

**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.)

RESPONSE OF INFINITY WIND POWER TO MLA MOTION TO COMPEL

Infinity Wind Power (Infinity) hereby responds to the *Motion to Compel Answers to Certain Data Request Submitted to Infinity Wind Power* filed by the Missouri Landowners Alliance (MLA) on March 2, 2017 (Motion), and respectfully requests the Commission deny the Motion.

MLA's Motion is asking the Commission to force Infinity, a privately held entity, to produce its private financial statements. MLA wants to evaluate whether MLA believes Infinity can perform its obligations under its power purchase agreement (PPA or contract) with MJMUEC when MLA is not qualified to perform such an evaluation, and any such analysis by MLA would be irrelevant to this proceeding. Further, there is no evidence to suggest that Infinity is incapable of performing under the contract with MJMEUC, Infinity's future performance under the contract is a matter beyond the scope of this docket and the Commission's jurisdiction, disclosure of the information could have a chilling effect in future Commission proceedings, the TSA between Grain Belt Express and MJMEUC is not contingent upon the Infinity PPA, and even if Infinity were unable to perform under the terms of the PPA, an allegation that Infinity strongly rejects, another wind developer could offer comparably priced energy to MJMEUC. Finally, MLA's arguments are factually inaccurate.

I. BACKGROUND

1. On January 24, 2017, Infinity filed its Rebuttal testimony of Mr. Matt Langley, wherein Mr. Langley noted that Infinity negotiated a 20-year fixed price power purchase agreement (PPA) with the Missouri Joint Municipal Electric Utility Commission (MJMEUC) for power to be generated by the Iron Star project, and transmitted along the Grain Belt Express Project.¹

2. On February 10, 2017, MLA issued discovery to Infinity seeking, *inter alia*, the private, confidential financial statements of Infinity and Iron Star. On February 17, 2017, Infinity objected to the discovery as not relevant to the Commission's determination in this matter.

3. As noted by MLA,² in an attempt to resolve the discovery dispute, Infinity provided to MLA a list of nine (9) projects completed by Infinity over the past several years. The projects range in size between 74 MW and 300 MW, and demonstrate that Infinity is capable of completing the Iron Star project, which pursuant to the PPA with MJMUEC will provide up to 200 MW of wind energy capacity annually. A copy of that list is attached hereto as **Attachment A**.

II. RESPONSE

A. *Financial Statements of a Privately Held Wind Producer are not Relevant to the Commission's Determination in this Matter.*

4. In making its determination on the Grain Belt Express Application, the Commission will analyze the Application in light of the five (5) factors or criteria applicable to

¹ Specifically, consistent with industry practice, Infinity created Iron Star Wind Project, LLC in 2008, which is a special purpose entity and wholly owned subsidiary of Infinity Wind Holdings, LLC, which is an affiliate of Infinity Wind Power.

² Motion, p. 4, ¶ 5.

CCN requests, which are: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.³

5. The Commission has already noted in this proceeding that “parties may obtain discovery regarding any matter, not privileged, that is... is reasonably calculated to lead to the discovery of admissible evidence[,]” and that in determining whether information 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.’”⁴

6. Here, Infinity acknowledges that whether a need for the Grain Belt Express Project can be shown is relevant to the Commission's inquiry. The existence of the PPA between MJMUEC and Infinity for the Iron Star wind project supports this aspect of the Commission's analysis, and as such that contract has been provided to the Commission as part of the testimony filed in this matter.⁵ As noted by Infinity witness Mr. Langley, absent the Grain Belt Express Project there are simply no other economically feasible pathways to export energy, and the contract between Infinity and MJMEUC will not exist without the Grain Belt Express Project.⁶

³ In re Entergy Arkansas, Inc., File No. EA-2012-0321, *Order Granting Certificate of Convenience and Necessity*, p. 2, issued July 11, 2012 (citing In re Tartan Energy Company, 3 Mo.P.S.C. 173, 177 (1994)).

⁴ File No. EA-2016-0358, *Order Denying Motions to Compel*, pp. 3-4, issued Dec. 21, 2016.

⁵ See, Grotzinger Rebuttal, Schedule JG-4 (HC).

⁶ Langley Rebuttal, p. 4.

7. However, what is not legally relevant to the Commission's five (5) criteria as applied to the Grain Belt Express Application, are the financial statements of a privately held wind producer. Certainly, Grain Belt Express must show that *it* has the financial ability to provide the service it is offering and for which it seeks Commission approval, which is the High Voltage, Direct Current (HVDC) Transmission Line that is the subject of this proceeding. But, MLA goes a step further and argues that Infinity must also prove its financial ability in order for the Commission to grant Grain Belt Express' request for a CCN. Stated otherwise, MLA requests the Commission apply the CCN criteria not only to Grain Belt Express, but also to Infinity, a non-applicant. MLA offers no support for such use of the Commission's CCN criteria, and there is no probative value in the information sought by MLA. Rather, the introduction of this information would not only serve to confuse the issues before the Commission, but it would also waste the time of both the Commission and the Parties, and could have a chilling effect on industry participation in future Commission proceedings.

