

**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 Current Transmission Line)
and an Associated Converter Station)
Providing an Interconnection on the)
Maywood - Montgomery 345 kV transmission)
Line.)

Case No. EA-2016-0358

**SHOW ME CONCERNED LANDOWNERS' MOTION TO STRIKE
AND IN THE ALTERNATIVE TO DELAY SURREBUTTAL TESTIMONY AND
HEARING DATES**

COMES NOW the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners ("Show Me"), by and through its counsel and respectfully moves that the Missouri Public Service Commission ("Commission") strike the Missouri Joint Municipal Utility Commission ("MJMEUC") testimonies of Duncan Kincheloe and John Grotzinger filed on January 24, 2017, and in the alternative, delay the remainder of the procedural schedule by four months, and in support thereof, states the following:

1. On August 30, 2016, Grain Belt Express Clean Line ("Grain Belt") filed its Application for a Certificate of Convenience and Necessity ("Application"). Grain Belt filed fifteen sets of prefiled direct testimony contemporaneously with its Application.

2. On September 28, 2016, the Commission held a procedural conference for the purpose of, at least in part, developing a procedural schedule for the case. Thereafter, the Commission issued an *Order Setting Procedural Schedule and other Procedural Requirements* ("*Procedural Order*"). In its *Procedural Order*, the Commission set January 24, 2017, as the date to prefile rebuttal testimony and February 21, 2017, as the date to file surrebuttal testimony.

On January 24, 2017, MJMEUC filed what purported to be the rebuttal testimonies of Duncan Kincheloe and John Grotzinger (“MJMEUC Testimony”).

3. The Commission rules of practice and procedure, 4 CSR 240-2.130(7), provide in part:

(7) For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party’s entire case-in-chief;

* * * * *

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party’s direct case;

The rule requires that direct testimony contain all of the party’s case-in-chief, and it requires rebuttal include only testimony that constitutes a rejection, disagreement, or proposed alternative to the direct case. Stated another way, an applicant must make its case in its direct testimony. It cannot, by itself or by a surrogate, supplement its case in chief by rebuttal testimony.

4. One of the key “benefits” of the proposed project, as described in the Application is a transmission service agreement with MJMEUC. The Application made power supply via the Grain Belt project to MJMEUC a key component of Grain Belt’s case-in-chief. However, the full details of that key component, the Power Purchase Agreement, were not provided in the direct testimony.

5. The MJMEUC testimony provides that key component of the case-in-chief. Mr. Grotzinger describes the purpose of his testimony as follows:

I will explain the economic benefit that the Grain Belt Express Clean Line LLC (Grain Belt) project will provide to Missouri citizens if Grain Belt were to receive a Certificate of Convenience and Necessity (CCN) and the project is completed. If the project is completed, MJMEUC members will have the opportunity to buy renewable energy for their customers at a competitive price delivered to Missouri.

Rebuttal Testimony of John Grotzinger, p. 2, lines 8 -13. He goes on to summarize his testimony: “The agreement with Grain Belt will allow MJMEUC to purchase needed energy for its members that is both renewable and economical. This project will allow for substantial savings over other proposals to supply energy to MJMEUC, particularly when including transmission costs.” Rebuttal Testimony of John Grotzinger, p. 2, lines 17 -20. Schedule JG-4HC is a copy of the executed Power Purchase Agreement. Mr. Grotzinger’s testimony explains the value of this Power Purchase Agreement and the “agreement with Grain Belt” to MJMEUC. The Power Purchase Agreement is accompanied by a seventy page “Regional Market Report” supporting Mr. Grotzinger’s testimony as Schedule JG-2HC. Mr. Kincheloe’s testimony likewise supports Mr. Grotzinger’s testimony regarding the Power Purchase Agreement and the transmission service agreement.

