BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

APPLICATION FOR REHEARING BY
MISSOURI'S AGRICULTURAL ASSOCIATIONS

COMES NOW Missouri Farm Bureau Federation, Missouri Cattlemen's Association, Missouri Pork Association, Missouri Soybean Association and Missouri Corn Growers Association (hereafter collectively referred to as the "Agricultural Associations") pursuant to RSMo. 386.500 and 20 CSR 4240-2.160, and set forth their application for a rehearing in this matter in light of the Commission's Report and Order issued on October 12, 2023 (the "Report and Order"). For the following reasons, the Agricultural Associations contend the Report and Order was unlawful, unjust, and unreasonable:

A. Judge Dippel's refusal to allow relevant cross-examination of Grain Belt's expert witness Mark Repsher was unlawful, unreasonable and unjust

On June 6, 2023, the second day of the evidentiary hearing in this matter, the Agricultural Associations' counsel attempted to cross-examine Grain Belt Express LLC's ("Grain Belt") expert witness Mark Repsher regarding his assumption of the future existence of a national carbon tax and his conclusions regarding the Grain Belt project.

During the Agricultural Associations' cross examination of Mr. Repsher, the Agricultural Associations' counsel's first exchange with Mr. Repsher at Tr. Vol. 9, page 351, line 23 through page 352, line 4, was as follows:

CROSS-EXAMINATION

BY MR. HADEN:

Q. So I want to go back just quickly. I know you worked it over pretty hard yesterday. ***The assumption about carbon tax, you had an assumption built in that there would be carbon taxes from 2027 going forward, correct?***

A. That was the assumption we made, correct.

(emphasis added)

An exchange of questions then ensued from Tr. Vol. 9, page 351, line 23 through page 365, line 12 in which Mr. Repsher confirmed both directly and indirectly that his analysis did assume that in 2027 and after a national carbon tax will be imposed by some method. For example, at Tr. Vol.9, page 363, line 20-25:

Q. Okay. Your assumptions -- You talked about the Illinois program. Is the assumption you've built in , is it just for the Illinois program or would it be for a broader cap and trade regime?

A. It would be for a carbon regime that covers all generators within the U.S.

Mr. Repsher also confirmed that he was uncertain as to the financial impact on the Grain Belt project if there is no carbon tax in place in 2027. At Tr. Vol.9, page 356, line 12, the following exchange occurred between Agricultural Associations' counsel and Mr. Repsher:

Q. Is it neutral to your analysis then whether you include that assumption or not?

A. ***It's not neutral but it's not binary***.

Q. Then which way does it cut? Here's the reason I'm asking. If it doesn't matter if it truly just zeroes out in the math, then it doesn't really matter if you include the assumption, right, but I think you just said that it does matter if you include the assumption. So why is it there?

A. It's a complicated question. And I know you want me to be quick. So I'll try to be quick here. One of the impacts by including a carbon assumption, again in both worlds, is that it makes it more challenging for fossil generators to operate and induces more renewables to enter the system. Again, we're not even talking about the lines. It makes renewables more economic. So what does that do. Renewables in and of themselves, which again I think was consistent from one of the Staff witnesses, is that as you include more renewables in the supply stack, all else equal you're reducing power prices. So we're actually creating in some ways a more

> conservative power price outcome by including more renewables in our analysis than would otherwise be there without that carbon assumption. So again, to answer your question, I can't say definitively which way it would move because yes, from a single -- if we remove carbon, all else equal would power prices be lower, yes, they'd be lower in both cases, but the counter to that is we also would build a lot loss renewables. So because of that power prices would go up. So where is it? It's somewhere in the middle. ***I don't know where it is because I haven't done the analysis.*** It's not an easy 101 one-for-one analysis to do.
>
> (emphasis added)

Then, at Tr. Vol.9, page 365, line 9 through 12, the Agricultural Associations' counsel asked the following question:

> Q. But you would stand today on the assumption in the model that there would be a cap and trade system that would dynamically affect your overall conclusion by 2027?

