵ MLA Initial Post-Hearing Brief, pages 12-13.

¹⁶ MLA Initial Post-Hearing Brief, page 14.

¹⁷ *Office of Public Counsel v. Missouri PSC (In re KCP&L Greater Missouri Operations Co.)*, Docket Nos. WD79550 and WD 79551, 2016 Mo. App. LEXIS 1318 *10-11, internal citations omitted.

delivered via Grain Belt. Real Missourians have executed real contracts to meet a real need in the manner most beneficial to the public represented here.

The evidence is that hundreds of thousands of members of the Missouri public will enjoy greater benefits from the Grain Belt-MJMEUC-Infinity-MoPEP-Kirkwood-Hannibal contracts than any harm experienced by the relatively fewer objecting landowners.

MLA and its expert Joseph Jaskulski admit that the TSA between Grain Belt and MJMEUC, which provides MJMEUC with the “first mover rate,” will save MJMEUC’s members at least \$3 million annually for the twenty-plus year life of the contract.¹⁸ MJMEUC’s evidence indicates the minimum value of measurable savings to be closer to \$10 million annually, but for this Commission’s purposes in assessing Grain Belt’s benefit to the public, MLA’s admission of \$3 million in annual savings over the twenty-plus year life of the contracts is a very significant undisputed benefit to the public.

MLA acknowledges that MJMEUC’s first mover rate is “amazing” and, particularly for the first 100 MW, is “only about 20% of the ‘normal’ rate for the same physical service into Missouri.”¹⁹ Thus, MLA’s argument that MJMEUC should have expended more time and resources determining whether or not an even more amazing rate was available elsewhere lacks all credibility in light of MLA’s simultaneously-advanced criticism that MJMEUC remained uninterested in Grain Belt for too long a period of time before finally executing the TSA.²⁰ Reaching even further, MLA would have this Commission hold hostage the benefits of this amazing rate from MJMEUC’s sixty-eight members by conditioning its CCN to Grain Belt on Grain Belt first confirming that it has also contracted with other Missouri load-serving utilities

¹⁸ MLA Initial Post-Hearing Brief, page 33 and footnote 113, and page 35.

¹⁹ MLA Initial Post-Hearing Brief, page 54.

²⁰ MLA Initial Post-Hearing Brief, pages 49-55.

for the remaining 300 MW so that incumbent utilities, Ameren for example, could negotiate with Grain Belt for the benefit of Ameren's ratepayers.²¹

MLA further acknowledges that Grain Belt's benefit to MJMEUC's public may amount to "savings of several dollars per month on MJMEUC's retail electric bills."²² How large is the public represented by MJMEUC? It is undisputed that MJMEUC's sixty-eight Missouri municipal members and its rural electric cooperative together serve some 347,000 retail customers in Missouri with a combined peak load of approximately 2,600 MW.²³

Show Me's expert Paul Glenden Justis, Jr. agreed that, in performing his own calculations and analysis of Kansas, Missouri and Iowa wind energy, Kansas wind delivered to MJMEUC by GBX was "the cheapest of these three [alternatives] that I analyzed, yes."²⁴ Specifically, when using 2021 pricing (which is the year Grain Belt is to be functional), Mr. Justis agreed that Kansas wind delivered to MJMEUC and into MISO is cheaper than Crystal Lake Iowa wind delivered inside MISO.²⁵ Mr. Justis agreed that congestion pricing can be accurately predicted up to five years in the future, well within the timeline of Grain Belt's expected operation date.²⁶ When questioned regarding The Energy Authority's ("TEA's") locational marginal price ("LMP") study referenced in MJMEUC's John Grotzinger's Schedule JG-8, Mr. Justis admitted that when applying the LMP study to the most competitive MISO wind opportunity identified in the hearing, ** [REDACTED]

²¹ MLA Initial Post-Hearing Brief, pages 49-55, and page 73.

²² MLA Initial Post-Hearing Brief, page 48.

²³ Exhibit 475, page 3, lines 15 – 18. Further, whether or not the elected leaders of every one of MJMEUC's 68 members choose to take competitive advantage of Grain Belt in the same way that the MoPEP cities, Kirkwood and Hannibal have, is not – as argued by MLA at pages 56-57 of its brief – a matter of concern for this Commission.

²⁴ Tr. 1557:17 – 1558:5.

²⁵ Tr. 1566:6 – 1567:21.

²⁶ Tr. 1560:23 – 1561:13, 1562:10 – 22.

