

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

**In the Matter of the Application of Grain)
Belt Express Clean Line LLC for Certificate)
of Convenience and Necessity Authorizing it)
to Construct, Own, Operate, Control,)
Manage and Maintain a High Voltage,)
Direct Current Transmission Line and an)
Associated Converter Station Providing an)
Interconnection on the Maywood-)
Montgomery 345 kV transmission line.)**

Case No. EA-2016-0358

**OPPOSITION OF GRAIN BELT EXPRESS TO MISSOURI LANDOWNERS
ALLIANCE'S MOTION TO COMPEL ANSWERS TO 3RD SET OF DATA REQUESTS
SUBMITTED TO GRAIN BELT EXPRESS WITNESS PRESCOTT HARTSHORNE**

Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”), pursuant to Commission Rule 4 CSR 240-2.090(8), states the following in Opposition to the Motion to the Compel filed by Missouri Landowners Association (“MLA”) on February 28, 2017:

1. This is the second motion to compel MLA has brought against Grain Belt Express seeking discovery from a non-party to the case. On January 20, 2017 MLA filed its first Motion to Compel Company witness Prescott Hartshorne to produce documents from National Grid plc “and any and all of its subsidiaries.” On January 30 Grain Belt Express filed its Opposition to the first Motion to Compel, which MLA withdrew the following day, January 31.

2. On January 31 MLA propounded the same data requests to Mr. Hartshorne, merely replacing “National Grid plc” with “National Grid USA,” which is Mr. Hartshorne’s employer. Grain Belt Express objected to these data requests on the same grounds as the previous data requests directed to National Grid plc and its subsidiaries, including National Grid USA. On February 28 MLA filed this second motion to compel regarding its data requests directed to National Grid USA.

3. The substance of MLA's second motion to compel is largely the same as its first motion to compel. MLA has merely substituted non-party National Grid plc with non-party National Grid USA. The argument of this Opposition is largely the same as the Company's earlier Opposition to MLA's first motion to compel.

4. MLA's pending motion concerns three requests contained in its 3rd Set of Data Requests directed to Mr. Hartshorne, an employee of non-party National Grid USA Service Company ("National Grid USA").

5. MLA asked Mr. Hartshorne to produce:

(a) Data Request PH-25: "... all documents compiled by or for National Grid USA which address its decisions about whether to make an additional investment in Clean Line at or near the time that Bluescape first invested in Clean Line."

(b) Data Request PH-36: "... all internal documents and correspondence written by National Grid USA for distribution to upper management at National Grid USA and/or its parent company National Grid plc addressing in whole or in part the performance, status, progress, problems, profitability, scheduling and/or budget of Clean Line or of the Grain Belt project."

(c) Data Request PH-27: "... all documents and correspondence compiled by or for National Grid USA which quantify the expected or estimated dollar value of any of Clean Line's transmission projects at any point after said projects are in service, or of any generic transmission project generally comparable to the Grain Belt project."

6. MLA's reference to "Clean Line" is to Clean Line Energy Partners LLC, the ultimate parent of Grain Belt Express. Among the major investors in Clean Line is GridAmerica Holdings, Inc., a subsidiary of National Grid USA, which is a subsidiary of National Grid plc, based in the United Kingdom. See Application, ¶ 9. Another major investor in Clean Line is

Clean Grid Holdings, LLC, a subsidiary of Bluescape Resources Company, LLC (also referred to as “Bluescape”). See Application, ¶¶ 5(g), 8-11. None of the investors in Clean Line is a party to this proceeding.

7. Grain Belt Express objected to MLA’s data requests on the grounds that: (1) National Grid USA is not a party to the case; and (2) internal National Grid USA documents are not relevant to the Company’s application and not reasonably calculated to lead to the discovery of admissible evidence. Further, not only is National Grid USA not a party to this case, but it also is not an investor in Clean Line. GridAmerica Holdings, Inc. is the entity which has made the investment in Clean Line.

8. MLA’s Motion to Compel concedes that National Grid USA is not a party to this case, but argues that National Grid USA “should not be allowed to volunteer information through the testimony of a witness to the case, and then refuse to provide further information which could potentially be damaging to its cause. As a principal owner of a party to the case, National Grid is for all intents and purposes a party itself.” See Motion to Compel at 3.