Grain Belt's counsel then objected and the following exchange among the Agricultural Associations' counsel, Grain Belt's counsel and Judge Dippell occurred from Tr. Vol. 9, page 365, line 13 through page 369, line 20:

> MR. SCHULTE: Objection. It misstates the previous testimony as we've been over many times. The testimony does not -- the model does not assume specific federal action in order to assume a carbon constrained future.
>
> MR. HADEN: I didn't say I assumed federal action. I said it assumes a cap and trade carbon program, I believe, but that's what I'm asking about.
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> MR. SCHULTE: Again, it still misstates the evidence because the testimony which we've been over many times is that it does not assume specific government action federal or state.
>
> MR. HADEN: Okay. But it does assume, I think he said multiple times, a carbon tax program being in place from 2027 forward and he said that does make a difference in the model. He may not know exactly where the number is, but that's what I'm trying to get to the bottom of. I don't understand why there's such a push. You're going to present an expert and then try to constrain his testimony only to what you want to hear. It's a fair question as to how that affects the model. If we're to believe the model, he should be able to explain the model. I'm not saying Witness Repsher is not. But I don't understand the objection, and I don't think it misstates his testimony, but more importantly I think I'm asking as it relates to his conclusion in a way that's fair to the overall inquiry for the expert witness. That's what he's here for.

JUDGE DIPPELL: Ms. Bentch, could you read back the last question.

(The last question was read back by the stenographer.)

JUDGE DIPPELL: Thank you. I'll let you get caught back up. Are you ready to -- Okay. Objection sustained. I believe the question asks for facts that the witness has testified don't exist. ***He has not testified that he assumed a carbon tax.***

MR. HADEN: Judge, I respectfully disagree. If I could ask to clarify then his testimony on that matter to see if we can come back to this. We may get an asked and answered objection. My understanding what he testified to earlier is -- well, and I can ask him again but I don't think that's what he said in his earlier testimony about the way that assumption --because it's not that the assumption is neutral, have it in and have it out. It's not that it's completely transparent to the rest of the conclusion. He said that himself earlier that you subtract it out but there is movement, he doesn't know the exact number, but there is a difference between having it in and having it out.

MR. SCHULTE: Judge, if I may.

JUDGE DIPPELL: One last.

MR. SCHULTE: Mr. Haden is testifying about what this witness testified about.

MR. HADEN: Then we can go back and read the record. I'm fine with that, but I don't want to slow it down that much.

JUDGE DIPPELL: Mr. Haden.

MR. HADEN: I don't think I am.

JUDGE DIPPELL: Mr. Haden --

MR. HADEN: Yes, Judge.

JUDGE DIPPELL: -- let Mr. Schulte finish.

MR. HADEN: Yes.

MR. SCHULTE: This is a good example, Judge Dippell, of why we have prefiled testimony in complicated technically intense areas and we could simply go back and read footnote 4 on page 7 of Mr. Repsher's testimony where he explains this very clearly. And I don't know if Mr. Haden did not read that or if he has questions specific to that statement in his testimony, but I think that would help us and the Commission clarify exactly what Mr. Repsher's testimony is.

MR. HADEN: Judge, active cross-examination is here in part because a witness might have an inconsistent answer, they may roll back on an answer. In all sorts of judicial proceedings, people say X in direct testimony and then come back and say well, Y, in cross-examination or they qualify their answer.

MR. SCHULTE: A study is a fixed final study.

MR. HADEN: It's about procedure.

> JUDGE DIPPELL: Okay. Stop. Stop. I've already ruled on the objection. Move on with your next question.
>
> MR. HADEN: Judge, I will move on.
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> JUDGE DIPPELL: ***Do not argue with me.***
>
> MR. HADEN: I have a question then on clarification then. I'm not to go back to ask about anything he's talked about earlier then in terms of the analysis? I'm not going to ask the same question again. I'm unclear now as to what his testimony is about how it applies.
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> JUDGE DIPPELL: ***We talked for a long time yesterday about a carbon tax. The witness testified, the witness has prefiled testimony. I don't know how much more we need to testify about whether there's going to be, whether there was or whether there's assumptions about an official carbon tax.***
>
> MR. HADEN: And Judge, not argumentative then, you know I have to do my job just making a record then, I just put a place in the record. I mean, I am objecting on an ongoing basis in not being able to adequately cross-examine this witness based on the ruling. I'll put that on the record. I'm not arguing. You understand where I'm at on that. I'll move on.
>
> JUDGE DIPPELL: Go ahead.
>
> MR. HADEN: Thank you. I have. I just wanted to make a statement there so I've got that.
>
> (emphasis added)

It is clear from this exchange that the Agricultural Associations were not allowed to adequately cross-examine Mr. Repsher at the evidentiary hearing, and that Judge Dippell's prohibition of the Agricultural Associations' cross-examination is unlawful, unjust, and unreasonable.

