

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

**RESPONSE TO MOTION TO COMPEL AND
MOTION FOR RECONSIDERATION**

COMES NOW Walmart, Inc. (“Walmart”), pursuant to Commission Rules 4 CSR 240-2.090 and 240-2.160, and for its Response to Motion to Compel and Motion for Reconsideration respectfully states as follows:

BACKGROUND

1. On January 24, 2017, Walmart filed the Rebuttal Testimony of Steve W. Chriss. In that testimony, Mr. Chriss addresses the need for the Grain Belt Express transmission line as well as the public interests supporting the Commission granting a certificate of convenience and necessity to the Grain Belt project. As basis for his belief that the public interest weighs in the favor of this project, Mr. Chriss points out that the Grain Belt line would allow for the delivery of renewable energy to Missouri as well as to the MISO and PJM service areas to the east. Mr. Chriss points out that in Illinois, as well as much of the PJM footprint, customers are able to independently arrange for the purchase of energy. For companies that have made commitments to renewable energy, this allows these companies to independently purchase renewable energy such as that delivered by the Grain Belt project. Mr. Chriss notes that Walmart has availed itself of this opportunity to buy renewable energy through a subsidiary, Texas Retail Energy.

2. On February 7, 2017, the Missouri Landowners Alliance issued 7 data requests to Walmart. Included in these data requests were three data requests that sought to extract certain information in the control of Texas Retail Energy. Specifically, those three data requests are as follows:

SC.1: Over the last 12 month period for which data is available, please state how many MWs and MWhs of electrical power were purchased by Texas Retail Energy for Walmart facilities in the Illinois MISO footprint, and the total amount paid by Texas Retail Energy for that power.

SC.2: Over the last 12 month period for which data is available, please state how many MWs and MWhs of renewable electrical power were purchased by Texas Retail Energy for Walmart facilities in the Illinois MISO footprint, and the total amount paid by Texas Retail Energy for that power.

SC.3: For the last 12 month period for which data is available, for purchases of power made within the United States by Texas Retail Energy, what percentage (by either dollars or MWhs) was for renewable energy and what percentage was for non-renewable energy?

3. On February 15, 2017, Walmart provided full and complete responses to 4 of the MLA data requests and objected to the three data requests related to Texas Retail Energy. Specifically, Walmart objected as follows:

Walmart objects to this question on the basis that it seeks information wholly irrelevant to the immediate proceeding. Furthermore, Walmart objects to this data request on the basis that it seeks to discover information from an entity (Texas Retail Energy) that is not a party to this proceeding. As such, the information sought in this data request is not within the possession of Walmart. Additionally, this data request seeks to discovery confidential and competitive information. Such information constitutes commercially sensitive business information, trade secrets or other confidential research, development or commercial information. Finally, the probative value of the information sought is greatly outweighed by the harm disclosure would cause.

4. On February 17, 2017, MLA filed its Motion to Compel responses to the three data requests related to Texas Retail Energy. On March 1, 2017, lacking any response from Walmart, the Commission issued its unopposed Order granting the MLA Motion to Compel.

RESPONSE TO MOTION TO COMPEL

5. As mentioned, Walmart believes that MLA's attempt to extract information related to Texas Retail Energy is inappropriate. ***First***, the information sought is irrelevant. As MLA points out in its Motion to Compel, the existence of Texas Retail Energy, and its ability to independently purchase renewable energy in MISO and PJM on behalf of Walmart, is relevant to this proceeding. The existence of such companies demonstrates the public interest in having projects like the Grain Belt transmission line deliver renewable energy from Kansas into MISO and PJM. While the existence of Texas Retail Energy is relevant, the information sought by MLA is entirely irrelevant. Specifically, the number of MW's and MWh's purchased by Texas Retail Energy in MISO, PJM and nationwide, ***as well as the "total amount paid by Texas Retail Energy" for such energy***, is not relevant to Mr. Chriss' opinion of the public interest, nor of the Commission's consideration of the public interest. Instead, these data request represent a massive overreach by MLA and a flagrant abuse of the Commission's discovery process.