9. MLA’s argument that the Commission is free to disregard corporate distinctions is contrary to Missouri law. Separate corporations “are to be regarded as distinct legal entities, even if the stock of one is owned partly or wholly by the other.” Mid-Missouri Tel Co. v. Alma Tel. Co., 18 S.W.3d 578, 582 (Mo. App. W.D. 2000). Therefore, the ownership of capital stock in one corporation by another “does not itself create identity of corporate interest as between the two.” Central Cooling & Supply Co. v. Director of Revenue, 648 S.W.2d 546, 548 (Mo. 1982). In light of this authority, the Court of Appeals has declared that “our Supreme Court has advised that the doctrine of corporate entity is valid and substantive in nature, and should ‘be ignored with caution, and only when the circumstances clearly justify it.’” Mid-Missouri Tel. Co. v. Alma Tel. Co., 18 S.W.3d at 582. Such circumstances occur only where the control exercised by

the parent is so total that, for example, the subsidiary has grossly inadequate capital; pays the salaries, expenses and losses of the subsidiary; the subsidiary has substantially no business; and the formal legal requirements of the subsidiary are not observed. Collet v. American Nat'l Stores, Inc., 708 S.W.2d 273, 283-84 (Mo. App. E.D. 1986).

10. Moreover, such control must be exercised “to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or an unjust act.” Id. at 284. See Weitz Co. v. MH Washington, LLC, 631 F.3d 510, 520-21 (8th Cir. 2011) (noting Collet as the leading Missouri case on these issues). Only when one company is being operated as a sham or dummy corporation is it appropriate to disregard their separate existence, contrary to the general rule that respects corporate distinctions. May Dep't Stores Co. v. Union Elec. Light & Power Co., 107 S.W.2d 41, 53-54, 58 (Mo. 1937). Because there is no allegation or evidence that such circumstances exist with regard to Clean Line and any National Grid entity, there is no basis to treat National Grid USA as a party because of GridAmerica Holdings' investment in Clean Line.

11. It is also clear that Mr. Hartshorne's testimony explaining GridAmerica Holdings' investment in Clean Line does not transform it or any other National Grid entity into a party litigant subject to discovery. A “party” is defined by the Commission's Rule, 4 CSR 240-2.010(10): “Party includes any applicant, petitioner, respondent, intervenor, or public utility in proceedings before the commission.” There is no such thing as a party for “all intents and purposes,” as MLA alleges. See Motion to Compel at 3. National Grid USA is not a party to this case.

12. MLA cites Hancock v. Shook, 100 S.W.3d 786, 979 (Mo. en banc 2003), for the argument that a party must produce not only documents in its actual possession, but also documents within its “control,” which include documents where it has the “practical ability to

obtain the documents from a nonparty to the action.” In Hancock, the documents at issue were held by the expert witness and veterinarian of the plaintiff. “In this context, the record establishes that Mr. Hancock had practical control over his treating veterinarian and designated expert witness, Dr. Mozier, at least to the extent of production of documents maintained by Dr. Mozier that related to Mr. Hancock’s dairy herd.” Id.

13. The relationship between Clean Line and National Grid USA is different than a party and his expert witness. Simply because a witness for the Company is employed by a National Grid affiliate does not mean that Grain Belt Express, Clean Line or the witness has “the practical ability” to produce the materials requested by MLA. Clearly, the Hancock case does not stand for the proposition that a non-party investor is subject to discovery by those who oppose the projects that it has invested in.

14. The discovery sought by MLA is similar in scope to that found in State ex rel. Coffman Group, L.L.C. v. Sweeney, 219 S.W.3d 763, 765 (Mo. App. S.D. 2005), where the defendant sought a writ of prohibition against a circuit judge who had permitted the plaintiff in a Telephone Consumer Protection Act (“TCPA”) lawsuit to request “[a]ll documents relating to third parties that have transmitted fax advertisements on behalf of Defendants.” The Court of Appeals held that this request was “overbroad and appears to call for documents that would be irrelevant to the pending action. It encompasses *any* document, of *any* nature, by a third party that has faxed an advertisement on behalf of Relator [original emphasis].” It found such documents “wholly irrelevant to the TCPA violations at issue.” Id. at 768.

15. MLA’s request is similarly overbroad in its attempt to take discovery against National Grid USA with regard to all manner of transmission projects, including “any generic transmission project generally comparable to the Grain Belt project.” See Ex. A, Data Request PH-27, MLA Motion to Compel.

16. GridAmerica Holdings' investment in Clean Line and Mr. Hartshorne's explanation of that investment in his direct testimony are relevant issues. However, the data requests that MLA seeks to compel responses to are entirely based on its speculation regarding National Grid's communications and investment analysis.¹ What MLA finds "conceivable" does not justify a discovery "fishing expedition" for "all documents" against non-parties, one of whom has invested in the ultimate parent of Grain Belt Express.

17. Despite its lack of control, Grain Belt Express endeavored to avoid a discovery dispute and accommodate MLA. Pursuant to the Company's request, Mr. Hartshorne provided a highly confidential document which was recently produced to MLA. This document, prepared in January 2015, updated a highly confidential 2012 memorandum which was produced to MLA in the 2014 Grain Belt Express case (No. EA-2014-0207). The 2012 memorandum discussed GridAmerica Holding's investment in Clean Line and was entered into evidence as HC Exhibit 324. MLA acknowledges that it received this three-page National Grid document entitled "Clean Line business case relook." See MLA's Motion to Compel at 4, n.5.

