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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Discovery Conference

Monday, March 13, 2023
1:32 p.m. - 2:16 p.m.

webEx

VOLUME 6
Pages 46 - 75

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

NANCY DIPPELL, Presiding
DEPUTY CHIEF REGULATORY LAW JUDGE

REPORTED BY:

Angie D. Threlkeld, CCR
Registered Professional Reporter

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1 JUDGE DIPPELL: This is File Number EA-2023-0017,
2 In the Matter of the Application of Grain Belt Express for
3 an Amendment to its Certificate of Convenience and
4 Necessity Authorizing it to Construct, Own, Operate,
5 Control, Manage, and Maintain a High Voltage, Direct
6 Current Transmission Line and Associated Converter Station.

7 My name's Nancy Dippell, and I'm the regulatory
8 law judge assigned to this matter.

9 And we're going to begin with entries of
10 appearance. So if we could begin with Staff.

11 MR. THOMPSON: Kevin Thompson for the Staff of
12 the Missouri Public Service Commission, Post Office Box
13 360, Jefferson City, Missouri 65102.

14 JUDGE DIPPELL: Thank you.
15 Grain Belt Express?

16 MR. SCHULTE: This is Andrew Schulte with the
17 Polsinelli Law Firm on behalf of Grain Belt Express. And
18 my address for the court reporter is 900 West 48th Place,
19 Suite 900, Kansas City, Missouri 64112.

20 Also joining us today is Sean Pluta with
21 Polsinelli and Jared Jevins with Polsinelli.

22 JUDGE DIPPELL: Okay. Thank you.

23 Is there anyone from the Office of the Public
24 Counsel? Not seeing anyone.

25 I'm just going to go through my list of

1 intervenors, so in no particular order here.

2 Associated Industries of Missouri?

3 Clean Grid Alliance?

4 MS. WILLIS: Judith Anne Willis on behalf of
5 Clean Grid Alliance. It's P.O. Box 106088, Jefferson City,
6 Missouri 65110.

7 JUDGE DIPPELL: David and Patricia Stemme?
8 Dustin Hudson?

9 MR. AGATHEN: Thank you, Judge. This is Paul
10 Agathen. I represent him, but he's not a participant in
11 this case -- in this proceeding.

12 JUDGE DIPPELL: Okay. I have him listed on the
13 service list. I apologize.

14 MR. AGATHEN: And he just is not involved in this
15 particular discovery matter.

16 JUDGE DIPPELL: Okay. That's all right. would
17 you like to go ahead and make an entry for your other
18 clients, Mr. Agathen?

19 MR. AGATHEN: Yeah. Thank you, Judge. Paul
20 Agathen -- that's spelled A-G-A-T-H-E-N -- at 485 Oak Field
21 Court, Washington, Missouri 63090. And I'm representing
22 today Missouri Landowners Alliance and the Eastern Missouri
23 Landowners Alliance Doing Business As Show-Me Concerned
24 Landowners.

25 JUDGE DIPPELL: All right. And Missouri

1 Cattlemen's Association?

2 MR. HADEN: Brent Haden appearing for Missouri
3 Cattlemen's Association, Judge Dippell. Then I've got four
4 other agricultural association intervenors that I'm here
5 for that I could just run through quickly, if that is
6 faster.

7 JUDGE DIPPELL: Yes, please.

8 MR. HADEN: So Missouri Cattlemen's Association,
9 Missouri Farm Bureau, Missouri Corn Growers Association,
10 Missouri Soybean Association, and Missouri Pork
11 Association. I'm appearing for all five of those
12 agricultural associations as intervenors in the matter.

13 JUDGE DIPPELL: Thank you.

14 The Missouri Electric Commission?

15 MS. WHIPPLE: Good afternoon, Judge. This is
16 Peggy Whipple, W-H-I-P-P-L-E, at the Healey Law Offices.
17 That address is 3010 East Battlefield, Suite A,
18 Springfield, Missouri 65804, on behalf of the Missouri
19 Electric Commission, an intervenor in this case.