As the Commission has previously recognized, the relevance of requested information is determined by considering both the logical and the legal relevance of the requested information.¹ In assessing the legal relevance of the requested information, the Commission 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."²

In the case at hand, the prejudicial effect of the requested information greatly outweighs any probative value that information may have. As described, *infra*, the requested information is

¹ See, *Order Denying Motions to Compel*, issued December 21, 2016.

² *Id.*

of extreme sensitivity. Information related to the price paid and the amount of energy purchased would undermine Texas Retail Energy's ability to effectively negotiate such arrangements in the future. Certainly, then, the probative value is outweighed by the prejudicial effect and the information sought must be deemed legally irrelevant.

6. **Second**, the data requests seek to reach beyond the party intervening in this case (Walmart) and seek to extract information from affiliates and subsidiaries. Recognizing that a large number of industrial customers that participate in Commission proceedings have a global presence involving numerous subsidiaries and affiliates, a Commission order granting the MLA data requests could have a chilling effect on the willingness of such parties to participate in Missouri Commission proceedings. More disconcerting, lacking the participation of such parties, the Commission's ability to assess the public interest will be hampered. As such, the public interest certainly points to some reasonable limitation on the ability of parties to seek discovery on non-parties.

7. **Third**, the information sought is of utmost sensitivity. Specifically, the data requests seek to discover the number of MWh's purchased by Texas Retail Energy as well as the amount paid by Texas Retail Energy. A simple calculation would allow any party to rapidly deduce the \$ / MWh purchased. The ability of Texas Retail Energy to negotiate future arrangements will be severely hampered by the potential disclosure of such information. The risk of disclosure of such sensitive information outweighs the limited probative value that such information may have.

8. Walmart suggests that a more narrowly tailored data request would simply ask Mr. Chriss' understanding of the areas in which Texas Retail Energy has made purchases for Walmart and the percentage of such purchases that were renewable energy. In its telephone

conference with counsel for MLA, Walmart offered to provide such information. This compromise was rejected by counsel.

MOTION FOR RECONSIDERATION

9. As indicated, *supra*, the Motion to Compel was filed on February 17. On March 1, having not received any opposition to the motion, the Commission issued its Order granting the MLA Motion to Compel. Walmart hereby seeks reconsideration of that decision.

10. As the Commission is undoubtedly aware, undersigned counsel has been deeply involved in litigating the pending KCPL rate case as well as settling the pending Ameren rate cases. Indeed, the KCPL evidentiary hearing was just completed yesterday, February 28. Missouri statutes provide that such rate cases take “preference over all other questions pending before” the Commission.³ As a result of the KCPL and Ameren rate cases, undersigned counsel was unable to provide the following response in the 10 days typically provided by the Commission for response to motions. As such, Walmart asks that the Commission reconsider its Order Granting Motion to Compel in light of this response.

11. Commission Rule 4 CSR 240-2.160(3) provides that “[t]he filing of a motion for reconsideration shall not excuse any party from complying with any order of the commission, nor operate in any manner to stay or postpone the enforcement of any order, unless otherwise ordered by the commission.” The Commission’s March 1 Order Granting Motion to Compel provides that Walmart shall provide responses to the MLA data requests no later than March 7, 2017. Walmart hereby requests that the Commission stay enforcement of its Order Granting Motion to Compel pending its consideration of this response.

WHEREFORE, Walmart respectfully requests that the Commission issue its order granting motion for reconsideration and denying MLA’s motion to compel.

³ See, Section 393.150.2.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing pleading has been served by electronic means on all parties of record as reflected in the records maintained by the Secretary of the Commission through the EFIS system.

/s/ David Woodsmall

David Woodsmall

Dated: March 1, 2017.