Judge Dippell's ruling as to Grain Belt's objection relied on Judge Dippell's belief that "[h]e [Mr. Repsher] has not testified that he [Mr. Repsher] assumed a carbon tax." Judge Dippell's conclusion was simply in clear error in light of Mr. Repsher's own clear statements set forth above. Mr. Repsher himself conceded from the very beginning of his testimony under the Agricultural Associations' cross-examination "[t]hat was the assumption we made, correct."

And it wasn't just Mr. Repsher's testimony that confirmed this assumption- it is set forth clearly as Mr. Repsher's assumption in footnote 4 on page 7 of Mr. Repsher's direct testimony. That footnote stated:

> For the purposes of the analysis, ***PA assumed that a national carbon pricing regime would be implemented in 2026.*** The carbon price is set at $24.55/short ton in 2026 (nominal dollars) and increases at 2.2% per year, tracking inflation throughout the study period. ***These assumptions*** are broadly representative of values commonly utilized in utility resource planning and regulatory processes in the region. The use of an alternative carbon price assumption (either higher or lower) will still result in directionally consistent outcomes (i.e., ratepayer savings), albeit with differences in specific benefits values***. The assumption of a carbon pricing regime*** is a relatively common practice in utility (e.g., Ameren in their IRP) and ISO (e.g., MISO in their LRTP) planning processes. Carbon pricing can be reflected as a broad 'shadow cost' within fundamental market models to analyze varying regulatory outcomes, and the use as a modeling variable is not ***necessarily*** tied to/dependent on a single legislative outcome at the federal or state level. (emphasis added.)

There is no material issue of fact as to whether Mr. Repsher's conclusions rested on an assumption of a carbon tax existing in 2027. In fact, the very footnote from Mr. Repsher's direct testimony referred to by Grain Belt's counsel in his objection makes it clear that Mr. Repsher both assumed that there will be some sort of "national carbon pricing regime" implemented in 2026, and even contemplates that such regime *might* be from a single federal or state level program. The latter is clear from the use of the qualifying statement from Mr. Repsher's footnote that "the use as a modeling variable is not ***necessarily*** tied to/dependent on a single legislative outcome at the federal or state level."

The wiggle words in Mr. Repsher's direct testimony and on cross examination are significant. Before it was cut off by Judge Dippell's ruling, Mr. Repsher's direct testimony and testimony on cross examination indicated that Mr. Repsher 1) did assume that a carbon tax would be in place by 2027, 2) that whether such carbon tax actually was in place in 2027 would make a difference on the savings realized by consumers through the Grain Belt project, and 3)

that Mr. Repsher was unsure of how much the difference the absence of a carbon tax in 2027 would make to the underlying economics of the Grain Belt project.

Mr. Repsher's uncertainty about the actual benefits of the project if there is no carbon tax in 2027 is surely a relevant issue for the Commission to consider, as this issue goes to multiple factors in the *Tartan* test. In turn, questions as to whether Mr. Repsher's assumptions regarding the carbon tax were grounded in a likely future reality is an absolutely proper question for cross-examination. Mr. Repsher's own admission that he does not know what conclusions can be drawn from a model without a carbon tax in 2027 means that even by Mr. Repsher's own analysis there could be very minimal savings to Missouri consumers from this project, and that the underlying of feasibility of the project may be negatively impacted. The most Mr. Repsher could muster for a prediction of the project's benefits in the absence of a carbon tax was his statement that "I don't know where it is because I haven't done the analysis."

And this is not a minor issue given the Commission's heavy and uncritical reliance on Mr. Repsher's direct testimony in the Report and Order. The Commission obviously believed Mr. Repsher's testimony was relevant to its findings of fact because it cited Mr. Repsher's testimony twelve times in the Report and Order. (For comparison, the Commission only cited transcripts for the case 21 times in its Report and Order.)