20 JUDGE DIPPELL: Thank you.

21 Renew Missouri?

22 MS. GREENWALD: Alissa Greenwald on behalf of
23 Renew Missouri. My address is P.O. Box 413071, Kansas
24 City, Missouri 64141. Thank you, Judge.

25 JUDGE DIPPELL: Anyone for Sierra Club?

1 Union Electric Company?

2 And William W. Hollander and Amy Jo Hollander?

3 Okay. I think that that is everyone, unless I
4 missed someone who needed to make an entry. Not seeing
5 anybody.

6 Okay. So we are here today for a discovery
7 conference. This time this is our second conference. And
8 this time we have Grain Belt's request of the Landowners
9 Association and Show-Me Concerned Landowners.

10 Mr. Schulte, would you like to lead us off with a
11 short explanation of your discovery matter?

12 MR. SCHULTE: Sure. Thank you, Judge Dippell.
13 As you know, parties may obtain discovery regarding any
14 matter not privileged that is relevant to the subject
15 matter involved in the pending action, whether it relates
16 to the claim or defense of the party seeking the discovery
17 or a claim or defense of any other party.

18 And so in this case we are seeking discovery
19 relative to the claims of Missouri Landowners Association
20 and Show-Me Concerned Landowners. Notably, they have
21 claimed in their motion to intervene that -- MLA has
22 claimed that it has 1,100 members. Show-Me has claimed
23 that it has 400 members. And they have stated that the
24 membership in each of those groups consist -- and I'm
25 reading from the motion to intervene here of MLA, but it's

1 substantially the same in the Show-Me motion -- membership
2 in MLA consists, in large part, of people who live on or in
3 the general vicinity of the proposed route of the Grain
4 Belt transmission line; and it would, therefore, be
5 affected to varying degrees by construction of the proposed
6 line. Most, if not all, of the MLA's members joined the
7 organization because of their opposition to the proposed
8 Grain Belt line. Accordingly, most members would be
9 opposed to the application seeking approval for an
10 amendment or grant a certificate of convenience and
11 necessity to Grain Belt in this proceeding.

12 And so what we're trying to do with the discovery
13 in dispute here is simply probe into those claims, which
14 are claims that MLA and Show-Me put forth as part of this
15 proceeding. We would expect those claims to be repeated in
16 one form or another when they file their rebuttal testimony
17 on March 28th. And so we're simply trying to understand
18 the veracity of those claims. And, clearly, MLA and
19 Show-Me want to amplify their arguments and their position,
20 based on who their membership is and based on their alleged
21 opposition to the project.

22 And I can -- I can get into the details of the
23 four -- the four data requests at issue here. I can give a
24 brief summary of what those -- each of those four are
25 about, if that would help.

1 JUDGE DIPPELL: Go ahead with that summary.

2 MR. SCHULTE: The first is that DR number 3,
3 which is seeking a list of current members from each of MLA
4 and Show-Me.

5 The second is number 4, which is seeking a list
6 of members who live within 2,000 feet of the centerline of
7 the project. If we obtained number 3, then Grain Belt
8 could run its own analysis to determine, you know, the
9 proximity to the line because of the land records that
10 Grain Belt has already as part of its land acquisition
11 efforts. So, really, number 3 and number 4, you know,
12 those are -- number 4 is not necessary if we get number 3.

13 Number 6 is seeking the meeting minutes from the
14 prior three-year period. We do have the bylaws of MLA and
15 Show-Me respectively, and they both require that meeting
16 minutes be taken whenever their board of directors meets.
17 We limited it to a three-year period, because that's
18 essentially the period since MLA -- or, I'm sorry, since
19 Grain Belt was issued a certificate. It also covers a
20 period of time in which MLA or Show-Me have filed four
21 complaints against Grain Belt at the Commission. Those
22 should be easy to provide. They're required by the bylaws.
23 It's really no burden to provide those if they're kept.
24 And it goes to just the authority of MLA and Show-Me to
25 speak for their membership.

