

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) Case No. EA-2016-0358
Current Transmission Line and an Associated Converter)
Station Providing an interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

**GRAIN BELT EXPRESS CLEAN LINE LLC'S
OPPOSITION TO MISSOURI LANDOWNERS ALLIANCE'S
MOTION TO COMPEL DISCOVERY**

For its opposition to the Missouri Landowners Alliance (“MLA”) Motion to Compel, and Request To Take Administrative Notice (“Motion”), Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”) states the following:

INTRODUCTION

This discovery dispute relates to MLA’s request for confidential and trade secret third-party information that is neither relevant to the testimony in this case nor the five factors the Commission will examine when ruling upon the Company’s Application for a Certificate of Convenience and Necessity for the Grain Belt Express Project (“Project”).

MLA’s Data Requests 40 and 41 to David Berry seek documents and information that Grain Belt Express received in response to its November 2013 Request for Information (“RFI”) to wind generators referred to on page 24 of the Direct Testimony of David Berry filed August 30, 2016. The requested information was submitted by third-parties, and certain information is extremely confidential because it reveals specific pricing and wind speed information of specific generators and wind farms which are industry trade secrets.

Grain Belt Express conducted the RFI in order to characterize the level of potential wind generation activity, the cost to generate wind power, and the wind speeds in western Kansas.

From its inception, the RFI was intended to allow the Company to present aggregate data about the generation that can supply the Project with low-cost wind power, while maintaining the confidentiality of the respondents' specific data. The RFI was not intended to evaluate specific wind farms or sites to connect to the Project, or to select the customers for the Project. The Company is not using the data for this purpose. The RFI is relevant to the Company's Application because it provides information on the quality, cost, and abundance of wind resources in western Kansas. See Exhibit A, David Berry Affidavit, ¶¶ 3-4 (attached).

The disagreement between MLA and Grain Belt Express does not concern what information is to be produced, but rather how it is to be produced. MLA insists that Grain Belt Express supply it with information in a manner that would allow MLA to specifically link confidential wind speed and pricing information to the wind generation companies supplying it. However, the Company contends that it was reasonable and sufficient for it to provide all of the RFI information sought by MLA in a way that preserves the confidentiality of which wind generator offered what specific pricing, and which generator's project location has the highest wind speeds.

In response to MLA's requests, Grain Belt Express has provided a substantial amount of responsive information that is consistent with the relevancy of the RFI to this case. The Company provided MLA with the following: (1) a list of wind generators who responded to the RFI; (2) its internal credit analysis of those respondents; (3) a list of wind farm projects that responded to the RFI; (4) a map indicating the number of responding wind farms in western Kansas, western Oklahoma and the Texas panhandle by county; (5) proprietary summaries of the RFI's, including aggregated pricing and wind speed information; and (6) copies of all responses

to the RFI with limited redactions relating to the identity of the respondents and the specific locations of their projects. See Exhibit A, Berry Affidavit, ¶ 14.

The substantive information redacted from the RFI responses is the same information that was provided in the list of respondents and the map of the project locations.

Currently, MLA has access to all the necessary facts needed to prepare testimony and conduct cross-examination regarding the pricing of wind power, wind capacity factors, and the prevailing wind speeds of projects that can connect to the planned AC/DC converter station of the Grain Belt Express Project in western Kansas. In other words, the current production of information is sufficient for MLA to verify the assertions of Grain Belt Express, and provides a full and fair basis for MLA to present its position to the Commission.

The further disclosure requested by MLA goes far beyond the issues relevant to the Company's Application. Such disclosure would harm the RFI respondents, harm Grain Belt Express, and harm any public utility that wishes to use confidential requests for information as a way of presenting information to the Commission. Therefore MLA's Motion should be denied.

This very same issue was presented to the Commission in Grain Belt Express's initial Application for a Certificate of Convenience and Necessity ("CCN") filed in 2014.¹ MLA sought specific wind speed and pricing information for particular wind farms and filed a virtually identical motion to compel.² On September 24, 2014, the Commission denied MLA's motion to compel and granted the motions for protective order filed by Infinity Wind Power and TradeWind Energy, Inc.³ There is no reason for a different result in this case.

