

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 29<sup>th</sup> day  
of March, 2023.

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**

**ORDER DENYING REQUEST TO COMPEL DISCOVERY ANSWERS**

Issue Date: March 29, 2023

Effective Date: March 29, 2023

On August 24, 2022, Grain Belt Express LLC (Grain Belt) filed an application seeking an order amending its certificate of convenience and necessity (CCN) granted in File No. EA-2016-0358. On February 15, 2023, Grain Belt filed a motion requesting a discovery conference and requesting the Commission direct Missouri Landowner's Alliance (MLA) and the Eastern Missouri Landowner's Alliance d/b/a Show Me Concerned Landowners (Show Me), to provide complete answers to eight data requests (four each to MLA and to Show Me) proffered by Grain Belt on December 7, 2022. Both MLA and Show Me objected to the data requests.

On February 15, 2023, Grain Belt filed a motion for discovery conference, in which it requested the Commission to issue an order compelling MLA and Show Me to provide a full and complete answer to certain data requests issued to them. A discovery conference was held on March 13, 2023.

## **The Data Requests in Dispute**

The data requests at issue are identical, except for the fact that they are directed to either MLA or Show-Me. Data Requests MLA 3, MLA 4, MLA 6, MLA 14, Show-Me 3, Show-Me 4, Show-Me 6, and Show-Me 14, are in dispute.

### **MLA 3 and 4 / Show Me 3 and 4 (Data Request 3 and 4)**

In Data Request 3, Grain Belt seeks a list of all current members of MLA and Show Me. In Data Request 4, Grain Belt seeks a list of all current members of MLA and Show Me who live or own property within 2,000 feet of the centerline of the proposed route of the transmission line. Both Data Request 3 and 4 call for MLA and Show Me to produce information that personally identifies the members of MLA and Show Me.

MLA and Show Me object to Data Request 3 and 4 arguing that they are not relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to any issue in this proceeding. MLA and Show Me further objected because their records do not indicate the distance of the members' homes or property from the centerline of the proposed route of the line. Therefore, MLA and Show Me state the request would require them to create a study or analysis that is not currently in existence and would be unduly burdensome to compile, if it could be compiled at all. MLA and Show Me did partially answer Data Request 4 with information it believed to be true.

Grain Belt's counsel stated at the February 15 Discovery Conference that if Data Request 3 was answered, it would not need an answer to Data Request 4.

### **MLA 6 / Show Me 6 (Data Request 6)**

In Data Request 6, Grain Belt seeks meeting minutes, recordings, and/or transcripts for the prior three-year period if MLA and Show-Me take meeting minutes or hold membership meetings.

MLA and Show Me object to this request arguing that it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to any issue in this proceeding. However, MLA and Show Me answered the Data Request stating that the only responsive record held by either association are the results of annual elections of officers.

#### **MLA 14 / Show Me 14 (Data Request 14)**

Data Request 14 seeks information regarding how many members have contributed money to MLA and Show-Me in the previous 36 months, previous 24 months, and previous 12 months.

MLA and Show Me object to this request on the grounds that it is not relevant nor reasonably calculated to lead to the discovery of admissible evidence with respect to any issue in this amendment proceeding.

Grain Belt argues that because all that is required to become a member is to fill out an online form, the information of monetary contributions is needed to demonstrate MLA's and Show-Me's members' actual level of activity and interest in the case. Grain Belt argues that what it considers an "actual level of activity" is directly relevant to MLA and Show Me's "standing to participate, the weight of their position, and the scope and extent of their interests in this docket."<sup>1</sup>

#### **The Commission's Determination**

Missouri Supreme Court Rule 56.01(b)(1), provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to a pending action or reasonably calculated to lead to the discovery of admissible evidence.<sup>2</sup> Missouri's courts

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<sup>1</sup> Motion for Discovery Conference, (filed Feb. 15, 2023), paragraph 39.

<sup>2</sup> Commission Rule 20 CSR 4240-2.090(1) provides that discovery in matters before the Commission may be obtained by the same means and under the same conditions as in civil actions in the circuit court.

have indicated that there are two aspects to relevance - logical relevance and legal relevance.<sup>3</sup> Logical relevance simply means that the questioned evidence tends to make the existence of a material fact more or less probable.<sup>4</sup> In determining legal relevance, the court, or administrative agency, must weigh “the probative value of the evidence against the dangers to the opposing party of unfair prejudice, confusion of the issues, undue delay, waste of time, cumulativeness, or violations of confidentiality. Evidence is legally relevant if its probative value outweighs its prejudicial effect.”<sup>5</sup> The method of discovery at issue is data requests, which are informal requests for documents or information made pursuant to the Commission’s regulations.<sup>6</sup>

With regard to Data Request 3 and 4, under the terms of Section 105.1500, RSMo, a public agency shall not require the disclosure of personal information or otherwise compel the release of personal information of any entity exempt from federal income taxation under Section 501(c) of the Internal Revenue. The Commission is a public agency under that section.<sup>7</sup> Personal information is defined as any information that directly or indirectly identifies a person as a member, supporter, volunteer, or donor of an entity exempt from Section 501(c) of the Internal Revenue Code.<sup>8</sup> MLA and Show Me each alleged in their respective motions to intervene that they were not-for-profit corporations, incorporated under the laws of Missouri.<sup>9</sup> Grain Belt also attached to its Motion for Discovery Conference incorporation documents showing that MLA and Show

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<sup>3</sup> *State v. Kennedy*, 107 SW 3d 306, 311 (Mo. App. W.D. 2003).