1 And number 14 is seeking the -- how many members
2 contributed money to the organizations -- I want to make
3 sure I have the details of that question correct -- how
4 many members have contributed money to MLA or Show-Me in
5 the previous 36 months and then how many in the previous 24
6 and how many in the previous 12. That relates to another
7 DR that is not at issue here, but it puts it in
8 perspective.

9 Number 12 asks the MLA and Show-Me how
10 individuals become members. And the response provided was
11 that an individual signs a membership form, either in
12 person or through the Internet. These organizations have
13 been in existence for ten years or nearly ten years or
14 more, and so it is unknown how many of those members simply
15 signed a form ten years ago but that are no longer active.
16 So number 14 is just a -- the DR -- the information sought
17 by DR number 14 is just a proxy to figure out how active
18 the membership is.

19 Those are the four that are at issue. Thank you,
20 Judge.

21 JUDGE DIPPELL: And, Mr. Agathen, did you want to
22 make a quick -- a brief response to those DRs?

23 MR. AGATHEN: Yes. Thank you, Judge. First,
24 sort of as a lead-in, I really think the key to all these
25 data requests is that Grain Belt acknowledges that this

1 case is going to be decided by whether or not it satisfies
2 the five Tartan factors. So that means that the only
3 relevant facts in this proceeding are those related to
4 those Tartan issues.

5 Now, in its discovery motion Grain Belt didn't
6 even attempt to show that any of the information it's
7 seeking would lead to prove or disprove any fact relevant
8 to the Tartan factors. So it necessarily follows that none
9 of the data requests would produce answers which tend to
10 prove or disprove a material fact in this case. And that
11 means that all of the information Grain Belt is seeking
12 fails to meet the basic legal test for relevance. So that
13 really should be the end of the entire matter right there,
14 without even going into the specifics of the four data
15 requests that are at issue.

16 Now, if you want me to, I can briefly run through
17 a quick response to each of those four data requests.

18 JUDGE DIPPELL: Yeah, go ahead.

19 MR. AGATHEN: First, data request number 3 asks
20 for a complete list of the members' names. And Grain Belt
21 argues that, when the Commission is debating the actual
22 merits of this case, the number of members in an
23 organization could somehow sway their decision. That's, I
24 think, a real unique thought; that Grain Belt hasn't proven
25 there's any logical or factual basis to support that

1 contention. And, of course, Grain Belt has the burden of
2 proving that it is relevant.

3 Data request number 4, the second one, asks for a
4 list of members who have property within 2,000 feet of the
5 proposed line. And, again, Grain Belt has provided no
6 evidence that the Commission's going to be swayed in
7 deciding the merits of this case by the number of
8 landowners within some arbitrary distance from the line.

9 The third item is data request number 6. That
10 asks for copies of all written records of membership
11 meetings and meeting minutes from the past three years.
12 Now, while we don't concede that it's relevant, we did
13 provide the evidence to Grain Belt that the boards of both
14 organizations had approved their intervention in this case.
15 And I do believe that anything beyond that is just a
16 fishing expedition on Grain Belt's part.

17 And, finally, data request number 14 asks for the
18 number of members who contributed money over the past one-,
19 two-, and three-year periods. And this information
20 supposedly would demonstrate the level of interest on the
21 part of the members of these two organizations. Well,
22 first, Grain Belt has failed to prove that the interest
23 level of the membership over the last three years is even
24 remotely relevant to any of the five Tartan factors. And,
25 in addition, the mere number of those making contributions

1 means nothing at all. For example -- and this is just
2 hypothetically -- if the MLA saw no need to solicit
3 contributions from its members over the past 12 months and,
4 therefore, received no contributions, an answer to the data
5 request of zero contributors would mean nothing.