8. MLA contends is that it needs the financial data of a privately held entity (Infinity) supplying power to a Grain Belt Express customer (MJMUEC), so that it (MLA) can determine whether that privately held entity "will actually be able to finance, develop and construct the proposed wind farm...to ensure a reliable supply of energy...at the guaranteed price..." As stated above, MLA is not qualified to perform an evaluation of Infinity's ability to meet its private contractual obligations. Additionally, MLA offers no basis for its suggestion that Infinity is incapable of developing the Iron Star project. In fact, as evidenced in **Attachment A**, Infinity has a proven track record of developing similar projects. Whether

Infinity is able to perform under the terms of the legally binding contract it initiated with MJMEUC is a contractual matter for a future day and in another venue.⁷

B. *MLA's Arguments are Factually Inaccurate*

9. As a basis for its Motion to Compel, MLA states that “according to MUMEUC’s witness Mr. Grotzinger, [MJMEUC] seem[s] to doubt that they would find a 100-200 MW supply of energy at a price comparable to the contract with Infinity.”⁸ MLA mischaracterizes Mr. Grotzinger’s testimony. Mr. Grotzinger stated in his Rebuttal testimony that,

“Current market prices for a long-term PPA have been consistently higher than the **combination** of the Grain Belt TSA and energy and capacity contract with Infinity. We have not located another **combination** of transmission, energy and capacity that can compete with the offer for transmission from Grain Belt and capacity Infinity for a delivered product into Ameren’s zone.” (Emphasis added)⁹

What Mr. Grotzinger’s testimony clearly states is that the combination of the Grain Belt TSA and the Infinity PPA is what will permit MJMEUC to experience the level of savings identified in Mr. Grotzinger’s testimony. Mr. Grotzinger’s testimony does not call into question the ability of MJMEUC to find a comparable power contract to replace the Infinity PPA. The fact that the Grain Belt Express Project will result in a less complex and less costly pathway to market for wind power and, therefore, lower overall power costs to consumers, is wholly consistent with what Grain Belt Express, Infinity, and other proponents of the Grain Belt Express Project have been saying since Grain Belt Express filed its first request for CCN in File No. EA-2014-0708.¹⁰

⁷ The PPA is a binding agreement between MJMEUC and Infinity, and the failure by either party to perform under the contract is a matter for arbitration pursuant to the laws of Missouri, and not a matter that would come before the Commission

⁸ Motion, p. 2.

⁹ Grotzinger Rebuttal, p. 7.

¹⁰ File No. EA-2014-0207, Berry Direct, Langley Rebuttal, Goggin Rebuttal, Costanza Rebuttal.

10. MLA's inference that MJMEUC believes it would be unable to obtain a comparable PPA from other wind producers for use in combination with the Grain Belt Express TSA is simply inaccurate and assumes the referenced PPA was negotiated in isolation. What MLA fails to note is that Infinity was but one wind developer to respond to the RFP issued by MJMEUC that resulted in the PPA between Infinity and MJMEUC, and that the bidding process was extremely competitive. Therefore, MLA's assertion that absent the Infinity PPA, MJMEUC may not utilize the Grain Belt line is without merit. Such statement ignores the existence of the TSA between Grain Belt Express and MJMEUC, which would remain intact absent Infinity's PPA, and the fact that MJMEUC would be able to obtain comparably priced wind power from another developer.

III. CONCLUSION

11. In summary, the Commission should deny MLA's motion to compel because the information sought is not legally relevant to the Commission's determination. Additionally, (1) there is no evidence to suggest that Infinity is incapable of performing under the contract with MJMEUC, (2) MLA is not qualified to evaluate the potential of Infinity to perform its obligations under its contract with MJMEUC, (3) Infinity's future performance under the contract is a matter beyond the scope of this docket and the Commission's jurisdiction, (4) the introduction and disclosure of the information will serve to waste time, confuse the issues before the Commission, and could have a chilling effect on future Commission proceedings, (5) the TSA between Grain Belt Express and MJMEUC is not contingent upon the Infinity PPA, and (6) even if Infinity were unable to perform under the terms of the PPA, an allegation that Infinity strongly rejects, the competitive nature of the MJMEUC RFP process demonstrates that another wind developer could offer comparably priced energy to MJMEUC.

WHEREFORE, for the reasons set forth above, Infinity Wind Power respectfully requests the Commission deny MLA's Motion to Compel.

Respectfully submitted,

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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 10th day of March 2017.

/s/ Terri Pemberton

Terri Pemberton

Attorney for Infinity Wind Power

Infinity Projects Operating/In Construction

| Project | State | Size (MW) | COD | Offtaker | Buyer/Owner | Status |
|----------------|--------------|-----------|------|---------------------------------|---------------|-------------------------------------|
| Ironwood | Kansas | 167 | 2012 | Westar | Duke & Westar | Operating |
| Shooting Star | Kansas | 104 | 2012 | Mid-Kansas Electric Cooperative | Exelon | Operating |
| Steele Flats | Nebraska | 74 | 2013 | Nebraska Public Power District | NextEra | Operating |
| Mammoth Plains | Oklahoma | 200 | 2015 | Southwestern Public Service | NextEra | Operating |
| Roosevelt | New Mexico | 300 | 2015 | Southwestern Public Service | EDF | Operating |
| Sunflower | North Dakota | 106 | 2015 | Basin Electric Co-op | SunEdison | Operating |
| Western Plains | Kansas | 280 | 2016 | Westar | Westar | Operating |
| Buckthorn | Texas | 98 | 2016 | Confidential | Confidential | Under Construction |
| Red Pine | Minnesota | 200 | 2016 | Confidential | EDF | Completing Development (PPA Signed) |