¹ In re Grain Belt Express Clean Line LLC, No. EA-2014-0207, Report and Order at 26-27 (July 1, 2015).

² Id., Motion of the Missouri Landowners Alliance to Compel Responses to Discovery Requests (Aug. 8, 2014).

³ Id., Order Denying Motion to Compel and Granting Motions for Protective Order (Sept.24, 2014).

FACTUAL BACKGROUND

A. Overview of the Grain Belt Express Clean Line project.

The Grain Belt Express Project is an approximately 750-mile, overhead, multi-terminal 600 kilovolt (“kV”) high-voltage, direct current transmission line (“HVDC Line”) and associated facilities that will deliver up to 500 megawatts (“MW”) of low-cost, wind-generated power from western Kansas into Missouri, and up to 3,500 MW to load and population centers in Illinois, Indiana and states farther east. The Project will facilitate the construction of thousands of MWs of new wind generation facilities in Kansas by connecting that state’s abundant, high capacity factor and affordable wind resources with the large and growing market for cost-effective, renewable energy in Missouri and other states.

In Missouri, Grain Belt Express proposes to construct the approximately 206-mile portion of the HVDC Line on a route that crosses the Missouri River south of St. Joseph and continues across the state in an easterly direction to south of Hannibal in Ralls County, where the HVDC Line will cross the Mississippi River into Illinois. The Company proposes to construct a converter station and associated AC interconnecting facilities in Ralls County that will facilitate the delivery of up to 500 MW of low-cost wind power to the grid for utilities and their customers in Missouri, Illinois, Indiana, and other states in the region.

B. MLA Intervenes in the CCN Case.

MLA, stating that it consisted of members who lived near the Project’s proposed right-of-way, filed a Motion to Intervene in this case, which the Commission granted on September 27, 2016.

C. The MLA Discovery Requests at Issue.

Data Request 40 to David Berry, Chief Financial Officer and Executive Vice President for Clean Line Energy Partners LLC (“Clean Line” is the Company’s ultimate parent), from MLA sought all the unredacted responses to the RFI completed by Grain Belt Express in January 2014. Likewise, Data Request 41 to David Berry from MLA sought work papers and documentation regarding similar specific pricing information regarding pricing from wind generators.

Having no objection to providing MLA adequate and appropriate discovery related to the RFI, Grain Belt Express has produced several hundred pages of documents that include copies of all responses to the RFI with limited redactions related to the identity of the respondents and the exact location of their projects. See Exhibit A, Berry Affidavit, ¶ 14.

Specifically, Grain Belt Express provided MLA with (1) a list of all wind generator respondents to the RFI; (2) its internal credit analysis of those respondents; (3) a list of wind farm projects that responded to the RFI; (4) a map indicating the number of responding wind farms in western Kansas, western Oklahoma and the Texas panhandle by county; (5) proprietary summaries of the RFI’s, including aggregated pricing and wind speed information; and (6) copies of all responses to the RFI with limited redactions relating to the identity of the respondents and the specific location of the projects. The substantive information redacted from the RFI responses is the same information that was provided in the list of respondents and the map of the project locations. See Exhibit A, Berry Affidavit, ¶¶ 7, 14.

MLA has continued to seek information linking confidential wind speed and pricing information to the precise project locations of the wind generators. Grain Belt Express has discussed these issues with counsel for MLA but resolution has not been achieved.

ARGUMENT

I. MLA's Discovery Must Be Reasonably Calculated to Lead to Admissible Evidence Regarding the Five Criteria the Commission Will Examine When Ruling Upon the CCN Application.

The Commission has stated that it will apply five criteria to cases regarding CCN applications: (1) There must be a need for the service the applicant proposes to provide; (2) The proposed service must be in the public interest; (3) The applicant's proposal must be economically feasible; (4) The applicant must have the financial ability to provide the service; and (5) The applicant must be qualified to provide the proposed service. See In re Entergy Arkansas, Inc., No. EA-2012-0321, Order Granting Certificate of Convenience and Necessity at 2 (July 11, 2012).

