

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day
of March, 2023.

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 Maintain a High)
Voltage, Direct Current Transmission Line)
and Associated Converter Station)

File No. EA-2023-0017

**ORDER GRANTING, IN PART, AND DENYING, IN PART, REQUEST TO
COMPEL DISCOVERY ANSWERS**

Issue Date: March 16, 2023

Effective Date: March 16, 2023

On August 24, 2022, Grain Belt Express LLC (Grain Belt) filed an application seeking an order amending its certificate of convenience and necessity (CCN) granted in File No. EA-2016-0358. On January 6, 2023, the Missouri Landowners Alliance (MLA)¹ filed a motion requesting a discovery conference and requesting the Commission direct Grain Belt to provide complete answers to eleven data requests² proffered by MLA to Grain Belt. Grain Belt objected to the data requests.

A discovery conference was held on January 20, 2023. The Commission allowed additional responses regarding the discovery requests and those filings were made by MLA and Grain Belt on January 24, 2023, and January 27, 2023, respectively.

¹ The motion was filed on behalf of the MLA, the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, Norman Fishel, Gary and Carol Riedel, and Dustin Hudson. For convenience, this group was collectively referred to as "MLA" in the motion and will be referred to similarly in this order.

² These were Data Request Nos. SS-5, SS-6, SS-7, SS-8, SS-22, G-13, G-14, G-15, G-16, G-17, and G-18.

The Commission previously granted Grain Belt a Protective Order that established procedures for controlling the flow of highly confidential information among the parties.³ This Protective Order allows Grain Belt to designate highly sensitive competitive market data, financial information, and other proprietary transactional data that will not be adequately protected by the “confidential” designation, set out in Commission Rule 20 CSR 4240-2.135, to be further protected from full disclosure.

Missouri Supreme Court Rule 56.01(b)(1), provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to a pending action or reasonably calculated to lead to the discovery of admissible evidence.⁴ Missouri’s courts have indicated that there are two aspects to relevance - logical relevance and legal relevance.⁵ Logical relevance simply means that the questioned evidence tends to make the existence of a material fact more or less probable.⁶ In determining legal relevance, the court, or administrative agency, 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.”⁷

The Data Requests in Dispute

MLA seeks complete answers to the following data requests (DRs):

DR SS5

In the first disputed data request, MLA requested that Grain Belt “provide a copy of all of the Memorandums of Understanding (MOUs) referenced at page 13 lines 7-10 of

³ Order Establishing Protective Order, issued October 20, 2022.

⁴ Commission Rule 20 CSR 4240-2.090(1) provides that discovery in matters before the Commission may be obtained by the same means and under the same conditions as in civil actions in the circuit court.

⁵ *State v. Kennedy*, 107 SW 3d 306, 311 (Mo. App. W.D. 2003).

⁶ *State v. Kennedy*, 107 SW 3d 306, 311 (Mo. App. W.D. 2003).

⁷ *Jackson v. Mills*, 142 SW 3d 237, 240 (Mo. App. W.D. 2004).

[Grain Belt witness Shashank Sane's] testimony." Grain Belt objected to this request because it "seeks information regarding commercially sensitive and competitive negotiations and the identities of potential commercial partners." Additionally, Grain Belt argued that "these discussions are protected from disclosure by the terms of executed confidentiality agreements and/or nondisclosure agreements with potential counterparties." However, Grain Belt does not state what harm would come from disclosing this information under the terms of the Protective Order. Additionally, at the January 20th Discovery Conference, Grain Belt indicated that although it had non-disclosure agreements as part of the Memorandums of Understanding (MOUs) it could disclose details of the agreements if it were under a legal requirement, such as a Commission order, to do so.⁸

Grain Belt uses the existence of these MOUs to support its case-in-chief. The relevance of these documents is not in question and their probative value is high. Further, the Commission finds that the protections provided by the Protective Order and the Commission's rule regarding confidential information are sufficient to safe guard the commercially sensitive information in the MOUs. Grain Belt will be directed to answer DR SS5.

DR SS6, DR SS7, and DR SS8

The next disputed data requests and the objections to them are nearly identical except for the companies involved and the citations to the testimony. As an example, DR SS6 states as follows:

With reference to your discussion of Ameren Missouri at p. 13 line 15 – p. 14 line 20 of [the Direct Testimony of Shashank Sane]: (1) Please provide a copy of all documents transmitted to Grain Belt from Ameren which address the question of what interest Ameren may have, if any, in purchasing an

⁸ Transcript, Volume 2, pages 34-35.

ownership interest in and/or capacity from the Grain Belt line. (2) Please provide a copy of all documents submitted by Grain Belt to Ameren discussing the possible purchase by Ameren of an ownership interest in and/or capacity from the Grain Belt line. With respect to items (1) and (2) immediately above, this request is limited to documents written or compiled after the Commission Order in the last CCN case.⁹

In its objections to DRs SS6, SS7, and SS8, Grain Belt argues that MLA 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. . . . Moreover, these discussions are protected from disclosure by the terms of executed confidentiality agreements and/or nondisclosure agreements with potential counterparties.” Grain Belt also argues that while it uses information related to specific companies to support its case-in-chief that there is demand for the project, the referenced witness testimony is compiled entirely from public information and does not reference any negotiations with Ameren Missouri, Evergy, or the Tennessee Valley Authority.

