

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Grain Belt)
Express LLC for an Amendment to its Certificate)
Of Convenience and Necessity Authorizing it to) File No. EA-2023-0017
Construct, Own, Operate, Control, Manage, and)
Maintain a High Voltage, Direct Current)
Transmission Line and Associated Convertor)
Station.

**RENEW MISSOURI’S RESPONSE IN OPPOSITION TO
MOTION FOR SUMMARY DISPOSITION AND LEGAL MEMORANDUM**

COMES NOW Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”) and pursuant to the Commission’s October 31, 2022 *Order of Correction and Setting Time for Responses to Motion for Summary Disposition* respectfully submits its Response to the Motion for Summary Disposition filed by the Missouri Landowners Alliance (“MLA”). For its Response, Renew Missouri states the following:

I. Background

1. On July 12, 2022, Grain Belt Express LLC (“Grain Belt” or the “Company”) filed a Notice of Intended Amendment Filing in File No. EA-2016-0358, providing notice it would file its Application to Amend the existing Certificate of Public Convenience and Necessity (“Application”) in 60 days. The Commission then opened the present docket and directed filing of the Application therein.

2. On October 28, 2022, MLA filed its Motion for Summary Disposition (“Motion”) and a legal memorandum in support thereof.

3. On October 31, 2022, the Commission issued its *Order of Correction and Setting Time for Responses to Motion for Summary Disposition* directing responses to MLA’s Motion be filed no later than November 28, 2022.

II. Standard of Review

4. Under Commission Rule 20 CSR 4240-2.117(1)(E), the standard for approval of MLA’s Motion requires a showing that (1) there is no genuine issue as to any material fact, (2) the moving party is

entitled to relief as a matter of law as to all or any part of the case, and (3) the Commission determines granting summary relief is in the public interest.¹ As discussed herein, MLA's Motion fails to meet these elements and the Commission should therefore deny summary disposition.

III. Response to MLA's Statement of Facts

4. Renew Missouri neither admits nor denies any of the factual statements asserted in MLA's Motion.

5. While Renew Missouri is not in a position to admit or deny material facts on behalf of Grain Belt, Renew Missouri would like to note that the operative fact upon which MLA relies, that, "... once Grain Belt decided to make these changes, as described in its verified Application to Amend, it necessarily conceded that it was no longer seeking to build the project approved in the Original CCN case,"² is neither included in MLA's statement of undisputed facts nor supported by facts on the record.

IV. Legal Memorandum in Opposition to MLA's Motion

As a preliminary matter, the idea that the MLA's argument is ripe contravenes the procedural process undertaken by the Commission in this matter. At the time MLA filed its Motion, and as of the filing of this Response, discovery is still ongoing and in its early stages. As evidence continues to be discovered, MLA's filing must be denied as material facts are still being disclosed. MLA's Motion is premature at best and frivolous at worst.

a. MLA has failed to demonstrate that no material facts are in dispute.

MLA moves for summary disposition on the basis that, because Grain Belt filed an Application to Amend its Existing Certificate of Public Convenience and Necessity ("CCN"), it has abandoned the CCN granted to it by the Missouri Public Service Commission ("PSC" or the "Commission") in Case No. EA-2016-0358.³ However, this statement is factually unsupported and moreover blatantly false as Grain Belt has expressly confirmed its intention to continue developing the original project and has made substantial progress in doing so.

¹ Commission Rule 20 CSR 4240-2.117(1)(E).

² EFIS File No. EA-2023-0017, Doc. No. 65, pg. 10.

³ *Id.* at pg. 1.

The notion that Grain Belt has affirmatively abandoned its CCN authority by filing for an amendment is the operative fact upon which MLA bases its argument, however, this statement is not only not asserted as an undisputed material fact by MLA, but is wholly unsupported by facts on record. In fact, Grain Belt's Application makes clear that it has no intention of abandoning its current CCN.⁴ Rather, Grain Belt's Application is consistent with the Commission Order previously granted to the Company, which specifically contemplated the possibility of changes to the project in the future and directed Grain Belt to make an *updated* filing for *further* review if and when changes were to be made to the original project.⁵ In line with this condition and its intention to update rather than abandon the project, Grain Belt filed notice for an amendment that the Company believes to be preferable and in the public interest.⁶

