

**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.)

MOTION FOR PROTECTIVE ORDER OF INFINITY WIND POWER

Infinity Wind Power (Infinity), pursuant to 4 CSR 240-2.135(2),(6), and Missouri Supreme Court Rule 56.01(c), hereby moves the Public Service Commission of the State of Missouri (MPSC or Commission) for a protective order prohibiting disclosure of Infinity’s commercially sensitive business information to any party to this proceeding. Any disclosure of the information that is the subject of this Motion will irreparably harm the competitive interests of Infinity and potentially subject it to litigation. The Commission’s rules governing the designation of confidential information are not sufficient to protect Infinity’s interest. Rather, the dissemination of the information, even if confidentially designated, is competitively and legally harmful to Infinity. In support of its Motion, Infinity states the following:

1. On October 16, 2016, the Missouri Landowners Alliance (MLA) issued to Grain Belt Express Clean Line LLC (Grain Belt Express or Applicant) witness Mr. David Berry data requests DB.40 and DB.41, attached hereto as **Attachment A.**¹ The data requests seek company-specific information pertaining to the request for information (RFI) issued to wind generators by Grain Belt Express on or around November 2013, and certain wind developer pricing information relating to the RFI.

¹ For sake of brevity, only the relevant pages are provided – the first and fifth pages. The original document is eleven (11) pages long, consisting of one hundred and six (106) questions.

2. On November 30, 2016, MLA filed its *Motion to Compel, and Request to Take Administrative Notice* (Motion to Compel) noting that Grain Belt Express provided to MLA hundreds of pages of information in response to data request DB.40,² but arguing that the information was insufficient to allow MLA to fully prosecute its case.³ MLA also noted that the information it currently seeks is essentially the same information it sought from Grain Belt Express in File No. EA-2014-0207.⁴

3. In File No. EA-2014-0207 the Commission issued an *Order Denying Motion to Compel and Granting Motions for Protective Order* on September 24, 2014 (Protective Order), wherein it found that “disclosure of the requested information would be harmful to the business interest of TradeWind and Infinity[,]” that release of the information “would negatively impact their ability to negotiate power contracts with customers[,]” and that “[d]esignation of this information as highly confidential, which permits disclosure to a party’s attorneys and expert witnesses, would not adequately protect the information because once that information is known to other persons it could be utilized in the future in other forums.”⁵ MLA offers no analysis in its current Motion to Compel as to why the Commission should disregard its previous findings and compel the disclosure of this same information.

4. On December 12, 2016, Grain Belt Express filed its opposition to MLA’s Motion to Compel, wherein it explained that the RFI information is relevant to the Application only in the sense that it provides information regarding the quality, cost, and abundance of wind resources in Kansas, and is not being used to evaluate specific wind farms to connect to the

² Motion to Compel, ¶ 3.

³ Motion to Compel, ¶¶ 6-8.

⁴ In File No. EA-2014-0207, MLA also sought disclosure of company specific wind generator information⁴ from Infinity, and TradeWind Energy, Inc. (TradeWind). Infinity⁴ and TradeWind⁴ both filed requests for a protective order to prevent the dissemination of the information.

⁵ Protective Order, p. 6.

Project, or in order to select customers for the Project.⁶ Grain Belt Express confirmed that it had provided to MLA significant amounts of redacted information, and noted that MLA has sufficient information to conduct its analysis and verify the assertions made by Grain Belt Express in support of its Application.⁷

5. Grain Belt Express argued that the information sought by MLA is not relevant to the five criteria under which the Commission will evaluate the Application in this matter,⁸ that it has provided adequate discovery to MLA, that dissemination of the remaining information sought by MLA will harm not only the RFI wind generator respondents,⁹ but also Grain Belt Express and Clean Line,¹⁰ and that MLA can verify the range of wind speeds in Western Kansas with publically available information.¹¹ Grain Belt Express also noted that the information currently sought by MLA is similar to the information sought by MLA in File No. EA-2014-0207 and protected by the Commission, and stated its belief that the information should be treated the same in this docket as it was in Grain Belt Express' previous docket.¹² Infinity supports the reasoning offered by Grain Belt Express, and incorporates herein Grain Belt Express' legal arguments.