6. MJMEUC is essentially a co-applicant to this proceeding with Grain Belt. MJMEUC and Clean Line Energy Partners LLC have a Joint Prosecution and Defense Agreement (“Joint Defense Agreement”) regarding this “Regulatory Litigation.” A copy of the Joint Defense Agreement is attached hereto as Schedule A. The first recital of the Joint Defense Agreement states the position of the Parties thereto, “WHEREAS, the Parties believe and anticipate that the nature of the Regulatory Litigation will present various common legal and factual issues and that the Parties have a mutuality of interest in a join prosecution, defense, and

investigation of the Regulatory Litigation; and.” Both MJMEUC and Grain Belt have asserted this mutuality of interest in the joint prosecution of this case repeatedly in responses to data requests. They have joint interest in prosecuting this Regulatory Litigation and they are executing their strategy together. MJMEUC should not be permitted to supplement the case-in-chief at this late date.

7. Not only does the Commission rule require the Commission to strike the MJMEUC testimony, equity and due process demand it. Grain Belt is and has at all times been in control of the filing of its case. Show Me has no knowledge of the strategy behind the timing of the signing of the Power Purchase Agreement one day prior to the filing of rebuttal testimony other than to note the timing is very convenient to an effort to hide the ball from Missouri Landowner Alliances data requests. The delay, well within MJMEUC’s and Grain Belts’ control, circumvented the procedural schedule designed to provide adequate time to review all facts and circumstances.

8. The Commission’s procedural schedules are set to permit staff and intervenors to have an adequate opportunity to evaluate and respond to the direct testimony in its entirety. The Commission, recognizing the need for time to adequately evaluate the direct testimony, provided from August 30, 2016 until January 24, 2017 to file rebuttal testimony. If MJMEUC is permitted to file this detailed, supportive testimony, intervenors’ opportunity to respond will be reduced by approximately 80%, to less than a month.

9. It is appropriate and right for the Commission to strike the MJMEUC testimony. The Commission should recognize the Power Purchase Agreement as of no legal relevance in this case. The Commission is aware that it is a body of limited jurisdiction. It has observed that, “the General Assembly of this state created the Public Service Commission for the expressed

purpose of regulating public utilities.” See *In Re Cuivre River Electric Service Company*, Case No. EA-87-102 and EA-87-159, p. 12 (Report and Order, April 27, 1990). The General has not granted the Commission jurisdiction over MJMEUC or the municipal utilities it represents. MJMEUC and its members are self-regulated. The needs of existing municipal customers are not legally cognizable to this Commission.

10. Further, this Commission has found that the terms and conditions of this agreement are not of significant probative value. In its *Order Granting Motion for Protective Order*, dated December 27, 2016, in this case, the Commission stated regarding pricing information for competitive wind generators, “The Commission finds that the probative value of the information requested in the MLA data requests is outweighed by the harm that disclosure would cause to Infinity.” See Case No. EA-2016-0358, Item 156, p. 3. Inasmuch as Grain Belt and MJMEUC put the value of the MJMEUC wind power supply at the very heart of their case, the Commission’s order speaks volumes.

11. To permit Grain Belt’s and MJMEUC’s strategy to go forward may result in tricking intervenors to spend their limited resources to less than the best effect. Intervenors were induced to do an analysis of the transmission service agreement without critical underlying facts. Now they must conduct another evaluation to determine what impact the Power Purchase Agreement has on the original analysis. Not only so, but Power Purchase Agreement calls into question Mr. Berry’s LCOS analysis. The Commission should not permit regulation to be conducted in such a piecemeal fashion. To do so burdens the limited resources of the landowners of the state.

12. In the alternative, Show Me requests that the Commission provide staff and intervenors adequate time to review the MJMEUC testimony. If Grain Belt and MJMEUC had

been forthcoming with the information that is a part of the case-in-chief in this case, intervenors would have had approximately five months to review and evaluate the MJMEUC testimony. Therefore, in the alternative, Show Me requests that the Commission delay the deadline for surrebuttal testimony by four months and the hearing dates by a comparable amount.

WHEREFORE, Show Me respectfully requests that the Commission strike the MJMEUC testimonies of Duncan Kincheloe and John Grotzinger, and in the alternative, grant a delay in the procedural schedule of four months.

Respectfully submitted,

By: /s/ David C. Linton

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Application to Intervene was sent to all parties of record in File No. EA-2016-0358 via electronic transmission this 26th day of January, 2017.

/s/ David C. Linton