6 And, Judge, if you don't mind, I have one final
7 point I'd like to make.

8 JUDGE DIPPELL: Go ahead, Mr. Agathen.

9 MR. AGATHEN: Thank you. I'm really concerned
10 that ruling for Grain Belt here is going to be a very
11 troublesome -- troubling precedent. It would mean that
12 every organization which intervened in a Commission
13 proceeding would be required to produce a list of its
14 members and the past three years of internal documents and
15 membership contributions, even if none of that material is
16 relevant to the merits of the actual issues in the case.

17 For example, if Grain Belt prevails here, then
18 all of Mr. Haden's agricultural clients that he mentioned
19 would be open to similar requests for irrelevant material.

20 And the same would hold true for the Sierra Club.
21 In its motion to intervene, it stated it had nearly 11,000
22 members in Missouri alone and a claim that, quote, many,
23 unquote, of those members could benefit from the Grain Belt
24 project. So if Grain Belt's successful here and a party to
25 this or, you know, some future case, if it comes up, would

1 have every right to Sierra Club's membership list, to the
2 number of members who contributed to that organization over
3 the last three years, and to the names of the individual
4 members who supposedly would benefit from the Grain Belt
5 project.

6 And one would think that, if the Commission
7 viewed this information -- this type of information as
8 useful to it, it would require it as part of that
9 application to intervene.

10 That's all I have, Judge. Thank you.

11 JUDGE DIPPELL: Thank you.

12 Mr. Schulte, Mr. Agathen said that they had
13 provided some of the information about the boards putting
14 in the intervention for DR 6. Has the Company received
15 that?

16 MR. SCHULTE: We received a supplemental response
17 to number 6, which I believe it -- so there no were minutes
18 provided. There was a description of how the votes were
19 collected from the board in order to approve the
20 intervention in this case. I believe that -- and I'm
21 not -- I don't have it in front of me right now, but my
22 recollection is there was a description of how the votes
23 were collected and a copy of an email among some of the
24 board members.

25 The problem that we have, though, with -- or our

1 concern that we have that we want to probe, and I think
2 that we have a right to probe and it's certainly relevant,
3 is that it appears that there have been numerous violations
4 of the bylaws by MLA and Show-Me. And the bylaws are -- is
5 the document by which these groups derive their authority
6 to represent their membership. And so if they have
7 violated the document that gives them the authority to
8 represent their membership, then that would certainly be
9 relevant to how the Commission views their positions in
10 this case.

11 For example, the Show-Me bylaws require that the
12 board of directors' term limits be limited to two
13 consecutive three-year terms and that one-third of the
14 board of directors should expire each year. However, in
15 response to DR number 6, Show-Me indicated that the only
16 response to this -- relevant to this request would be the
17 results of annual elections of officers, which results have
18 been the same over the prior three-year period.

19 So we're just trying --

20 MR. AGATHEN: Your Honor -- Your Honor, this is
21 Paul Agathen. We're really going beyond the scope of the
22 data requests which are at issue here.

23 MR. SCHULTE: And I'm trying to describe why we
24 simply need copies of the minutes. And, again, Mr. Agathen
25 does not get to determine, you know, how the Commission

1 views this evidence, nor do they get to assume ways in
2 which Grain Belt or the other parties might use the
3 evidence. The only issue -- the only standard is whether
4 the information sought appears reasonably calculated to
5 lead to the discovery of admissible evidence.

6 And I'd like to touch on Mr. Agathen's argument
7 that the discovery has to be related to the Tartan factors.

8 MR. HADEN: Judge, before we go -- this is Brent
9 Haden. Before we move on from that point, just for
10 economy, I guess I'd like to voice agricultural
11 associations' position as to that issue as well. I can
12 come back to it, if that's what you'd prefer. But before
13 we leave that, I'd like a chance to speak to it.

14 JUDGE DIPPELL: I'm sorry, Mr. Haden, to which
15 issue?

16 MR. HADEN: To this -- to Grain Belt's claim that
17 somehow that if they're -- let's say there was a violation
18 of the bylaws theoretically; that that somehow would
19 invalidate the intervention of this group or any other
20 group, if they have an internal violation of their own
21 bylaws.