██████** than the contracts MJMEUC has with Grain Belt and Infinity Wind once congestion pricing is included in the final cost impact.²⁷

Even after setting aside the first mover rate obtained by MJMEUC for its members, the evidence is that subsequent purchasers of Grain Belt service at the full tariff rate will experience savings versus the service offered by SPP and MISO.²⁸ Mr. Justis admitted, based upon the TEA LMP study in Schedule JG-8, that energy delivered under Infinity Wind prices with even a non-discounted Grain Belt transmission rate, would still be competitive with Crystal Lake Iowa.²⁹ And, no evidence was admitted during the hearing that indicated that any additional capacity exists at Crystal Lake Iowa or that any future wind capacity will be available within MISO at the pricing Crystal Lake Iowa offered, which still significantly exceeds the Grain Belt and Infinity Wind contracts. Once congestion pricing differences are accounted for, alternatives to the MJMEUC contracts are simply not competitive, and subsequent purchasers will likely choose Grain Belt as the least-cost service to deliver high-capacity renewables. Thus, MLA's dire prediction that Grain Belt will never be able to sell the 300 MW remaining after MJMEUC's contract for 200 MW is refuted by the evidence.

Although MJMEUC's affinity for all Missourians might have caused it to refrain from even suggesting a headcount, MLA invites the Commission to compare the benefits of Grain Belt to MJMEUC's members with the alleged detriments to the objecting landowners.³⁰ And the evidence is that the landowners who object to Grain Belt are far fewer in number than the hundreds of thousands of MJMEUC city citizens. Grain Belt's Deann Lanz testified on cross-

²⁷ In-Camera Tr. 1576:6 – 10.

²⁸ Tr. 1106:12 – 1110:15; Exhibit 477 Schedule JG-8.

²⁹ In-Camera Tr. 1576:11 – 25 (No specific quotation cited here so no need to handle as “HC” material).

³⁰ MLA Initial Post-Hearing Brief, commencing at page 35.

examination by MLA that the transmission line project is planned to cross properties owned by “about 570 unique landowners” but that 39 of those landowners in Missouri have already provided Grain Belt with easements on their properties.³¹ Ms. Lanz added that, in her experience, although landowners may initially be opposed to a line, “once we meet one-on-one with landowners at a table and they view our compensation package and our desire and ability to negotiate specific terms dealing with the uniqueness of their land, that generally they are much more open and pleased and are willing to voluntarily negotiate easements.”³² Therefore, even if the owner of every property that is crossed by the line and hasn’t already provided an easement objected to Grain Belt (which the evidence indicates is highly unlikely), there could be no more than several hundred objecting landowners.

Based on the evidence, the benefits of Grain Belt to hundreds of thousands of Missouri citizens are quantified in the millions of dollars annually and are 100% certain if this Commission grants the requested CCN, while the damages to no more than several hundred objecting landowners are, respectfully, not quantified and decidedly less certain.

The recent *Neighbors United* decision by the Missouri Court of Appeals-Western District is simply not applicable to this case.

A final decision from a higher court becomes precedential for the lower courts only when the factual and legal issues addressed by the higher court speak to the factual and legal issues before the lower courts. The undeniably non-final *Neighbors United* decision recently rendered by the Missouri Appellate Court-Western District is not applicable here because it does not address the legal and factual issues pending before this Commission. This Commission is asked to determine whether approval by any local government is necessary before it may issue the

³¹ Tr. 427:3 – 428:17.

³² Tr. 443:18 – 444:1.

requested line certificate to Grain Belt – a public utility that does not already possess and is not seeking an area certificate to serve customers. At no point in its decision did the *Neighbors United* Court ever address a line certificate authorized by §393.170.1.³³ Instead, the *Neighbors United* Court analyzed the second and third subsections of §393.170 (regarding area certificates and due hearings), and declared, inexplicably, that its “harmonization of the statute preserves the integrity of *both* subdivisions of section 393.170” as though there are only two, and not three, subdivisions of that statute.³⁴ The *Neighbors United* Court then ruled that the applicant, ATXI, must “receive the consent of *local* government authorities before the PSC issues a CCN,” even though ATXI did not seek an area certificate under subsection two of §393.170 which, even if it had been applicable, would have specifically required the consent of the “proper *municipal* authorities,” not “local” or “county” authorities.³⁵ The *Neighbors United* case thus provides no guidance for the Commission’s ruling in this case, and certainly no grounds for a stay of that ruling as requested, again, by MLA.³⁶

Conclusion:

On behalf of its sixty-eight Missouri members and their combined 347,000 retail customers, MJMEUC respectfully requests that this Commission find that the Grain Belt project is necessary and convenient for the public service and issue to Grain Belt the requested certificate of convenience and necessity.

³³ *Neighbors United Against Ameren’s Power Line v. PSC*, No. WD79883 (Mar. 28, 2017).

³⁴ *Neighbors United*, Slip Opinion at 8 (Emphasis added).

³⁵ *Id.*

³⁶ MLA Initial Post-Hearing Brief, page 72.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Missouri Joint Municipal Electric Utility Commission's Reply Brief was served by electronically filing with EFIS and emailing a copy to the following interested persons on this 24th day of April, 2017:

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