

**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        )  
Construct, Own, Operate, Control, Manage, and        )     File No. EA-2023-0017  
Maintain a High Voltage, Direct Current                )  
Transmission Line and Associated Converter            )  
Station    )

**GRAIN BELT EXPRESS SUR-REPLY TO MLA’S RESPONSE TO GRAIN BELT  
EXPRESS’ RESPONSE TO MOTION FOR DISCOVERY CONFERENCE**

Pursuant to the discussion at the Discovery Conference on January 20, 2023, and the Commission’s Order on January 20, 2023, Grain Belt Express respectfully submits this Sur-Reply to *MLA’s Response to Grain Belt’s “Response to the Motion for Discovery Conference”* (“MLA’s Response”) filed by Missouri Landowners Association (“MLA”), the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, Norman Fishel, Gary and Carol Riedel, and Dustin Hudson (following the naming convention in the MLA’s Response, these parties are collectively referred to as MLA):

**I. Background**

1. On January 20, 2023, parties to this Docket held a Discovery Conference (“January 20th Discovery Conference”) to review objections to MLA’s Data Requests SS-5, SS-6, SS-7, SS-8, SS-22, G-13, G-14, G-15, G-16, G-17, and G-18.

2. Some of MLA’s requests seek signed Memoranda of Understanding (“MOUs”) between Grain Belt Express or Invenergy, on one hand, and potential customers and suppliers of the Amended Project, on the other hand, relating to capacity on the transmission line. Grain Belt Express objected to these requests, in part, because the MOUs are protected by Nondisclosure Agreements (“NDAs”) with third parties. Grain Belt Express has since notified those parties

pursuant to the terms of the various NDAs but has not been granted authority by the counterparties to voluntarily disclose copies of the MOUs, even under the Highly Confidential designation.

3. After the January 20th Discovery Conference, on January 20, 2023, MLA provided notice to the parties that it intended to file a response to Grain Belt Express' *Response to Motion for Discovery Conference* filed January 17, 2023 ("January 17th Response"). On the same day, the Commission authorized Movants' request and responses by other parties in the *Order Authorizing Filings*.

4. On January 24, 2023, MLA filed MLA's Response<sup>1</sup> to which Grain Belt Express now replies.

5. Grain Belt Express stands on the objections it raised in its responses to SS-5, SS-6, SS-7, SS-8, SS-22, G-13, G-14, G-15, G-16, G-17, and G-18; the arguments made in its January 17th Response; and the arguments it made at the January 20th Discovery Conference. Specifically, as it relates to this Sur-Reply, Grain Belt Express stands on its objections to SS-5 through SS-8, and SS-22 that the requests 1) seek information regarding commercially sensitive and competitive negotiations and the identities of potential commercial partners, which if disclosed, would result in substantial harm to Grain Belt, potential commercial partners, and the public interest, which benefits from confidential, arms-length negotiation; and 2) these discussions are protected from disclosure by the terms of executed confidentiality agreements and/or nondisclosure agreements with potential counterparties. As a result, this Sur-Reply is limited to responding to MLA's Response.

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<sup>1</sup> *MLA's Response to Grain Belt's "Response to the Motion for Discovery Conference"*, EA-2023-0017 (Jan. 24, 2023) (MLA's Response).

## **II. Grain Belt Express Did Not Rely on Negotiations to Support its Case-in-Chief**

6. MLA's Response states that "the material requested in data requests SS-5 through SS-8, and SS-22, was all relied upon by Grain Belt in support of its case-in-chief."<sup>2</sup> That statement is false.

7. This is the Direct Testimony of Shashank Sane on this issue, filed August 24, 2022 states:

Grain Belt Express has entered into Memorandums of Understanding ("MOUs") with major commercial and industrial consumers, and electric utilities, each of which has expressed interest in acquiring transmission capacity from the Project.<sup>3</sup>

Grain Belt Express does not rely upon any materials beyond the MOUs themselves to support its case-in-chief, nor does this paragraph demonstrate that Grain Belt Express is relying upon negotiations with third parties to support its case-in-chief.