22 JUDGE DIPPELL: Okay. Go ahead and state your
23 point.

24 MR. HADEN: I don't think that Grain Belt has any
25 standing to attempt to enforce anything on that basis, even

1 if it was true, anymore, by the way, than any of us on this
2 side of the table could come after Grain Belt if they had
3 some internal violation of their own corporate governance
4 act.

5 Let's say they did do that. Let's say they
6 violated a fiduciary duty to their own investors or
7 whatever the case may be. I don't think we can go to it
8 and say Grain Belt, therefore, doesn't have standing to
9 properly pursue this action or it invalidates their whole
10 underlying legal argument as to whether they get their CCN.

11 And the intervention decision has already been
12 made. And I think a lot of these arguments, I guess,
13 should have been made back at the intervention decision.
14 They very well may have been. But the intervention
15 decision's been made.

16 But I don't understand why they have any standing
17 at all to make some argument that, if there was an internal
18 violation of bylaws from any group on any side of the table
19 here that's a nonprofit or otherwise, that that somehow
20 would invalidate their intervention in the case that they
21 are otherwise making legally-valid points.

22 So, I mean, I just -- I guess that's the
23 argument. I think it's -- I just don't think they would
24 have the standing to make that complaint. And I don't
25 think it could be the basis of ejecting an otherwise proper

1 intervenor or attacking the underlying legal merits of
2 their argument. And if that is going to be the case, then
3 it's got to be fair play the other direction. They need to
4 give us -- I mean, we haven't asked for it, because I
5 didn't think this would ever be relevant. I guess we want
6 to see all their deep down, dirty corporate governance
7 documents to see whether they've ever had some violation of
8 their own bylaws or their own corporate governance rules
9 for the exact same reason; because if that invalidates
10 their legal standing to seek a CCN here, as they're
11 claiming it invalidates apparently the opposition to it,
12 then I think turnabout would be fair play as to that
13 question. I just don't see how it's relevant.

14 JUDGE DIPPELL: Okay. I don't think there's been
15 any argument to -- or request to reject the intervenors as
16 a party to this case.

17 MR. HADEN: Well, then I guess I'd ask
18 Mr. Schulte to clarify his argument. If that's -- if the
19 argument is they deserve to get this information -- I think
20 that's what he said -- that's going to be irrelevant too.
21 It would somehow make the arguments of the MLA or arguably
22 any other group, if they did it to another group, legally
23 invalid because they violated their own bylaws. Is that
24 not the argument, Mr. Schulte, or am I missing something?

25 JUDGE DIPPELL: Mr. Schulte, if you'd like to

1 respond, go ahead.

2 MR. SCHULTE: The argument is that the basis for
3 Show-Me and MLA's -- that the -- their attempts to amplify
4 their voice in this proceeding is based on the claims that
5 they have put in their motion to intervene. Not that we
6 are challenging their ability to intervene in the first
7 place; but we are simply trying to probe into the weight
8 that their position should be given, given their own claims
9 about the numbers of their members and the -- you know, the
10 high degree of -- or the high percentage of those members
11 that are opposed to the application.

12 That is not -- the scope is actually very narrow.
13 It's only with regard to how the membership approves of
14 interventions in PSC proceedings. It's not whether there's
15 any violation ever of their bylaws. It's whether they
16 violated the bylaws in representing their membership for
17 the purposes of this particular proceeding in this
18 particular argument that they have already put forth to the
19 Commission.

20 MR. HADEN: You're saying that you're seeking to
21 see if there was actually some vote that said they couldn't
22 do this, but they did it anyway?

23 JUDGE DIPPELL: I think we're getting a little
24 off field here. So...

25 MR. HADEN: Judge, I understand that. I'm sorry,

1 I don't want to cross-talk. I'm just trying to make sure I
2 understand their position, because -- and, also, if their
3 position is that the number of people that are opposed is
4 somehow relevant, I mean, I'd be interested to know that.
5 Because if one person makes a legally-adequate argument
6 against the project, that surely would be enough.

