

**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,) **File No. EA-2016-0358**
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)

**ORDER GRANTING MOTION TO COMPEL, IN PART, AND GRANTING
MOTION FOR PROTECTIVE ORDER, IN PART**

Issue Date: December 13, 2018

Effective Date: December 13, 2018

Motion to Compel

On December 11, 2018, the Missouri Landowners Alliance (“MLA”) filed a Motion to Compel and for Expedited Treatment, requesting that the Commission order Grain Belt Express to disclose financial statements of Invenergy Transmission LLC and un-redacted versions of the Membership Interest and Purchase Agreement and Development Management Agreement between Grain Belt Express and Invenergy (collectively, “Agreements”), including any associated exhibits and schedules. Grain Belt Express has represented to the presiding officer that the redacted portions of the Agreements concern either transaction pricing information and similar financial terms or information identifying landowners who have signed easement agreements with Grain Belt Express. MLA states it requires that information to analyze the financial condition of Grain Belt Express and Invenergy, which is an issue in this proceeding.

Grain Belt Express responded by stating that disclosure of the Agreements would have a very great prejudicial effect on Grain Belt Express, as these documents contain numerous confidential provisions. The Agreements apply to the entire transmission line, not just Missouri's portion, so Grain Belt Express argues that disclosure of those redacted terms will impact the company's competitive advantage in those other states and jeopardize Invenenergy's future contract negotiations by revealing important pricing information to competitors. With regard to the financial statements, Grain Belt Express states that MLA's overbroad request asks for information completely unrelated to Invenenergy Transmission and the project at issue in this case, which is not necessary to assess Invenenergy's financial ability to complete the project. If this information were to become public, it could harm Invenenergy's competitive position in the market as competitors could use this information as leverage in future negotiations, causing severe and irreversible harm to Invenenergy.

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.¹ Missouri's courts have indicated that there are two aspects to relevance - logical relevance and legal relevance.² Logical relevance simply means that the questioned evidence tends to make the existence of a material fact more or less probable.³ 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

¹ Mo. Sup. Ct. Rule 56.01(b)(1). Commission Rule 4 CSR 240-2.090(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.

² State v. Kennedy, 107 SW 3d 306, 311 (Mo. App. W.D. 2003). That two-part relevance test is used to analyze the appropriateness of an administrative investigative subpoena in Jackson v. Mills, 142 SW 3d 237 (Mo. App. W.D. 2004).

³ State v. Kennedy, at 311.

issues, undue delay, waste of time, cumulateness, or violations of confidentiality. Evidence is legally relevant if its probative value outweighs its prejudicial effect.”⁴

The financial ability of Grain Belt Express and Invenergy to construct and operate the proposed transmission line is one of the most important issues for determination in this remand proceeding. The requested information could impact a determination on this issue, so the probative value of the information is high. However, Grain Belt Express has also made a persuasive argument for the risk of harm to the companies should that information become publicly available. The Commission concludes that the probative value outweighs the potential prejudice to the companies, so some of the requested information is relevant and discoverable. The information that is not discoverable is described immediately below.

Some of the redacted portions of the Agreements contain the names or other identifying information regarding property owners who have signed easements or other agreements relating to the transmission line project. This information is not relevant to the Commission’s decision in this case and should not be disclosed. Also, some of the financial statements requested by MLA contain data unrelated to Invenergy Transmission and the project, so that information is not relevant and should not be disclosed. The Commission finds that MLA should be provided with the same financial information provided to Staff in response to Staff DR 75, which is Invenergy Investment Company LLC’s 2017 audited consolidated balance sheet, income statement, and cash flow statement, as well as the September 30, 2018 quarterly income statement and balance sheet and full Independent Auditors’ Report with notes for the years ended Dec. 31, 2017 and 2016.

⁴ Jackson v. Mills, 142 SW 3d 237, 240 (Mo. App. W.D. 2004).

Since the evidentiary hearing is scheduled to begin in five days, the Commission will direct Grain Belt Express to provide the information authorized by this order immediately to MLA.