MLA Discovery to Other Parties to the Proceeding

6. In addition to the discovery issued to Grain Belt Express, the MLA issued to the Missouri Joint Municipal Electric Utility Commission (MJMEUC) on October 26, 2016, a data

⁶ Grain Belt Express' Opposition, p. 2.

⁷ Id. at pp. 2-3.

⁸ Id. at p. 6.

⁹ Id. at pp.7-9.

¹⁰ Id. at pp. 9-10

¹¹ Id. at pp. 10-11.

¹² Id. at p. 3.

request consisting of twenty-seven questions seeking, *inter alia*, disclosure of “all documents, correspondence and communications between MJMEUC...and prospective wind farms...related to the purchase of energy by MJMEUC for transmission over the Grain Belt Express line...” A similar question was posed for all MJMEUC member utilities. (Questions, MJM.10 and MJM.12, respectively). A copy of the MLA’s data request is attached as **Attachment B**.

7. On November 7, 2016, Infinity filed a Motion for Protective Order with regard to MLA’s data requests MJM.10, MJM.12, and to the extent applicable, MJM.3,¹³ but withdrew that motion on November 14, 2016, after reaching an agreement with MLA regarding the referenced data requests as they pertain to Infinity. During the conversations with MLA, Infinity was not made aware of the ongoing efforts of MLA to gain access to the 2013 RFI information that the Commission previously protected in Case No. EA-2014-0207. To be clear, Infinity was aware of the data requests DB.40 and DB.41, but was unaware that MLA was renewing efforts to force disclosure of the information the Commission previously found harmful to Infinity if disseminated. At that time, Infinity assumed that the voluminous aggregate information that Grain Belt Express provided in File No. EA-2014-0207 would be sufficient to satisfy the request from MLA in light of the Commission’s previous ruling on the issue. Had Infinity been aware of the efforts of MLA to gain access to the company-specific RFI information from Grain Belt Express, it would not have withdrawn its motion for Protective Order, rather, it would have modified its request to include the data being sought from Grain Belt Express.

8. As a result of MLA’s efforts to access the information previously protected by the Commission in File No. EA-2014-0207, Infinity hereby renews its request for a Protective Order in this matter. As noted, the information sought is sensitive, competitive information of potential

¹³ The information sought by the MLA is not publicly available at this time.

wind power providers, such as Infinity,. Further, the information is not legally relevant to this proceeding. In determining whether evidence is legally relevant, 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.”¹⁴ Here, the probative value to the Commission, if any, does not outweigh the prejudicial effect to Infinity.

9. Conversely, the release of this information will have a negative impact on negotiations of Infinity by providing competitive advantage to others to the detriment of Infinity. Because the prejudicial effect of disclosing this information greatly outweighs its probative value, the information is not legally relevant.

10. As noted by Infinity in its Motion for Protective order in File No. EA-2014-0207, and the initial Motion for Protective Order in this docket, the wind generators who chose to seek intervention in the Grain Belt Express proceedings did so to in an attempt to provide the Commission with general wind resource information to assist the Commission in making its determination in this matter. Any directive by the Commission to disclose commercially sensitive information will have a chilling effect on interventions and participation by industry in the future.

11. Issuing a protective order to prevent the dissemination of this sensitive information would be consistent with the Commission’s findings in File No. 2014-0207. MLA offers no compelling justification as to why the information previously protected by this Commission should now be disseminated in this proceeding.

¹⁴ Jackson v. Mills, 142 SW 3d 237, 240 (MO. App. W.D. 2004).

12. In conclusion, a protective order is necessary to protect the confidential, proprietary, and commercially sensitive information of Infinity from disclosure to any party to this proceeding at this time. Further, the issuance of a protective order is consistent with the Commission's previous action under similar facts.

WHEREFORE, Infinity Wind Power respectfully requests the Commission issue a protective order in this proceeding that prohibits the discovery sought by the MLA specifically in data requests DB.40 and DB.41 issued to Grain Belt Express, and data requests MJM.10, MJM.12 and by extension, MJM.3 issued to MJMEUC, because the information sought is commercially sensitive, proprietary and highly confidential information, the release of which at this time will irreparably harm the competitive interests of Infinity. Further, to the extent that additional discovery of a similar nature in this proceeding is sought by MLA or any other intervenors, Infinity requests the Commission prohibit the disclosure of such information.