7 But if it does go to numbers, then -- I mean,
8 that's the whole thing. I think they would argue that's
9 not a relevant test legally. Because if one person or a
10 million people oppose it, they would say is not statutorily
11 the test on the one hand. But on the other hand, now,
12 seeking to -- or to snoop into and exclude or argue against
13 or expose some opposition because, well, they say it's X
14 number of people that are opposed, but it's really only Y
15 number, again, I don't think it's -- I don't know how that
16 would be legally relevant. If it's one person or a
17 million, if they make the right legal argument or at least
18 state the facts that tie the legal argument, that's the
19 relevancy test.

20 This is just -- this sounds like just like an
21 attempt to try to embarrass MLA or feasibly some other
22 group by saying, well, you don't really represent all that
23 many people. What if they only represented one or two
24 people, but they made the right arguments against the CCN?
25 Surely that would be enough, without having a chilling

1 effect on the associated and free speech of, you know,
2 power of two or a million or however many people in between
3 are opposed.

4 So that's our argument against relevance. And
5 I'll pipe down now for a minute. I may have some other
6 question. But I think -- I think the Bench would
7 understand what I've argued.

8 JUDGE DIPPELL: Thank you, Mr. Haden.

9 MR. HADEN: Thank you.

10 JUDGE DIPPELL: Do -- would Staff or any of the
11 other parties like to express an opinion? Not hearing
12 anything.

13 MR. SCHULTE: If I may respond briefly? Again,
14 we're not asking the Commission -- we don't need to assume
15 or make a decision on how the Commission would weigh this
16 information. The only question before -- before you, Judge
17 Dippell, is whether it is reasonably calculated to lead to
18 the discovery of admissible evidence regarding a claim or
19 defense of a party in this case.

20 And the claim -- I mean, if you read the claims
21 of the Show-Me Landowners and MLA, we're just asking
22 directly about the claims that they have made. We're not
23 asking for anything outside of the claims that they
24 themselves have made. And it's the same claims that have
25 been made in numerous complaints before this Commission and

1 again repeated here in this proceeding.

2 So, you know, we've been responding to and
3 addressing these claims from MLA and Show-Me for -- for a
4 number of years now, and we simply want to understand how
5 these organizations operate. Grain Belt has answered many
6 hundreds of data requests from MLA and Show-Me and other
7 parties. I think everybody knows exactly how Invenergy
8 operates and how -- the organizational structure of
9 Invenergy and how Invenergy operates and who its officers
10 are. We're just asking a few pointed questions about the
11 same information from MLA and Show-Me. It's really not as
12 burdensome as Mr. Haden makes it out to be.

13 JUDGE DIPPELL: Okay. Does anyone have a request
14 to file anything else with regard to these data requests?
15 I'm considering what we've talked about and the previous
16 filings to basically be a motion to compel the discovery
17 and the answers.

18 I don't want to drag it out any longer than we
19 have to, so I guess my question is: Is there a need for
20 any further responses, besides what we've discussed here
21 today, following this discovery conference, before the
22 Commission makes a decision?

23 MR. HADEN: Judge, this is Brent Haden again.
24 The only thing I'd ask for is -- I mean, I touched on this
25 one point, but I'd ask for about three minutes of argument

1 more broadly to the underlying four questions here and put
2 on the record today. But that's all I would need.

3 JUDGE DIPPELL: Okay. Hold that thought then.

4 MR. HADEN: Yes. Thank you.

5 JUDGE DIPPELL: Mr. Schulte, you were going to
6 say something else?

7 MR. SCHULTE: Yes. I had another oral argument
8 to make regarding something that Mr. Agathen raised. But
9 we don't see a need to file additional written argument.