Motion for Protective Order

Due to the sensitive and confidential nature of the information requested by MLA, as has been described above, Grain Belt Express has requested that the Commission grant a protective order requiring that the information requested by MLA only be viewed by an attorney in-camera at a law office of either Grain Belt Express or MLA's attorneys; the information may only be reproduced by taking hand-written notes; and it may not be disclosed to other persons. MLA argues that this process is unreasonable because counsel would be required to spend an unknown number of hours making handwritten copies of numerous documents. This process would also unfairly limit MLA's due process rights, because it would hinder its ability to cross-examine company witnesses on matters relating to the documents.

Commission rules provide for the issuance of protective orders when necessary to protect information from discovery more rigorously than would be provided from a confidential designation.⁵ The Commission may order such greater protection by a party explaining what information must be protected, the harm to the disclosing party that might result from disclosure of the information, and how the information may be disclosed while protecting the interests of the disclosing party.⁶ Grain Belt Express has made convincing arguments that the risk of harm to the companies is great should the confidential information be publicly disclosed. However, Grain Belt Express has not adequately

⁵ Commission Rule 4 CSR 240-2.135(3).

⁶ Commission Rule 4 CSR 240-2.135(4).

explained why the protections of the Commission's rules would not work to prevent that unauthorized disclosure. Grain Belt Express' proposed solution of an in-camera review is a drastic step that would unfairly limit disclosure to only those parties who have the time and resources to travel to the attorney's office and make hand-written notes. Since there are so many parties to this case, some of whom are located out of Missouri, this procedure would result in an unfair selective disclosure. Grain Belt Express states that it is concerned about the release of highly sensitive information to individuals beyond attorneys and subject matter experts in this case. To mitigate this concern, the Commission will grant the motion for protective order by designating as "highly confidential" all information disclosed under this order and by limiting disclosure of that information to attorneys of record for all parties, to state agency parties and their employees covered by statutory confidentiality requirements, and to designated outside experts of any non-state agency party. All outside experts must complete the certification process described in Commission Rule 4 CSR 240-2.135(7).

THE COMMISSION ORDERS THAT:

1. The Missouri Landowners Alliance's Motion to Compel and for Expedited Treatment is granted, in part, as described in the body of this order. Grain Belt Express shall provide to MLA the information authorized by this order immediately, subject to the provisions of the protective order granted below.

2. Grain Belt Express Clean Line LLC's Motion for Protective Order is granted, in part. Any information authorized to be disclosed in this order shall be designated as "highly confidential". Competitively sensitive information designated by Grain Belt Express as highly confidential shall be disclosed only to attorneys of record for all parties, to state

agency parties and their employees covered by statutory confidentiality requirements, and to designated outside experts of any non-state agency party.

3. All outside experts must complete the certification process described in Commission Rule 4 CSR 240-2.135(7). Except for attorneys of record for all parties, and employees of state agency employees covered by statutory confidentiality requirements, all persons authorized to access “highly confidential” information in this case shall complete the nondisclosure agreement attached to this order as Exhibit A.

4. This order shall become effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Michael Bushmann, Senior Regulatory
Law Judge by delegation of authority
pursuant to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 13th day of December, 2018.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

**NONDISCLOSURE AGREEMENT
For Case No.: EA-2016-0358
(To Access Highly Confidential Information)**

I, _____, have reviewed the Commission's Rule at 4 CSR 240-2.135
on the ____ day of _____, 20_____.

I have requested review of the highly confidential information produced in Case No.
_____ on behalf of _____.

I hereby certify that:

(a) Only an outside expert retained by a party in this case may receive highly confidential
information;

(b) I am an employee of _____ acting as an outside
expert for [state name of intervenor] _____
retained to provide expert consultation or testimony in this docket;

and

(c) I have read and agree to abide by the Commission's Rule at 4 CSR 240-2.135 and all
terms of the Protective order issued by the Commission in this docket.

Dated this _____ day of _____, 20_____.

Signature & Title

Employer

Party

NONDISCLOSURE AGREEMENT
For Case No: EA-2016-0358
(To Access Highly Confidential Information)
Page 2

Address

Telephone

E-Mail Address

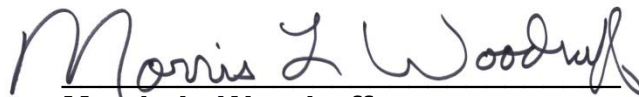
STATE OF MISSOURI

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 13th day of December 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

December 13, 2018

File/Case No. EA-2016-0358

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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 "Morris L. Woodruff". The signature is written in a cursive style with a large initial "M".

Morris L. Woodruff
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.