Grain Belt's statement that it continues to develop the original project rather than abandoning it is supported by the Company's progress in securing voluntary easements on approximately 72% of the existing route across Kansas and Missouri.⁷ In addition, Grain Belt has made over \$11 million in upfront easement signing payments to landowners.⁸ The Company has conducted extensive outreach and hired over twenty agents in support of the land effort.⁹ Further, the Grain Belt has developed and begun planning an extension of its original outreach efforts that it intends to conduct along the extended Tiger Connector route.¹⁰

In addition to its progress in land acquisition, Grain Belt has satisfied the Kansas Corporation Commission's deadlines for easement acquisitions as a condition of retaining siting authority in Kansas, achieved approvals from the Indiana Utility Regulatory Commission to authorize Invenergy Transmission to proceed with the project in Indiana, worked with Illinois stakeholders to advance legislation permitting Grain Belt's filing of a CCN with the Illinois Commerce Commission, filed a CCN with the Illinois

⁴ See EFIS File No. EA-2023-0017, Doc. No. 10, pg. 7, stating, "The Certificated Project remains viable, feasible and in the public interest, and Grain Belt Express is continuing to develop the Certificated Project."

⁵ EFIS File No. EA-2016-0358, Doc. No. 758, pg. 52.

⁶ EFIS File No. EA-2023-0017, Doc. No. 10, pg. 7.

⁷ EFIS File No. EA-2023-0017, Doc. No. 21, pg. 6.

⁸ *Id.*

⁹ *Id.*

¹⁰ EFIS File No. EA-2023-0017, Doc. No. 21, pg. 6-13.

Commerce Commission, submitted and advanced interconnection requests with MISO, signed an interconnection agreement with AECl, and advanced through the interconnection process with PJM Interconnection and Southwest Power Pool.¹¹

b. MLA cites no relevant authority indicating that it is entitled to judgment as a matter of law.

In addition to its failure to cite any material facts indicating that Grain Belt has abandoned its CCN authority, MLA fails to demonstrate that it is entitled to judgment as a matter of law. Rather, MLA's legally unsupported assertions are yet another attempt to revive an argument that the Commission has previously rejected.¹²

As noted by the Commission in its Report and Order in MLA's previous complaint case, there is no statutory provision that provides for the termination of CCN authority outside of expiration due to inaction.¹³ While Section 393.170, RSMo authorizes the Commission to grant CCNs and requires Commission approval for an electrical corporation to begin construction of an electrical plant, it provides no mechanism in which the Commission may revoke a CCN once granted.¹⁴ The Missouri Supreme Court has also confirmed the PSC does not have the authority to revoke a CCN.¹⁵ However, authority conferred by a CCN must be exercised within a period of two years from its granting, otherwise it is null and void.¹⁶ There is no statutory provision governing the affirmative abandonment of a previously granted CCN outside of the two-year expiration for inaction.¹⁷

While MLA argues that Grain Belt *can* abandon its CCN authority if it so chooses, this argument alone fails to carry MLA's burden of demonstrating entitlement to judgment as a matter of law as Grain Belt expressly disputes the assertion that it has abandoned its CCN. Finally, MLA cites no statutory authority indicating that a utility cannot amend an existing CCN.

¹¹ EFIS File No. EA-2023-0017, Doc. No. 11, pg. 9-10.

¹² See EFIS File No. EC-2021-0059, Doc. No. 66.

¹³ *Id.*

¹⁴ Section 393.170, RSMo.; See also EFIS File No. EC-2021-0059, Doc. No. 66, pg. 15.

¹⁵ *State ex rel. City of Sikeston v. Public Service Com'n of Missouri*, 82 S.W.2d 105 (Mo. 1935).

¹⁶ Section 393.170, RSMo.

¹⁷ EFIS File No. EC-2021-0059, Doc. No. 66, pg. 15.

V. Conclusion

As Grain Belt has clearly exercised its CCN authority since its granting and has also expressly stated that it has no intention of abandoning its CCN authority, MLA's factual and legal arguments fall short. At the very minimum, genuine issues of material fact exist and summary disposition should be denied.

WHEREFORE, for the reasons stated above, Renew Missouri respectfully requests the Commission deny MLA's Motion for Summary Disposition, along with any further relief the Commission deems proper.

Respectfully,

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Certificate of Service

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 28th day of November 2022:

/s/ Alissa Greenwald