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 13th day of December 2016.

/s/ Terri Pemberton

Terri Pemberton

Attorney for Infinity Wind Power

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Current Transmission Line and an Associated Converter)
Station Providing an interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

Missouri Landowners Alliance First Set of Data Requests
Directed To David Berry

Definitions: for purposes of these data requests the following words and phrases are defined as indicated:

“2014 case” is Case No. EA-2014-0207 at the Missouri Public Service Commission.

“Bluescape” means Bluescape Resources Company LLC and its affiliates

“Clean Line” means Clean Line Energy Partners LLC

“Document” shall be construed in accordance with Missouri Supreme Court Rule 58.01 and shall mean the original and every draft or non-identical copy (whether different from the original because of handwritten notes or underlining or checkmarks on the copy or otherwise) of every paper, electronic record, electronic mail or other record, regardless of origin, location or format, whether sent or received or made or used internally, in whatever form, electronic or otherwise, in the possession, custody, or control of Clean Line, Grain Belt or the person to whom the particular data request is directed, or in the possession, custody or control of the attorneys for Clean Line, Grain Belt or the attorneys for the person to whom the particular data requests are directed.

“Entity” means an individual, a company, a governmental unit or any other form of organization or association.

“Grain Belt” means Grain Belt Express Clean Line LLC

“MJMEUC” means the Missouri Joint Municipal Electric Utility Commission

“National Grid” means National Grid plc, and any and all of its subsidiaries.

“the proposed line” means the HVDC line proposed in this case by Grain Belt.

whole or in part by TSAs which included an explicit option for the prospective buyer to not buy any capacity on the line.

DB.35 For each project listed in the answer to the preceding item, please provide documentation to support that answer.

DB.36 With reference to page 20 line 21 of your testimony, please define the term “contracted cash flow available to service debt”.

DB.37 With reference to page 23 line 22 of your testimony, what is the specific pricing “range” to which you are referring?

DB.38 With reference to page 24 lines 1-2 of your testimony, please list all “recent wind procurements” which have trended downward from the level of \$19.15/MWh, including the location of the wind farm (city or county, and state), the name of the seller, name of the buyer, date of the contract, term of the contract, the first year price per MWh, and any escalation factors included in the contract.

DB.39 Please provide the same information requested in the preceding item, but for contracts signed after the Cedar Bluff Wind Farm contract was signed, and with a price above \$19.15/MWh.

DB.40 With reference to page 24 lines 10-15 of your testimony, please provide a copy of the complete unredacted responses to the RFI completed in January, 2014.

DB.41 With reference to page 24 lines 14-15 of your testimony, please provide the work papers and documentation which support the figure of 2.0 cents per kWh flat for 25 years for the lowest-priced 4,000 MW, including the name of each wind farm included in that calculation.

DB.42 With reference to page 24 lines 18-21 of your testimony, in the January, 2015 open solicitation, how many requests did Grain Belt receive for the Missouri-PJM service, and from whom were those requests received?

DB.43 With reference to page 25 lines 18-25 of your testimony, please state whether the wind map at Schedule DAB-04 was compiled by AWS Truepower, and please briefly summarize the process by which that map was compiled.

DB.44 With reference to page 27 lines 1-3 of your testimony, please provide a copy of the two tax incentives offered by the State of Kansas, or a citation to where those provisions may be found.

DB.45 With reference to page 28 line 16 of your testimony, what is the value of the “published rate for Kansas-PJM service”. Please provide a copy of the document(s) wherein that rate is published.

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To MJMEUC

Definitions: for purposes of these data requests the following words and phrases are defined as indicated:

“Clean Line” means Clean Line Energy Partners LLC

“Correspondence” shall have the broadest meaning possible, including but not limited to, all written or printed matter or electronically stored matter or copies thereof, including the originals and all non-identical copies thereof and any attachments to or enclosures in, including without limitation e-mails, attachments to e-mails, letters, facsimiles, notes of communications, summary of communications, memoranda, opinions about communications, compilations of communications, inter-office and intra-office communications, notations of any sort of conversations or communications, diaries, appointment books or calendars, teletypes, telefax, thermafax, confirmations, computer data (including information or programs stored in a computer, server or other data storage device, whether or not ever printed out or displayed), text messages, and all drafts, alterations, modification, changes and amendments of any of the foregoing, and all graphic or manual records or representations of any kind.