Mr. Repsher's work was used to support the finding at paragraph 64 that the "Project could offer Missouri over $7.6 billion in social benefits from 2027-66, in addition to the over $17.6 billion in direct ratepayer savings in the energy and capacity costs over this same period—bringing the total cumulative benefit to over $25.3 billion by 2066." A similar finding was made at paragraph 124 of the Report and Order. These purported facts in turn formed the basis for the Commission's conclusion in the Decision portion of the Report and Order as establishing in part

two of the *Tartan* factors: the need for the project (page 55-56 of the Report and Order) and the economic feasibility of the project (page 59 of the Report and Order).

Given that the Commission relied so heavily on Mr. Repsher's work, the question of whether or not Mr. Repsher's work is accurate, whether the underlying assumptions are sound, and whether his conclusions would change if such assumptions were untrue necessarily matter to the outcome of this case.

However, the Commission was deprived of the ultimate answer to these questions by Judge Dippell's entirely erroneous ruling that "[Mr. Repsher] has not testified that he assumed a carbon tax," and by Judge Dippell's further statement that " I don't know how much more we need to testify about whether there's going to be, whether there was or whether there's assumptions about an official carbon tax."

Cross-examination is a critical part of due process. The Commission's own rule at 20 CSR 4240-2.130(1) states that it supplements Section 536.070, RSMo. in Missouri's Administrative Procedure Act. That statute states in part that "[e]ach party shall have the right to call and examine witnesses, to introduce exhibits, ***to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not the subject of the direct examination,*** to impeach any witness regardless of which party first called him or her to testify, and to rebut the evidence against him or her[.]" (emphasis added.)

In addition, Missouri courts have consistently recognized that administrative agencies cannot deny parties the right to cross-examination. *See Lagud v. Kansas City Bd. Of Police Commissioners*, 136 S.W.3d 786, 793 (Mo. en banc 2004), citing *Sandy Ford Ranch, Inc. v. Dill*, 449 S.W.2d 1 (Mo. 1970).

In this matter, the Agricultural Associations were deprived of their right to due process and their statutory rights under the laws of Missouri when cross-examination on a critical issue was denied by Judge Dippell, and for the reasons set forth above such denial was unlawful, unjust, and unreasonable. The Agricultural Associations therefore respectfully move the Commission for rehearing in this matter pursuant to Section 386.500, RSMo.

B. The Commission's finding of facts regarding purported job creation by the Grain Belt project is unreasonable in that it is not supported by the testimony cited to by the Commission of Grain Belt's own expert witness Dr. David Loomis

Paragraph 130 of the Report and Order states as follows:

> 130. The Project advances the public interest through its impact on local economic, fiscal, and employment benefits. For example, the Project will support 5,747 construction jobs statewide over a three-year period and a significant number of construction jobs in the Missouri counties it crosses: 247 for Audrain County, 318 for Buchanan County, 243 for Caldwell County, 66 for Callaway County, 303 for Carroll County, 362 for Chariton County, 226 for Clinton County, 804 for Monroe County, 356 for Ralls County, and 284 for Randolph County. In addition to construction jobs, the Project will support 104.4 long-term positions statewide and long-term jobs in the Missouri counties it crosses: 10.6 for Audrain County, 3.8 for Buchanan County, 1.9 for Caldwell County, 0.3 for Callaway County, 3.2 for Carroll County, 4.1 for Chariton County, 1.4 for Clinton County, 16.2 for Monroe County, 2.0 for Ralls County, and 2.6 for Randolph County. These jobs are estimated to result in total worker earnings from the Project for Missouri of $586,118,331 during the three year construction period and $8,113,077 during the operation phase of the Project.

In support of the conclusion in paragraph 130, the Commission cited four times to the direct testimony of Dr. David Loomis, one of Grain Belt's expert witnesses in this case. The Commission cited the same job numbers forth in paragraph 130 on page 60 in its Decision portion of the Report and Order as part of the support for the "public interest" prong of the *Tartan* factors. However, a review of Dr. Loomis' direct testimony and testimony under cross examination from the Agricultural Associations' counsel makes it clear that the Commission has misstated Dr. Loomis' own conclusions in paragraph 130 of the Report and Order.

