

**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 MOTION TO STRIKE**

Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”) states the following in Opposition to the Missouri Landowners Alliance’s (“MLA”) Motion To Strike Certain Matieral [sic] in Reply Brief of Grain Belt Express (“MLA Motion to Strike”):

1. Defending itself against MLA’s spurious allegation that the 55% wind capacity factor used by Company witness David Berry in his levelized cost of energy (“LCOE”) analysis had no support (MLA Brief at 18-19), Grain Belt Express attached its verified answers to MLA’s own Data Requests showing the firm scientific basis for that 55% figure. See Att. A, Grain Belt Express Reply Brief. MLA now cries foul and asks the Commission to suppress the facts supporting the 55% figure and to ignore the truth.

2. MLA’s Motion to Strike must be denied, not only because it lacks legal support, but because it would deprive the Commission of relevant information as it weighs the facts of this case.

3. All of the cases cited by MLA relate to attempts by parties at the appellate level to bring matters to the attention of a reviewing court that were not part of the record at the trial court. See McGee v. City of Pine Lawn, 405 S.W.3d 582, 587 n.1 (Mo. App. E.D. 2013);

Miners Co. v. Clayton Greens Nursing Center, Inc., 645 S.W.2d 722, 724 (Mo. App. E.D. 1982).

This is a far cry from the situation at hand where this proceeding is still pending before the Commission, which heard the evidence and created the record in this case.

4. The Company's purpose in appending Attachment A to its Reply Brief was to respond to the unsupported allegation by MLA that Mr. Berry's use of the 55% capacity factor for western Kansas wind generation was not widely accepted, and to demonstrate that MLA knew full well the factual basis of the 55% figure. The November 1, 2016 Responses of Grain Belt Express to MLA's First Set of Data Requests to Mr. Berry show that there is no basis for MLA's argument in its Brief, and that it should be disregarded.

5. Furthermore, the Commission's rules on post-hearing briefs do not contain any restriction or prohibition on citing such matters as verified responses to a party's data request in order to make certain that the arguments of counsel are constrained by the facts. See 4 CSR 240-2.140.

6. At this point, the issue has become more than a mere matter of the credibility of an argument in a party's brief. It is a matter of what are the true facts regarding the 55% wind capacity factor. Consequently, MLA's disregard of those facts must be dealt with affirmatively.

7. Given MLA's Motion to Strike and its insistence that the 55% capacity factor "should be given no credence by the Commission" (MLA Brief at 19), the Company has filed a separate formal Motion to Supplement the Record with the Responses of Grain Belt Express to MLA's Data Requests to Mr. Berry, pursuant to 4 CSR 240-2.130 (16), so that the record is clear and unequivocal.

8. MLA expresses additional undue surprise and shock that Grain Belt Express would quote Dr. Michael Proctor's testimony in the Company's prior Application for a Certificate of Convenience and Necessity, No. EA-2014-0207 ("2014 Case") when he responded to questions posed to him by former Chairman Robert Kenney. See MLA Motion to Strike at 3. However, MLA itself quoted Dr. Proctor in its Brief in similar fashion as did one other party in its brief. See MLA Brief at 18.¹

9. In response to MLA's discussion of Dr. Proctor's testimony in the 2014 Case (MLA Motion to Strike at 3), the Company attaches a transcript of the questions that Chairman Kenney asked Dr. Proctor with regard to the 55% wind capacity issue. See Exhibit 1. It should be noted that in the course of testifying he did not dispute "the possibility and maybe even the probability that by 2019 we might have capacity factors of 55 percent," Dr. Proctor stated without qualification: "I'm not a technology expert on wind generation." Id. at p. 1390.

10. Because there is no legal basis to support MLA's Motion to Strike, and good cause supports the Company's attachment of verified Responses to MLA's Data Requests to clarify the record (as well as the attached Exhibit 1 to present the Commission with the complete answers of Dr. Proctor), the Motion to Strike should be denied.

WHEREFORE, Grain Belt Express Clean Line LLC requests that the Commission deny the Missouri Landowners Alliance Motion to Strike.

¹ See Show Me Concerned Landowners' Initial Post-Hearing Brief at 20.

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 2nd day of May 2017.

/s/ Karl Zobrist

Attorney for Grain Belt Express Clean Line LLC

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing
November 14, 2014
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In the Matter of the Application)
of Grain Belt Express Clean Line)
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Construct, Own, Operate, Control,) File No.
Manage and Maintain a High Voltage,) EA-2014-0207
Direct Current Transmission Line)
and an Associated Converter Station)
Providing an Interconnection on the)
Maywood - Montgomery 345 kV)
Transmission Line.)