<sup>4</sup> *State v. Kennedy*, 107 SW 3d 306, 311 (Mo. App. W.D. 2003).

<sup>5</sup> *Jackson v. Mills*, 142 SW 3d 237, 240 (Mo. App. W.D. 2004).

<sup>6</sup> Commission Rule 20 CSR 4240-2.090(2)(A).

<sup>7</sup> Section 105.1500.2(2), RSMo.

<sup>8</sup> Section 105.1500

<sup>9</sup> Motion to Intervene by the Missouri Landowners Alliance, (filed Aug. 12, 2022), paragraph 1; and Motion to Intervene of the Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners, (filed Aug. 12, 2022), paragraph 1.

Me are nonprofit organizations that are exempt under Section 501(c)(3) of the Internal Revenue Code.<sup>10</sup> Thus, under Section 105.1500, the Commission cannot require MLA and Show Me to list the members of their associations.

Under exceptions in Section 105.1500, an individual or entity is not prohibited from being required to comply with any lawful request for discovery of personal information in litigation if the requestor demonstrates a compelling need for the personal information by clear and convincing evidence.<sup>11</sup> The Commission finds, however, that Grain Belt has not shown a compelling need for the personal information by clear and convincing evidence. Therefore, the Commission will deny Grain Belt's request to compel responses to Data Request 3 and 4.

In Data Request 6, Grain Belt requested meeting minutes, recordings, and/or transcripts from MLA's and Show Me's records which Grain Belt claims will tend to show the weight that should be given to MLA's and Show Me's arguments. Further, at the Discovery Conference on March 13, 2023, Grain Belt argued that the response to Data Request 6 goes to the authority of MLA and Show Me to speak for their membership.

Grain Belt has applied for the amendment of a previously issued CCN and sought approval of certain material changes to the design and engineering of the Project, including relocating and increasing the capacity of a converter station, relocating an AC connector line, and constructing the project in two phases. The key issue in this case is whether Grain Belt's application will be necessary or convenient to the public interest. Intervenors in this action were approved on findings of whether they have interests which are different from those of the general public, and whether allowing them to intervene

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<sup>10</sup> Motion for Discovery Conference, (filed Feb. 15, 2023), Exhibits 1 and 2.

<sup>11</sup> Section 105.1500.4(4)(a), RSMo.

would serve the public interest.<sup>12</sup> The Commission has already determined that MLA and Show Me meet those criteria and are proper parties to this case.<sup>13</sup> Thus, standing is not at issue. Showing the degree to which these entities adhere to their bylaws does not change that they are established parties to the case. Therefore, the Commission finds that Data Request 6 is not reasonably calculated to lead to the discovery of admissible evidence. The Commission will deny Grain Belt's request to compel responses to Data Request 6.

In Data Request 14, Grain Belt requested the number of members of MLA and Show Me that have contributed money in the previous 12, 24, and 36 months. MLA and Show Me may pursue their goals in this matter with or without any contributions at all, and their status as intervenors does not rely on whether financial support from their members has been obtained, or on the timing of that support. Showing a lack of support would not change the status of the organizations as intervenors, or their right to bring a valid claim in this action. The Commission finds that the number of financial contributors is not reasonably calculated to lead to the discovery of admissible evidence. The Commission will, therefore, deny Grain Belt's request to compel responses to Data Request 14.

**THE COMMISSION ORDERS THAT:**

1. Grain Belt's requests to compel discovery answers in its *Motion for Discovery Conference* filed February 15, 2023, are denied.
2. This order shall be effective when issued.

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<sup>12</sup> Commission Rule 20 CSR 4240-2.075(3).

<sup>13</sup> Order Granting Applications to Intervene, (issued October 26, 2033). The Commission notes that MLA's and Show Me's applications to intervene were not contested.



**BY THE COMMISSION**

*Nancy Dippell*

Nancy Dippell  
Secretary

Rupp, Chm., Coleman, Holsman, and  
Kolkmeier CC., concur.

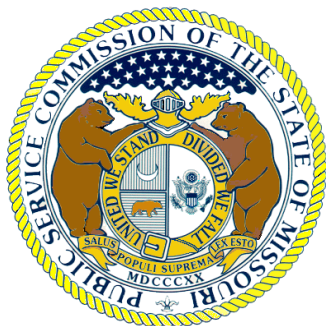
Dippell, Chief Regulatory Law Judge

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 29<sup>th</sup> day of March, 2023.**



*Nancy Dippell*  
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**Nancy Dippell**  
**Secretary**



**MISSOURI PUBLIC SERVICE COMMISSION**

**March 29, 2023**

**File/Case No. EA-2023-0017**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

*Sincerely,*



**Nancy Dippell  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.