8. MLA also cites to page 13, line 15 through page 14, line 20 of Mr. Sane's Direct Testimony as the basis for its SS-6 data request. This is that testimony:

Both Ameren Missouri and Evergy have announced carbon emission reduction goals, which further demonstrate demand for expanding the delivery capability of the Project.

On June 23, 2022, Ameren Missouri filed its 2022 Annual Update to its Integrated Resource Plan ("IRP"), noting that the Preferred Resource Plan presented in its 2020 Triennial Integrated Resource Plan should be revised. Ameren states that the new Preferred Resource Plan represents an acceleration in the retirement of approximately 3,000 MW of coal-fired generation by the end of 2030, acceleration in the retirement of approximately 1,000 MW of gas-fired generation, total renewable generation of 3,500 MW by 2030, among other items. These accelerated transitions and retirements will permit Ameren to achieve greater reductions in carbon emissions by 2030, in furtherance of its stated goal of net zero carbon emissions.

Ameren's Annual Update also states that:

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<sup>2</sup> MLA's Response, p. 1.

<sup>3</sup> Direct Testimony of Shashank Sane, EA-2023-0017, at 13 (Aug. 24, 2022) (Sane Direct Testimony).

[As it] considers new wind and solar projects to fulfill the resource needs identified in the new Preferred Resource Plan, it will be focused on ensuring a regionally diverse portfolio to mitigate any potential impacts on energy supply due to variations in weather conditions across geographical locations. With strategic and proper siting, geographic diversity allows for a smoothing effect across variable energy resources, allowing for improved reliability. Further, a geographically diverse energy portfolio is more resilient during unplanned events that would otherwise negatively impact the electrical system. With a host of viable solar generation projects currently under consideration, Ameren Missouri will also be focused on wind generation additions after 2025 to ensure a balanced portfolio designed to mitigate the variations in generating performance of wind and solar technology.

As Ameren will need additional and diverse supply to meet its new IRP goals, adding capacity to the Project will help Ameren achieve these goals. Additionally, as noted in Ameren's Change of Preferred Plan issued in 2022, Ameren indicated it would accelerate retirement of the Rush Island Energy Center ("Rush Island") from 2039 to 2025. This will increase Ameren's need for both new sources of generation and transmission infrastructure to replace the Rush Island's contributions to Ameren's supply of electricity.

In these paragraphs Grain Belt Express is using public information released by Ameren Missouri to support its case-in-chief that there is demand for expanding the delivery capabilities of the Project in Missouri. These paragraphs do not in any way reference negotiations with Ameren Missouri. Simply stated, and contrary to MLA's assertion, Grain Belt Express did not rely upon negotiations with Ameren Missouri to support its case-in-chief.

9. MLA next cites to page 14, line 21 through page 15, line 2 of Mr. Sane's Direct Testimony as the basis for its SS-7 data request. Mr. Sane there states:

Further, Evergy's IRP, filed with the Commission on April 30, 2021<sup>12</sup>, announced the acceleration of the company's carbon reduction timeline. As part of the plan, Evergy will retire nearly 1,200 megawatts of coal-based fossil generation and add 3,200 MW of renewable generation in the next 10 years. Within the next three years, the company will retire its Lawrence (KS) Energy Center and add 700 MW of solar energy. The plan prioritizes sustainability, reliability and cost competitiveness, while advancing Evergy's goal to reduce carbon emissions 70 percent by 2030 (relative to 2005 levels) and achieve net-zero carbon emissions by 2045.

In this paragraph Grain Belt Express is using public information released by Evergy in its IRP to support its case-in-chief that there is evidence demonstrating the demand for expanding the delivery capabilities of the Project in Missouri. This paragraph does not reference negotiations with Evergy. Again, Grain Belt Express did not rely upon negotiations with Evergy to support its case-in-chief.

10. MLA next cites to page 16, line 9–19 of Mr. Sane’s Direct Testimony as the basis for its SS-8 data request. Mr. Sane there states:

On July 11, 2022, the Tennessee Valley Authority (“TVA”) requested up to 5,000 megawatts of carbon-free energy that must be operational before 2029, which is one of the largest clean energy procurement requests in the nation. Per its press release,

TVA is executing a defined strategy to reduce carbon from 2005 levels by 70% by 2030, 80% by 2035, and aspire to be net-zero by 2050. To support its carbon- reduction efforts, the agency is aggressively exploring and accelerating carbon-free technologies and moving to bring an additional 10,000 megawatts of solar energy capacity online by 2035. [Citation omitted]

The Amended Project, through its AECI interconnect, could be a potential transmission source for this additional energy need.