“Communications” means all occasions on which information was conveyed from one person to another (a) by means of a document, including electronically, or (b) verbally, including but not limited to, by means of a telephone or other mechanical device. The word “communications” shall have the broadest meaning possible, including but not limited to, all written or printed matter or electronically stored matter or copies thereof, including the originals and all non-identical copies thereof and any attachments to or enclosures in, including without limitation e-mails, attachments to e-mails, letters, facsimiles, notes of communications, summary of communications, memoranda, opinions about communications, compilations of communications, inter-office and intra-office communications, notations of any sort of conversations or communications, diaries, appointment books or calendars, teletypes, telefax, thermafax, confirmations, computer data (including information or programs stored in a computer, server or other data storage

device, whether or not ever printed out or displayed), text messages, and all drafts, alterations, modifications, changes and amendments of any of the foregoing, and all graphic or manual records or representations of any kind.

“Document” shall be construed in accordance with Missouri Supreme Court Rule 58.01 and shall mean the original and every draft or non-identical copy (whether different from the original because of handwritten notes or underlining or checkmarks on the copy or otherwise) of every paper, electronic record, electronic mail or other record, regardless of origin, location or format, whether sent or received or made or used internally, in whatever form, electronic or otherwise, in the possession, custody, or control of Clean Line, Grain Belt or the person to whom the particular data request is directed, or in the possession, custody or control of the attorneys for Clean Line, Grain Belt or the attorneys for the person to whom the particular data requests are directed.

“Entity” means an individual, a company, a governmental unit or any other form of organization or association.

“Grain Belt” means Grain Belt Express Clean Line LLC

“Identify” with respect to a person means to provide, to the extent available, the person’s name, employer and business address.

“MJMEUC” means the Missouri Joint Municipal Electric Utility Commission

“MJMEUC Contract” is the contract included with Mr. Mark Lawlor’s direct testimony in this case as Schedule MOL-1.

“the project” means the proposed 750-mile transmission line and associated facilities.

“the proposed line” means the HVDC transmission line which is part of the project.

Data Requests:

MJM.1 Please identify the person who was primarily responsible on behalf of the MJMEUC for negotiating the terms of the MJMEUC Contract.

MJM.2 Please provide a copy of all documents, correspondence and communications exchanged between employees, representatives members or agents of MJMEUC on the one hand, and employees, representatives or agents of Grain Belt or Clean Line on the other, related to the MJMEUC Contract.

MJM.3 Please provide a copy of all documents, correspondence and communications exchanged between employees, representatives members or agents of MJMEUC on the one hand, and employees, representatives or agents of Grain Belt or Clean Line on the other, related to the analysis or study referenced at page 3 lines 16-18 of the direct

testimony of Mr. Lawlor in which the MJMEUC is said to have estimated a \$10 million annual savings to its members.

MJM.4 Please provide a list of Missouri utility systems which are members of the MJMEUC, or a link or citation to where that list may be found.

MJM.5 By what means does MJMEUC anticipate that a member of MJMEUC would legally commit to buy or take any of the capacity on the Grain Belt line which is to be sold to MJMEUC under the terms of the MJMEUC Contract; i.e., by purchase from MJMEUC, by assignment of the capacity rights, or by some other means.

MJM.6 Please provide a copy of the documents which set forth the terms by which a member of MJMEUC would make the commitment referenced in the preceding item.

MJM.7 Please provide a copy of all documents, correspondence and communications between MJMEUC on the one hand, and any Missouri municipal utility system on the other, related to the purchase or assignment of capacity or capacity rights which MJMEUC acquired or agreed to acquire under the MJMEUC Contract.

MJM.8 Please explain which entity or entities will be responsible for purchase of the energy to be transmitted over the Grain Belt line for delivery to the individual MJMEUC members, utilizing the capacity which is the subject of the MJMEUC Contract.