The Report and Order states that "the Project will support 5,747 ***construction jobs*** statewide over a three-year period and a significant number of ***construction jobs*** in the Missouri counties it crosses[.]" (emphasis added). The job numbers referenced are set forth in Schedule DL-2 to Dr. Loomis' direct testimony starring on page 10 (which is page 15 of 27 of the red EFIS page stamps.)

Dr, Loomis' testimony on cross examination at the evidentiary hearing made it clear that the 5,747 is for total jobs that are projected to exist during the construction phase (not annualized jobs), and that not all jobs projected in that number are construction jobs. The Agricultural Associations' counsel and Dr. Loomis had the following exchange regarding Grain Belt's proposed project beginning at Tr. Vol. 10, page 759, line 16:

> Q….What did they tell you they were going to do?
>
> A. That they would hire local.
>
> Q. That was the assumption they had you working on?
>
> A. Yes.
>
> Q. If that turns out to not be true, does that mean your underlying report would have less predictive power and be less accurate?
>
> A. So that's going to affect the direct jobs because those are the effects of those construction workers and others. But you also have to remember an important part when we're talking about jobs during, this is really jobs during construction. And to simplify the analysis, this includes all of the expenditures that Invenergy makes up until the point that it's operational. Okay. ***So you look at construction and you're thinking people climbing the poles. But the cost to Invenergy is going to be attorneys, local land agents that are signing up people, it's going to be, you know, financial people, accounting people, all of that is in, you know, the direct jobs so it's --***
>
> Q. And I understand.
>
> A. ***So that 33-1/3 is not just saying oh, that's the guy pouring concrete or stringing the –***
>
> (emphasis added.)

The fact that the jobs at issue may not be actual construction jobs is significant. Dr. Loomis' testimony gives no actual indication of how many of the jobs at issue will be actual construction jobs. The

Commission's characterization of the jobs at issue as "construction jobs" when there is in fact no indication as to how many, if any, of the jobs at issue will be actual construction jobs is at best misleading and the Commission's findings of fact and conclusions of law are unreasonable in light of the actual testimony of Dr. Loomis. For this reason, the Agricultural Associations move the Commission for a rehearing pursuant to Section 386.500, RSMo.

In addition, for the sake of transparency and accountability for Grain Belt as to their alleged intention to hire local workers for the project, the Agricultural Associations respectfully move the Commission to modify its Order at paragraph 14 on page 75 to require Grain Belt to provide annual report data regarding the county of residence of employees in jobs allegedly created by the project. Grain Belt has made much of the impact of the project on local economies along the line. Those promises will ring very hollow if the project merely funds white collar jobs in urban and suburban Missouri while rural Missouri must take on the burdens of easements for the transmission line. Modifying the order to require reporting on local employment data will allow the public and the Commission to understand and track the actual impact of the project on the local economies along the project's transmission lines, and to hold Grain Belt accountable for its representations to those communities and the Commission.

WHEREFORE, for the reasons set forth above, the Agricultural Associations moves the Commission for rehearing pursuant to Section 386.500, RSMo., and for the Commission to modify its Order at paragraph 14 on page 75 to require Grain Belt to provide annual report data regarding the county of residence of employees in jobs purpotedly created by the project at issue in this matter.

Respectfully submitted,

HADEN & COLBERT LLC

Brent E. Haden, Mo. Bar No. 54148
827 E. Broadway, Suite B

P.O. Box 7166
Columbia, MO 65201
(573) 442-3535
(888) 632-7775 (fax)
brent@showmelaw.com
ATTORNEY FOR
MISSOURI FARM BUREAU FEDERATION
MISSOURI CATTLEMEN'S ASSOCIATION
MISSOURI PORK ASSOCIATION
MISSOURI SOYBEAN ASSOCIATION
MISSOURI CORN GROWERS ASSOCIATION
(COLLECTIVELY "THE AGRICULTURAL ASSOCIATIONS")

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been e-mailed to all parties on the official service list for this case on November 10, 2023.

Brent E. Haden, Mo. Bar No. 54148