As with the prior paragraphs, in these paragraphs Grain Belt Express is using public information released by Tennessee Valley Authority (“TVA”) to support its case-in-chief that there is evidence demonstrating the demand for expanding the delivery capabilities of the Project in Missouri. These paragraphs do not reference negotiations with TVA. Once more, Grain Belt Express did not rely upon negotiations with TVA to supports its case-in-chief.

11. MLA next cites to page 31, lines 5–8 of Mr. Sane’s Direct Testimony of Mr. Sane as the basis for its SS-22 data request. Here Mr. Sane testified:

Q. Will customers be willing to pay the transportation costs of Grain Belt Express to move power from Kansas?

A. Yes, as discussed above Grain Belt Express has entered into several MOUs with various parties and the discussions around the MOUs included pricing that incorporates the current projected cost of the Project. These MOUs are a clear demonstration both of the interest in and need for the Project.

While Mr. Sane’s testimony mentions discussion around the entry into the MOUs, it does not rely on the details of those discussions—rather, the clear purpose of the testimony is to explain that the counterparties to the MOUs were aware of “the current projected cost of the Project.” The “current projected cost of the Project” is already in evidence (see Direct Testimony of Aaron White at p. 19). This testimony does not rely upon documents related to discussions with third parties which MLA seeks to obtain.

12. To conclude, Grain Belt Express did not rely upon negotiations for its case-in-chief. MLA’s assertions to the contrary are false. Ordering Grain Belt Express to produce immaterial negotiations with third parties that were not relied upon in its case-in-chief highlights the harm that would occur to Grain Belt, potential commercial partners, and the public interest, which benefits from confidential, arms-length negotiation. Harm which outweighs the probative value of the information sought.

**III. *Arkansas Power & Light and Utility Consumers Counsel Do Not Support the Production of Negotiations Between Grain Belt Express and Third Parties Because Grain Belt Express Does Not Rely Upon Third Party Negotiations to Support Its Case-in-Chief***

13. MLA relies upon *State ex rel. Arkansas Power & Light v. Mo. Pub. Serv. Comm’n*, 736 S.W.2d 457 (Mo. Ct. App. 1987) and *State ex rel. Utility Consumers Counsel v. Pub. Serv. Comm’n of Mo.*, 562 S.W.2d 688 (Mo. Ct. App. 1978) to support its argument that Grain Belt Express should produce the information requested in SS-5 through SS-8, and SS-22.<sup>4</sup> However,

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<sup>4</sup> MLA’s Response, p. 1–2.

*Arkansas Power & Light and Utility Consumers Counsel* does not support the production of the documents requested in SS-6 through SS-8, and SS-22.

14. In *Arkansas Power & Light*, the material subject to the dispute involved a process manual and coal invoices.<sup>5</sup> The Commission excluded that evidence because it believed AP&L “cannot be allowed to maintain its burden of proof by the use of secret or unrevealed information.” *Id.* Because the evidence was excluded there was an evidentiary gap regarding AP&L’s expenses. According to the *Arkansas Power & Light* court, “The evidence subject . . . was highly relevant and material, and critical to AP&L’s case.”<sup>6</sup> As a result, the *Arkansas Power & Light* court held that the Commission erred in excluding the evidence and denied the applicant a meaningful hearing.<sup>7</sup>

15. The circumstances concerning third party negotiations in this Docket are entirely different from the circumstances before the court in *Arkansas Power & Light*. That case concerned material that was in fact highly relevant and material. Here, pre-contractual negotiations with third parties are neither relevant, highly or otherwise, nor material and were not relied upon by Grain Belt Express in its case-in-chief.

16. In *Utility Consumers Counsel*, another case cited by MLA, the issue before the court was whether the Commission improperly restrained cross examination on proprietary information proffered by the Company.<sup>8</sup> Here, again, the circumstances are entirely different. Grain Belt Express is not proffering or relying upon pre-contractual negotiations to support its case-in-chief.

