

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

**OPPOSITION OF INFINITY WIND POWER TO  
SHOW ME'S MOTION TO STRIKE**

Infinity Wind Power (Infinity) hereby submits its opposition to *Show Me Concerned Landowners' Motion to Strike Testimonies of Langley and Goggin* (Motion to Strike), filed on January 30, 2017, and states the following:

1. Show Me argues that the testimonies of Matt Langley on behalf of Infinity, and Michael Goggin on behalf of Wind on the Wires and the Wind Coalition, should be stricken from the record based on its unsupported and narrow interpretation of Commission rule 4 CSR 240-2.130(7).

2. Show Me not only argues that 4 CSR 240-2.130(7) requires rebuttal testimony to be *only that* which “constitutes a rejection, disagreement, or proposed alternative to the direct case”<sup>1</sup> but also that the Commission’s rule “requires that direct testimony contain all of the party’s case-in-chief” and that an applicant may not “by itself or by a surrogate, supplement its case in chief by rebuttal testimony.”<sup>2</sup> Infinity is not a joint applicant in this matter, nor is it a “surrogate” of Grain Belt Express Clean Line LLC (Grain Belt Express). Black’s Law Dictionary defines surrogate as “a person appointed to act in the place of another < in his

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<sup>1</sup> Motion to Strike, ¶¶ 4-5.

<sup>2</sup> Id. at ¶ 4.

absence[.]”<sup>3</sup> Therefore, Show Me’s argument that Infinity was required to file direct testimony at the time of Grain Belt Express’ Application, and Show Me’s depiction of Infinity as a surrogate for Grain Belt Express, are inappropriate and flawed.

3. Infinity, like Show Me, is an intervenor in this matter. As stated in its request for intervention, Infinity is supportive of Grain Belt Express’ Application, and is participating in this matter in order to offer its experience as a Midwest wind developer to the Commission as this matter is being deliberated.<sup>4</sup> Show Me, on the other hand, intervened in opposition to Grain Belt Express’ Application. Based on Show Me’s narrow interpretation of the Commission’s rule, Show Me would be allowed to file two rounds of testimony, but Infinity would be limited to one. The Commission placed no such limitation on Infinity when it granted intervention.

4. In the event that Infinity were restricted to filing only cross-surrebuttal testimony, it seems plausible that Show Me would then file a Motion to Strike for impermissibly raising new issues for the first time in surrebuttal, thereby denying Show Me the opportunity to fully prosecute its case and file testimony responsive to Infinity’s. With that said, it seems appropriate that parties supportive of an Applicant file rebuttal testimony responsive to the direct case in order to allow those in opposition the opportunity to respond during cross-surrebuttal, so as to avoid due process arguments.<sup>5</sup> This is exactly what Infinity did.

***Show Me Raised No Procedural Objections During the Development of the Schedule***

5. On September 28, 2016, Infinity and Show Me, along with other parties to the proceeding, participated in a procedural conference in this matter. At no time did Show Me raise

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<sup>3</sup> BLACK’S LAW DICTIONARY 1485 (8<sup>th</sup> ed. 1<sup>st</sup> Reprint - 2004).

<sup>4</sup> Application to Intervene of Infinity Wind Power, ¶ 4, (filed Sept. 8, 2016).

<sup>5</sup> In the event the Commission directs Infinity to file only cross-surrebuttal testimony, the Commission should make clear that Show Me is prohibited from raising such due process arguments at that time.

concern with regard to the timing or nature of the testimonies anticipated to be filed by parties supportive of Grain Belt Express' Application.

6. As the Commission is aware, Infinity and Show Me both participated in Grain Belt Express' previous certification efforts in File No. EA-2014-0207. As a participant in that previous docket, Show Me was clearly aware at the time of the procedural conference in this matter, of the type of testimony expected to be filed by Infinity,<sup>6</sup> yet it raised no concern with regard to this issue at that time.

7. It should also be noted that in File No. EA-2014-0207, Show Me did not file to strike Infinity's testimony as impermissible under 4 CSR 240-2.130(7). Perhaps more importantly, the Commission did not reject, *sua sponte*, Mr. Langley's Rebuttal testimony as contrary to rule 4 CSR 240-2.130(7). Rather, the Commission admitted Mr. Langley's Rebuttal testimony into the record.<sup>7</sup> In the instant case, Infinity filed its testimony consistent with how it filed testimony in File No. EA-2014-0207, and it should not now, without prior notice, be treated differently in this proceeding.

### ***Infinity's Testimony in This Matter is Not Speculative***

8. Finally, Infinity takes exception with Show Me's characterization of Mr. Langley's testimony as "speculation."<sup>8</sup> There is nothing speculative about the 20-year term fixed-price contract that Infinity entered into with the Missouri Joint Municipal Electric Utility Commission (MJMEUC). While the contract is contingent on the approval of the Grain Belt

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<sup>6</sup> Show Me acknowledges this fact in its Motion to Strike (see ¶7).

<sup>7</sup> Infinity notes that the Commission did not accept into the record an exhibit attached to Mr. Langley's Cross-Surrebuttal testimony, but that determination was made regarding a challenge by the MLA to the Cross-Surrebuttal testimony pursuant to RSMO 536.070(11). No challenges were made with regard to Mr. Langley's Rebuttal testimony, which was similar in nature to that which was filed in the instant matter.

<sup>8</sup> Motion to Strike, ¶7.

Express Project, the contract itself is not speculative in nature. In fact, MJMEUC attached a fully executed copy of that contract to its testimony in this matter.

***Conclusion***

9. In conclusion, Granting Show Me's Motion to Strike would be contrary to the Commission's past treatment of similar testimony filed by Infinity. Moreover, adopting Show Me's narrow view of 4 CSR 240-2.130(7) would be a radical departure from how the Commission has applied the rule in the past. For these reasons the motion should be denied.

WHEREFORE, for the reasons set forth above, Infinity Wind Power respectfully requests the Commission deny Show Me's *Motion to Strike the Testimonies of Langley and Goggin*.

Respectfully submitted,

***/s/ Terri Pemberton***

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**ATTORNEYS FOR INFINITY WIND POWER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served upon the parties to this proceeding by email or U.S. Mail, postage prepaid, this 9<sup>th</sup> day of February 2017.

*/s/ Terri Pemberton*

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Terri Pemberton  
Attorney for Infinity Wind Power