In the Direct Testimony of witness Shashank Sane, Grain Belt presents evidence that each of these utilities’ future plans make it likely that they will purchase power from Grain Belt’s transmission lines. However, Grain Belt does not rely upon any negotiations with these entities to support its application. Therefore, the Commission finds that these data requests are not sufficiently related to the relevant testimony to make their probative value greater than the potential harm to Grain Belt in producing information about these

⁹ DR SS7 asks for similar information with regard to Evergy as discussed in the Direct Testimony of Shashank Sane at page 14, line 21, to page 15, line 2. DR SS8 asks for similar information with regard to the Tennessee Valley Authority (TVA) as discussed in the Direct Testimony of Shashank Sane at page 16 lines 9-19.

potential negotiations. The Commission will deny the request to compel answers to DRs SS6, DR SS7, and DR SS8.

DR SS22

In DR SS22, MLA requests that Grain Belt “provide a copy of all documents related to each of ‘the discussions around the MOUs’.”¹⁰ Grain Belt objects to this request for similar reasons as the above requests, because the data request “seeks information regarding commercially sensitive and competitive negotiations and the identities of potential commercial partners and because the discussions are protected by the terms of executed confidentiality agreements and/or nondisclosure agreements.” Grain Belt argues that the harm of disclosure “outweighs the probative value of the information sought.”

The Commission has reviewed DR SS22 and the testimony that it cites. The portion of Grain Belt’s witness Shashank Sane’s Direct Testimony that DR SS22 references is specifically being used to support the financial viability of the project.¹¹ The Commission finds that the information regarding what those pricing discussions were is directly related to the evidence Grain Belt is presenting to support the economic feasibility of its project. Thus, the Commission finds that Grain Belt has opened the door to discovery of these relevant and potentially highly probative discussions surrounding the MOUs. Further, the Protective Order will offer sufficient protection for the highly confidential and

¹⁰ Citing to page 31 lines 5-8 of the Direct Testimony of Shashank Sane.

¹¹ The section titled “The Amended Project is Economically Feasible” of the Direct Testimony of Shashank Sane, page 31, lines 5-8, states:

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.

commercially sensitive information. Therefore, the Commission will direct Grain Belt to answer DR SS22.

DR G13, DR G14, DR G15, DR G16, DR G17, and DR G18

In DR G13, DR G14, DR G15, DR G16, DR G17, and DR G18, MLA requests specific information, including all the details and terms of offers and negotiations related to the potential purchase of capacity from Grain Belt since the close of the last certificate of convenience and necessity case.

Grain Belt objects to this request as not being relevant nor reasonably calculated to lead to the discovery of admissible evidence. Grain Belt also objects because the information is commercially sensitive and it argues that the harm of disclosure outweighs the probative value of the information sought because it did not rely on any negotiations or inquiries to support its case-in-chief. Grain Belt also argues that these discussions are protected from disclosure by the terms of executed confidentiality agreements and nondisclosure agreements with potential contracted parties.

While Grain Belt has presented testimony alleging that its project will be economically feasible and in the public interest, the probative value of the sensitive details of all entities Grain Belt has contacted and negotiated with regarding the purchase of capacity for this project does not outweigh the potential harm to Grain Belt in disclosing these details. Therefore, the Commission will not direct Grain Belt to answer DR G13, DR G14, DR G15, DR G16, DR G17, or DR G18.

THE COMMISSION ORDERS THAT:

1. The request to compel answers to discovery is granted, in part, and denied, in part.

2. No later than March 23, 2023, Grain Belt shall respond to DR SS5 and DR SS22.

3. MLA's request to compel answers to DR SS6, DR SS7, DR SS8, DR G13, DR G14, DR G15, DR G16, DR G17, and DR G18 is denied.

4. So that the intervenors, Staff, and the Office of the Public Counsel have sufficient time to prepare their reports or rebuttal testimony, the time for filing the Staff Report and Intervenor Rebuttal Testimony is extended to April 5, 2023.

5. This order shall be effective when issued.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur.

Dippell, Chief Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 16th day of March, 2023.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 16, 2023

File/Case No. EA-2023-0017

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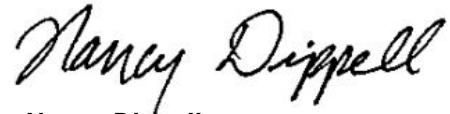
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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in black ink that reads "Nancy Dippell". The signature is written in a cursive, flowing style.

**Nancy Dippell
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.