Commission Rule 4 CSR 240-2.090(1) states that discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. Under Missouri Rule of Civil Procedure 56.01(b) parties may obtain discovery regarding "any matter, not privileged, that is relevant to the subject matter involved in the pending action ... including the existence, description, nature, custody, condition and location of any books, documents or other tangible things, and the identity and location of persons having knowledge of any discoverable matter."

In other words, parties may inquire only into a matter that is reasonably calculated to lead to the discovery of admissible evidence. State ex. rel. Martel v. Gallagher, 797 S.W.2d 730 (Mo. App. E.D. 1990). In this case the only relevant evidence relates to the five criteria that the Commission will examine when ruling upon the Grain Belt Express CCN Application. Therefore, all discovery requests must relate to those five criteria.

II. Grain Belt Express Has Provided Adequate Discovery to MLA and the Remaining Requested Discovery is Not Relevant and Would Unnecessarily Harm the RFI Wind Generator Respondents.

Having no objection to providing MLA adequate and appropriate discovery related to the RFI, Grain Belt Express has produced documents that give MLA access to all the essential facts required to prepare testimony and conduct cross-examination regarding the pricing of wind power, wind capacity factors, and the prevailing wind speeds of projects that can connect to the Kansas converter station. Grain Belt Express provided MLA with copies of the responses to the RFI's from the 26 wind farms and redacted only information that would allow MLA to identify the responding entity and the location of a respondent's particular project. See Exhibit A Berry Affidavit, ¶¶ 3, 5.

The Company also provided MLA with a map of the counties near the site of its Kansas converter station with the number of projects that responded to the RFI in each county, as well as a separate list of the names of the wind developers that responded to the RFI. Id., ¶ 5. Finally, Grain Belt Express offered to provide a more detailed version of the map with a range of the wind speeds provided by the wind developers and additional information regarding the lowest-cost wind generation. Id., ¶ 15.

However, this did not satisfy MLA, which continues to demand information that connects particular companies with their confidential, trade secret data that is not relevant to the case filed by Grain Belt Express. The Application and the Direct Testimony of David Berry make general assertions about the wind speeds in western Kansas, the abundant supply of wind resources, and the low cost to generate wind energy. See Application, ¶¶ 1, 30, 31, 34, 41; Exhibit B, Berry Direct Testimony at 23-27.⁴ However, neither the Application nor Mr. Berry's testimony makes

⁴ For example, Mr. Berry stated in his direct testimony that "... generators provided indicative power purchase agreement pricing, which is their own calculation of their levelized cost of energy. The lowest-

any assertions about which wind generators are most likely to supply power to the Project, which wind generators offer the lowest proposed pricing, and whether there are better wind speeds ten miles to the north or to the south of the converter station. These considerations are neither relevant to whether the Project can provide low-cost wind power to Missouri, as described in the Application, nor relevant to any of the other five criteria examined by the Commission when ruling on a CCN application.

The RFI was not conducted to select customers for the Project. As a FERC-regulated open access transmission provider, Grain Belt Express must make its service available to all eligible customers. The award of capacity must be made through a detailed capacity allocation regulated by FERC, which is a process entirely separate from the RFI. See Exhibit B, Berry Direct Testimony at 9-10.

The RFI demonstrates the need for the service and the economic feasibility of the Project. More than 13,500 MW responded to the RFI, indicating that there is a great need for more transmission to connect low-cost wind power to markets in Missouri and other states. See Exhibit A, Berry Affidavit, ¶ 3. Whether it is developer X or developer Y who submitted a specific price or specific wind estimate does not affect whether there is a need for the service. Need is not shown by the identity of any single generator or the location of any single project. However, need is demonstrated by the overall characteristics of the wind generation resources in the region.

Similarly, the economic feasibility of the Project is established by the fact that western Kansas wind power can be generated at very low cost by a large number of planned wind farms and developers. The identity of a wind generator supplying a specific price in its response to the

priced 4,000 MW of new wind generation was an average of 2.0 cents per kWh flat for 25 years.” See Exhibit B, Berry Direct Testimony at 24.