10 JUDGE DIPPELL: Okay. And, Mr. Agathen, are you
11 in the same position?

12 MR. AGATHEN: If Grain Belt is not going to be
13 filing anything, Judge, then I see no need for us to.

14 JUDGE DIPPELL: Okay. Mr. Haden, I'll let you go
15 ahead with your statement first.

16 MR. HADEN: Judge, I would just say, I mean, this
17 is, I think, a really poor showing from Grain Belt. I
18 think what is happening is that actually they're seeking to
19 find the names and identities of the members of a nonprofit
20 association who opposes their work. It really has at its
21 core a -- you know, it's going to be about exposing,
22 shaming, pressuring, trying to divide these groups in a way
23 that has nothing to do with the underlying legal issues,
24 nothing to do with the CCN.

25 Note that Grain Belt itself sought -- has sought

1 protective orders and has protective orders in place as
2 relates to all sorts of information, partly in an
3 argument -- one of their arguments, as especially against
4 landowners, that they should not have any information
5 outside of the protective order because it would give them
6 some advantage over the Company in a negotiation.

7 Now, putting aside, that's a somewhat --

8 MR. SCHULTE: I'm sorry, what --

9 MR. HADEN: -- absurd argument, when they're
10 using a -- I'm talking about the protective order you moved
11 forth at the beginning of the case, Mr. Schulte.

12 Putting aside that that is a rather absurd
13 argument, given that they have eminent domain authority --
14 they can statutorily compel the sale of these properties --
15 they have made those arguments that they need that sort of
16 protection.

17 The Tartan test sets out the factors, and the
18 statute sets out the factors. None of those factors are,
19 well, did enough people show up and holler about this or
20 not, and so -- or did we find that some of these people --
21 either there's not enough people in the group that was
22 opposed or these people don't all seem to be of the same
23 mind as to every single issue or whatever reason they're
24 trying to get into this information. How many people
25 opposed it, especially after the intervention, is not

1 relevant to the underlying test for granting the CCN under
2 the Tartan factors or under the underlying statutes.

3 Same goes to within -- you know, the number of
4 people within 2,000 feet of the line. And same goes to
5 their membership meeting minutes or whatever the case may
6 be. And certainly as to how many people contributed money,
7 which is really interesting in that -- I mean, the whole
8 reason people have to collectivize these efforts is
9 because an individual landowner cannot take on a
10 multimillion-dollar company who's trying to take their
11 property by eminent domain by themselves. They simply
12 can't do it financially. It's not plausible.

13 And so I guess I can't -- I don't normally get
14 this animated, but I can't state the opposition of our
15 groups vociferously enough to this sort of abuse of
16 discovery, which I think does have an improper purpose and
17 doesn't have -- certainly -- whether it has an improper
18 purpose or not within their heart, certainly does not have
19 any purpose to lead to admissible, relevant information for
20 the underlying questions in this lawsuit.

21 And, you know, assuming that the five
22 agricultural associations may be next, I mean, we'd be back
23 making the exact same objections, which is one reason I've
24 said as much as I have today about it. Also, there is
25 crossover in the membership of MLA, certainly in the

1 agricultural associations, because some of these people are
2 agricultural producers.

3 None of these -- none of these are relevant
4 requests. And I think that -- I mean, on their best day
5 their argument apparently is to say, well, not that many
6 people are opposed. And how many people are opposed is not
7 one of the factors I think that you'll consider. If it is,
8 then I guess we'll roll up a bunch of evidence that goes to
9 how many people are opposed, but -- I mean, statewide or
10 whatever the case -- or nationwide, whatever the case may
11 be, if they think that's a relevant question. But that's
12 -- I don't see anywhere in the law that it is, for better
13 or worse. And so I don't think any of these requests are
14 relevant.

15 JUDGE DIPPELL: Okay. Thank you.

16 Mr. Schulte, you wanted to say something further?

17 MR. SCHULTE: I don't think Mr. Haden has any
18 basis to claim the purpose for which we're seeking this
19 information is any way improper. We're simply -- read a
20 claim that was made by a party to this case and wanted to
21 find out more information about it. That is not an
22 improper purpose.