MICHAEL BUSHMANN, Presiding,
Regulatory LAW JUDGE.
ROBERT S. KENNEY, Chairman
STEPHEN M. STOLL,
COMMISSIONERS.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR NO. 838
MIDWEST LITIGATION SERVICES

1 about the comparisons with Missouri wind and MISO
2 wind. Are you aware that there was recently a
3 400 megawatt project that was canceled in northwest
4 Missouri known as the Mill Creek Wind Energy
5 Project?

6 A. No, I was not aware of that.

7 MR. ZOBRIST: Thank you, Judge.

8 That's all I have.

9 JUDGE BUSHMANN: Questions from
10 Commissioners. Mr. Chairman, do you have any
11 questions?

12 QUESTIONS BY CHAIRMAN KENNEY:

13 Q. Dr. Proctor, how are you doing?

14 A. I'm doing well, thank you.

15 Q. I just have, I think, one question,
16 and it pertains to the capacity factors, the
17 distinction between the capacity factors that you
18 used in your analysis versus capacity factors that
19 Grain Belt experts used for determining cost
20 effectiveness and whether this is an economically
21 feasible project and whether it's needed.

22 And I think you indicated that you
23 disagree with the 55 percent capacity factor that
24 Grain Belt used, correct?

25 A. That's correct.

1 Q. And tell me, remind me of the
2 capacity factor that you assigned.

3 A. I used 50 percent.

4 Q. And your 50 percent was designated
5 from research that was historical, correct?

6 A. That's correct.

7 Q. And Grain Belt used capacity factors
8 based upon the assumption that the technology would
9 improve by 2019, correct?

10 A. That's correct.

11 Q. And then -- so let me ask you this
12 question, then, given what we've just established.
13 Did you disagree with the idea that the technology
14 will increase and that the capacity factors may
15 increase at some time in the future, or do you
16 disagree with using forward-looking future-based
17 numbers?

18 A. I guess --

19 Q. Do you understand my question? It's
20 a little nuance.

21 A. Yeah, I understand your question. My
22 position is that you should base your analysis on
23 what you're going to -- what you can expect to come
24 from this project based upon historic performance.
25 I think you can factor in the technology portion of

1 it to some extent. I think you have to be very
2 careful when you do that because these are
3 hoped-for improvements. They are not proven
4 improvements.

5 And what I had observed for Kansas
6 wind farms was that they fell more in the mid --
7 between 45 and 50 percent from the data that I had
8 looked at, and that was 2012 data. And I used a
9 50 percent factor. I went to the high end. That
10 was the highest that had been observed.

11 And I felt that was putting in some
12 compensation for -- for technology improvements.
13 But I -- but moving it all the way up to 55 percent
14 I was not comfortable with. Does that -- does that
15 kind of answer your question?

16 **Q. It does. It does. It helps. So I**
17 **mean, if I'm -- and don't let me put words in your**
18 **mouth. But if I'm understanding you, you're not**
19 **disputing the possibility and maybe even the**
20 **probability that by 2019 we might have capacity**
21 **factors of 55 percent?**

22 **A.** There's no way I can dispute that. I
23 mean, I don't have any evidence that -- I'm not a
24 technology expert on wind generation. So I have no
25 basis for disputing that, the possibility of it.

1 **Q. Fair enough.**

2 CHAIRMAN KENNEY: I don't think I
3 have any additional questions. Thank you very much
4 for your time. Good to see you again.

5 THE WITNESS: Good to see you.

6 COMMISSIONER STOLL: I have no
7 questions, but thank you for your testimony.

8 THE WITNESS: Thank you.

9 JUDGE BUSHMANN: Recross based on
10 Bench questions. Missouri Landowners Alliance?
11 Any questions, Mr. Agathan?

12 MR. AGATHAN: I'm sorry. No, Judge.

13 JUDGE BUSHMANN: Reicherts and
14 Meyers?

15 MR. DRAG: No questions, your Honor.

16 JUDGE BUSHMANN: Commission Staff?

17 MR. ANTAL: No questions, Judge.

18 JUDGE BUSHMANN: Wind on the Wires,
19 Wind Coalition?

20 MR. REED: No questions.

21 JUDGE BUSHMANN: Grain Belt Express?

22 MR. ZOBRIST: No questions.

23 JUDGE BUSHMANN: Redirect by Show-Me
24 Concerned Landowners?

25 MR. JARRETT: Yes. Just a few,