RFI is not relevant. What matters is the aggregate demand for the service by a number of viable wind projects.

In addition to being irrelevant, disclosing which wind generator offers what specific pricing based on wind speeds at specific locations is extremely harmful to the business interests of the RFI respondents. Pricing and wind speed data are the most valuable trade secrets of a wind developer. The RFI respondents provided this data to Grain Belt Express under confidentiality agreements with the understanding that such information would be kept strictly confidential and only disclosed in an aggregated fashion. If an RFI respondent's pricing data is revealed, it would prejudice the wind generator's ability to negotiate a power purchase agreement with a public utility or other customer seeking to buy wind energy, and could cost that generator tens or hundreds of millions of dollars. See Exhibit A, Berry Affidavit, ¶ 9.

Similarly, wind generators have made financial investments in meteorological towers and wind assessments to obtain valuable intellectual property about the wind speed at a particular site. Mandating the disclosure of that information would jeopardize the generators' investment and make them less likely to pursue this line of business. If proprietary data becomes more widely available, there is little or no economic benefit to companies who make substantial investments to obtain such data. See Exhibit A, Berry Affidavit, ¶ 10.

III. Granting MLA's Request Would Also Harm Grain Belt Express and Clean Line.

If the Company is compelled to disclose individual wind generation companies' RFI pricing and wind speed data linked to the exact sites of the wind projects, Grain Belt Express, its parent Clean Line, and potentially public utilities and other transmission service providers will not be able to conduct similar RFI's in the future.

This is because wind generators will protect their own business interests and refuse to share information with Grain Belt Express, with other projects that Clean Line is undertaking,

and with other entities (including companies under the jurisdiction of the Commission) that wish to conduct RFIs. If the Company and its affiliates cannot conduct future RFI's, their ability to show regulators, utilities and other potential customers the benefits of wind generation and of the Project will be severely and unfairly restricted. See Exhibit A, Berry Affidavit, ¶ 12.

In evaluating MLA's request, the Commission must also recognize that Grain Belt Express, as a merchant transmission line, is different from a traditional, cost-of-service based regulated public utility. The price that the Company will charge for transmission service is subject to market discipline and competitive forces. Similarly, wind generators supplying power must do so at a competitive price set by a free market of buyers and sellers. The specific economics of a particular wind farm connecting to the Project will not directly affect the cost-of-service rates charged in Missouri. However, consumers stand to benefit from wind generators who compete to provide the lowest cost power, as well as from merchant transmission lines that are not paid for by retail ratepayers. See Exhibit A, Berry Affidavit, ¶ 13.

Wind generators invest in developing sites and obtaining wind data because they believe the investment will position them to compete to provide low-cost power. Compelling the disclosure of such trade secret information would discourage continuing investment by wind developers to provide low-cost power to Missouri and other states. Protecting this specific trade secret data is essential to promoting effective competition among wind generators which will in the long run benefit Missouri and its citizens.

IV. The Range of Wind Speeds in Western Kansas is Well Known and Can Be Verified by Reference to Public Information.

The U.S. Department of Energy's National Renewable Energy Laboratory publishes state wind maps that show wind speeds. They can be viewed at:

http://apps2.eere.energy.gov/wind/windexchange/wind_resource_maps.asp

The Kansas map found at this website shows that a large area near the Project's converter station has wind speeds of 8.5 to 9.0 meters per second. This information alone allows MLA to verify the Company's assertions regarding the projected wind speeds of the generators responding to the RFI. See Exhibit B, Berry Direct Testimony at 25-26 & Sched. DAB-4.

CONCLUSION

For all of the reasons stated above, Grain Belt Express respectfully requests that the Commission deny MLA's Motion to Compel Discovery Responses.

Dated: December 12, 2016

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ATTORNEYS FOR GRAIN BELT EXPRESS
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all parties of record by email or U.S. mail, postage prepaid, this 12th day of December 2016.

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