23 Also, we keep going back to the Tartan factors,
24 as if the only test for relevancy is whether it fits within
25 the Tartan factors. That is also not the basis for

1 relevancy of discovery. The basis for relevancy on
2 discovery is whether it's related to any claim or defense
3 by any party. And that's all we're seeking.

4 The Tartan factors is certainly the standard by
5 which the Commission will determine whether to grant the
6 CCN or not, and that's the -- those are the factors that
7 the -- that Grain Belt has an obligation to satisfy. But
8 if other parties make other claims along the way, then we
9 can issue discovery about those claims. And that's exactly
10 what we've done here.

11 It's not improper to issue discovery. We've
12 issued a total of 14 discovery requests to the intervenors
13 in this case. We have answered many hundreds, maybe -- we
14 may be over a thousand at this point of DRs from other
15 parties, you know, testing claims that Grain Belt has made.
16 That's perfectly appropriate. That's what discovery is
17 for; it's in order to understand where the other parties
18 are coming from.

19 That's all we're trying to understand here is
20 simply -- we read claims that were made by MLA and Show-Me,
21 and we wanted some more information about those claims.
22 That's it.

23 JUDGE DIPPELL: Okay. Mr. Agathen, did you have
24 any final remarks or have you made all of your arguments?

25 MR. AGATHEN: Thank you. Just real quickly, I've

1 got two points. Mr. Schulte said that our testimony, which
2 is due on March 28th, is most likely or will surely or
3 something like that reiterate the claims about the numbers
4 of members and other information related to the data
5 requests. And I can guarantee you that that will not be
6 the case. There will be nothing about that in any
7 testimony, if there is any, filed by either of these
8 organizations at March 28th.

9 And then just one other point, Judge. You asked
10 the question about whether there was any evidence that the
11 boards had approved intervention in this particular case,
12 if I'm not mistaken. And if you're still interested in
13 that, I would refer you to our supplemental responses to
14 data request number 11 from both organizations, which were
15 attached to our response to the motion for discovery
16 conference.

17 JUDGE DIPPELL: Okay. What I was referring to, I
18 was just trying to make sure, if part of the discovery
19 request had been satisfied, I wanted to know that.

20 MR. AGATHEN: Okay, Judge, sorry.

21 JUDGE DIPPELL: Yeah. No, that's fine.

22 Okay. Well, with that, like I say, if there's no
23 need to have any further motions or answers filed, we'll
24 just consider that a motion to compel and answered orally,
25 and the Commission can make a ruling on that.

1 I do expect the Commission to rule on the
2 previous discovery request at their agenda this week.

3 Are there any of those discovery requests that
4 have been satisfied or withdrawn since we last discussed,
5 if anyone knows?

6 MR. AGATHEN: Judge, this is Paul Agathen.
7 Nothing's been done with respect to any of those, as far as
8 I know.

9 JUDGE DIPPELL: Okay.

10 MR. THOMPSON: Judge, if I could. This is Staff.
11 We're still waiting for the MOUs that were discussed at the
12 last discovery conference.

13 JUDGE DIPPELL: Okay. All right. Does anyone
14 have any final remarks that they would like to put on the
15 record?

16 All right. Seeing none, I thank you all for your
17 participation. And I thank our newest court reporter
18 volunteer from the Administrative Hearing Commission.

19 And we can go ahead and go off the record.

20 Thank you.

21 MR. AGATHEN: This is Paul Agathen, Judge. Thank
22 you.

23 (Off the record.)

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C E R T I F I C A T E

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

I, Angie D. Threlkeld, CCR and Registered Professional Reporter for the State of Missouri, that I was personally virtually present at said hearing and reported said proceedings, and the machine shorthand notes so made at the time and place mentioned on the title page hereof were transcribed under my direction and supervision by means of computer-aided transcription, and that the foregoing pages constitute a true, complete, and accurate transcript of the digital recording and my said machine shorthand notes.

Witness my hand this 14th day of March, 2023.



Angie Threlkeld, CCR, RPR