18. Responding to MLA's request, the Company stated that Mr. Hartshorne had advised that he was not aware of any other document "that addresses and updates the matters" in the 2012 memorandum. See Ex. 1, Grain Belt Express Response to MLA 2d Set of Data Requests to Prescott Hartshorne (Jan. 17, 2017) (attached). Despite the Company's efforts to work with its non-party investor and provide MLA with responsive documents, MLA will not be satisfied with anything short of subjecting National Grid USA to a full discovery dragnet.

¹ "It is certainly conceivable that this decision was made by National Grid for reasons related to problems with the Grain Belt schedule [or other issues]. There is obviously a reason why National Grid elected not to invest further in Clean Line. Depending on what that reason is, it could well be relevant in this case on a number of different levels [emphasis added]." See Motion to Compel at 4-5.

19. Following MLA's logic, a company that merely invests in an applicant seeking a certificate of convenience and necessity, or in fully-regulated Missouri utility filing an application at the Commission, would now become subject to regulatory litigation and discovery merely because it is an investor. If MLA's Motion to Compel is granted, it would have a profoundly chilling effect on investors' willingness to contribute capital to companies doing business in Missouri. Because there is no Commission or Missouri judicial precedent that supports MLA's Motion to Compel discovery against a non-party, it must be denied.

WHEREFORE, Grain Belt Express Clean Line LLC requests that the Commission deny Missouri Landowners Alliance's Motion to Compel Answers to Certain Data Requests Submitted to Grain Belt Witness Prescott Hartshorne.

Respectfully submitted,

/s/ Karl Zobrist

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record in this case on this 10th day of March 2017.

/s/ Karl Zobrist
Attorney for Grain Belt Express Clean Line LLC

**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,) Case No. EA-2016-0358
Control, Manage and Maintain a High Voltage, Direct)
Current Transmission Line and an Associated Converter)
Station Providing an Interconnection on the Maywood-)
Montgomery 345kV Transmission line.)**

**GRAIN BELT EXPRESS CLEAN LINE LLC’S
RESPONSE TO MISSOURI LANDOWNERS ALLIANCE
SECOND SET OF DATA REQUESTS DIRECTED TO PRESCOTT HARTSHORNE**

For its response to the Second Set of Data Requests Directed to Prescott Hartshorne by Missouri Landowners Alliance (“MLA”), Grain Belt Express Clean Line LLC (“Company” or “Grain Belt Express”) states the following:

Data Request:

PH.24 The MLA’s data request number PH.9 to Mr. Hartshorne was as follows: “Please provide a copy of all documents and correspondence compiled by or for National Grid which address its decision about whether to make an additional investment in Clean Line at or near the time that Bluescape first invested in Clean Line.”

In an amended answer to PH.9, served January 6, 2017, a single three-page document was supplied, with the statement that it was prepared in early January, 2015.

Please confirm that there were no other documents or correspondence (as those terms were defined in the original first set of data requests), which were responsive to data request PH.9 and which were prepared between the time of the early January, 2015 document and the time that Bluescape first invested in Clean Line.

If that is not the case, please provide a copy of the additional documents prepared during that time frame.

Response: Without waiving its objections, the Company states that the three-page document entitled “Clean Line business case relook” (prepared in early January 2015), which was provided in the amended response to MLA Data Request PH-9, is the only document that

EXHIBIT 1

Mr. Hartshorne is aware of that addresses and updates the matters discussed in the memorandum to the National Grid PLC Board of Directors (Sept. 26, 2012). This 2012 memorandum discussed National Grid's decision to invest in Clean Line Energy Partners LLC. It was produced as a highly confidential ("HC") document to MLA in the Company's earlier application for a certificate of convenience and necessity, No. EA-2014-0207 ("2014 Case"), and was entered into evidence in that case as HC Exhibit 324. It is the only document that was produced in the 2014 Case which was prepared by National Grid regarding its decision to invest in Clean Line Energy Partners.

The January 2015 document produced by the Company in its amended response to MLA Data Request PH-9 was tendered subsequent to a telephone conference that counsel for MLA and counsel for Grain Belt Express conducted on November 11, 2016, pursuant to Section (8) of the Commission's Discovery and Prehearings rule, 4 CSR 240-2.090, in an effort to resolve a potential discovery dispute.

VERIFICATION OF RESPONSE

The answers provided to this Set of Data Requests have been collected from various sources at Clean Line Energy Partners LLC and Grain Belt Express Clean Line LLC, and are true and accurate to the best of my knowledge and belief.

Signed:  _____

Position: General Counsel

Clean Line Energy Partners LLC

Date: 1/17/17