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<sup>5</sup> 736 S.W.2d 457, 459 (Mo. Ct. App. 1987).

<sup>6</sup> *Id.* at 460.

<sup>7</sup> *Id.*

<sup>8</sup> 562 S.W.2d 688, 692 (Mo. Ct. App. 1978).

17. Considering all of the foregoing, MLA's argument that Grain Belt Express should produce the information requested in SS-6 through SS-8, and SS-22 because Grain Belt Express relies upon it in its case-in-chief is incorrect and unsupported by caselaw. Again, ordering Grain Belt Express to produce immaterial negotiations with third parties that were not relied upon in its case-in-chief highlights the harm that would occur to Grain Belt, potential commercial partners, and the public interest, which benefits from confidential, arms-length negotiation. This harm far outweighs any perceived probative value of the information sought.

#### **IV. A Commission Order Directing Grain Belt Express To Disclose Protected Material Does Not Render Its NDAs with Third Parties Meaningless**

18. MLA's Response states that "if the Commission does direct Grain Belt to disclose the materials at issue here, the rest of the nondisclosure agreement becomes meaningless."<sup>9</sup> MLA does not provide support for this contention and has no basis for this contention because it is not privy to the terms of the NDAs. Therefore, the Commission should give it no weight in its ruling.

#### **V. Grain Belt Express Did Not Raise New Objections In Its January 17th Response; Rather, Grain Belt Express Provided Supporting Arguments To Its Previously-Raised Objections**

19. MLA's Response again misstates the facts, asserts that Grain Belt Express raised new objections in its January 17th Response and argues that they have been waived.<sup>10</sup> Grain Belt Express did not raise new objections in its January 17th Response; rather, it provided supporting arguments for its ongoing objections.

20. Grain Belt Express' objection to SS-5 states:

Grain Belt objects to this request in that it seeks information regarding commercially sensitive and competitive negotiations and the identities of potential commercial partners. Moreover, these discussions are protected from disclosure by

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<sup>9</sup> MLA's Response, p. 2.

<sup>10</sup> MLA's Response, p. 3.



the terms of executed confidentiality agreements and/or nondisclosure agreements with potential counterparties.

21. Grain Belt Express' objections to SS-6 through SS-8, and SS-22 state:

Grain Belt objects to this request and each subpart in that it seeks information regarding commercially sensitive and competitive negotiations and the identities of potential commercial partners, which if disclosed, would result in substantial harm to Grain Belt, potential commercial partners, and the public interest, which benefits from confidential, arms-length negotiation. Such harm outweighs the probative value of the information sought. Moreover, these discussions are protected from disclosure by the terms of executed confidentiality agreements and/or nondisclosure agreements with potential counterparties.

22. The excerpts that MLA takes issue with all support Grain Belt Express' objections to SS-5 through SS-8, and SS-22—that is, MLA requests information regarding commercially sensitive and competitive negotiations and the identities of commercial partners that, if disclosed, would result in substantial harm to Grain Belt, potential commercial partners, and the public interest, and that such harm outweighs the value of the information sought.

23. It would be unreasonable and contrary to administrative efficiency and precedent for parties to be required to provide all objections and all supporting arguments for every objection in every data request response.

## **VI. CONCLUSION**

24. For the reasons provided above, the Commission should:

- a. Find Movants' requested relief moot, in part, with respect to MLA's Data Requests SS-5 and SS-22 to the extent the requests call for descriptions or redacted versions of signed MOUs.
- b. Deny Movants' requested relief, in part, with respect to MLA's Data Requests SS-5 and SS-22 to the extent the requests call for more than descriptions or redacted versions of signed MOUs.

- c. Deny Movant’s requested relief with respect to MLA’s Data Requests SS-6, SS-7, and SS-8.
- d. Deny Movant’s requested relief with respect to MLA’s Data Requests G-13, G-14, G-15, G-16, G-17, and G-18.

Respectfully submitted,

*/s/ Andrew O. Schulte*

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ATTORNEYS FOR GRAIN BELT EXPRESS LLC

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served upon the parties listed on the official service list by email, this 27th day of January, 2023.

*/s/ Andrew O. Schulte*  
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Andrew O. Schulte