MJM.9 Please provide a copy of the documents which describe and delineate the obligations referred to in the preceding item.

MJM.10 Please provide a copy of all documents, correspondence and communications between MJMEUC on the one hand, and prospective wind farms on the other, related to the purchase of energy by the MJMEUC for transmission over the Grain Belt line, either on behalf of itself or on behalf of one or more of its members.

MJM.11 To MJMEUC's knowledge, has any MJMEUC member utility entered into negotiations for the purchase of energy to be delivered over the proposed line? If so, please list those member utilities.

MJM.12 Please provide a copy of all documents, correspondence and communications between MJMEUC member utility systems on the one hand, and prospective wind farms on the other, related to the purchase of energy by such member utility system for transmission over the Grain Belt line.

MJM.13 With reference to page 3 lines 16-18 of the direct testimony of Mr. Lawlor, please provide a copy of the studies or analyses (including work papers) in which the MJMEUC estimated the \$10 million in annual savings to its members.

MJM.14 If not shown on the materials referenced in the preceding item, who was the primary author of that study or analysis, and on what date was it completed?

MJM.15 Please provide a copy of all studies and analyses compiled by or available to MJMEUC comparing the projected cost to MJMEUC members of electricity from the Project versus the projected cost to MJMEUC members of electricity from other available or potentially available sources.

MJM.16 If not apparent on the studies or analyses provided in response to the preceding item, please state who the primary author was of those studies and analyses, and the date on which they were completed.

MJM.17 Please provide a copy of all documents, correspondence and communications in which MJMEUC submitted a request for bids or a similar invitation for proposals for power which could be utilized in whole or in part in lieu of the power expected to be delivered over the Grain Belt project.

MJM.18 Please provide a copy of all studies and analyses of projected wholesale electricity prices which MJMEUC utilized when negotiating or considering the MJMEUC Contract.

MJM.19 Please provide a copy of all studies and analyses of historical wholesale electricity prices which MJMEUC utilized when negotiating or considering the MJMEUC Contract.

MJM.20 Please list the member utilities in MJMEUC which have expressed an interest to MJMEUC in utilizing the proposed line to deliver power from the Missouri converter station to the eastern converter station near the Illinois/Indiana boarder.

MJM.21 Please provide a copy of all documents, correspondence and communications available to MJMEUC regarding the possibility of any member utility utilizing the proposed line to deliver power from the Missouri converter station to the eastern converter station.

MJM.22 Prior to July 1, 2015 (when the final Report and Order was issued in 2014 Grain Belt case at the MO PSC) did Grain Belt or Clean Line make a presentation to MJMEUC regarding the purchase of capacity on the proposed line?

MJM.23 If the answer to the preceding item is “yes”, please provide the following information: (1) date(s) of all such meetings; (2) attendees at each such meeting; (3) copies of all documents and correspondence related to each such meeting (including emails) whether sent, distributed or presented before, during or after the meeting; and (4) copies of all documents compiled by any employee, agent, representative or member of MJMEUC discussing or addressing the reason or reasons why MJMEUC decided at that time not to purchase capacity on the Grain Belt line, or to enter into any “memorandum of understanding” or similar document related to the purchase of such capacity.

MJM.24 Was the MJMEUC contract approved by a Board of Directors or similar governing entity of MJMEUC?

MJM.25 If the answer to the preceding item is yes, please provide the following: (1) the date on which the MJMEUC contract was approved by that board; (2) copies of all documents presented to the board related to the MJMEUC contract; (3) copies of all minutes and notes of the meeting at which the contract was approved, including a record of any vote taken for approval of the contract; and (4) copies of correspondence, including emails, between Grain Belt or Clean Line on the one hand, and any employee or representative of MJMEUC on the other, related to the board approval of the MJMEUC contract.

MJM.26 Please list the MJMEUC member utilities which have excess renewable generation which could be injected at the Missouri converter station and delivered at the eastern converter station for sale to systems east of Missouri.

MJM.27 For each member utility listed in the preceding item, please provide all available documentation which supports the fact that it has such excess generation.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the parties to this case by electronic mail this 26th day of October, 2016.

/s/ Paul A. Agathen

Paul A. Agathen

Attorney for the Missouri Landowners Alliance