

**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) File No. EA-2023-0017
Maintain a High Voltage, Direct Current)
Transmission Line and Associated Converter)
Station)

**GRAIN BELT EXPRESS LLC’S REPLY IN SUPPORT OF ITS REQUEST FOR
WAIVER OF THE 60-DAY NOTICE REQUIREMENT**

Pursuant to 20 CSR 4240-4.017 and 20 CSR 4240-2.080(13), Grain Belt Express LLC (“Grain Belt Express”) files this Reply in support of its request for waiver of the 60-day notice requirement in response to the October 11, 2022 filings by the Missouri Landowners Alliance (“MLA”); the Missouri Farm Bureau Federation, the Missouri Cattleman’s Association, the Missouri Pork Association, the Missouri Corn Growers Association, and the Missouri Soybean Association (collectively, the “Associations”); and the Staff of the Missouri Public Service Commission (“Staff”).

I. Background

1. On July 12, 2022, Grain Belt Express filed its Notice of Intended Amendment Filing (“Notice of Intent”) with the Missouri Public Service Commission (“Commission”), noting its intention to file an application to amend its Certificate of Public Convenience and Necessity (“CCN”) in the existing case, EA-2016-0358. Because Grain Belt Express intended to file in an existing case, the notice requirement in 20 CSR 4240-4.017(1) appeared to be inapplicable. Nevertheless, for planning purposes and in the interest of transparency, Grain Belt Express provided the Notice of Intent. In the event that the requirements of 20 CSR 4240-4.017(1) apply, Grain Belt Express sought waiver of the requirement to file notice 60 days in advance, explaining

that it filed the Notice of Intent as soon as practical after the finalization and public announcement of the proposed modifications to the Project. Grain Belt Express also attached the Verified Declaration of Shashank Sane, in compliance with 20 CSR 4240-4.017(1)(D), affirming that no person acting on behalf of Invenergy Transmission or Grain Belt Express had any communication with the Office of the Commission¹ within the prior one hundred fifty (150) days regarding any substantive issue likely to be at issue in the application to amend.

2. On July 13, 2022, the Commission issued its Notice Regarding Filing, and stated as follows:

On July 12, 2022, Grain Belt Express LLC filed a notice of its intent to file an application to amend the certificate of convenience and necessity that the Commission granted it in 2019 in File No. EA-2016-0358. It filed that notice in the old, closed file, reasoning that the proposed amendment in response to changed circumstances was contemplated in the order that granted the certificate of convenience and necessity.

The Commission has removed the notice of intent to file from EA-2016-0358 and placed it in a new file, EA-2023-0017. When Grain Belt Express files its application, it should file that application in the new file.

As part of its notice of intent, Grain Belt Express included a request for waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017. That request is premature at this time. Grain Belt Express may renew its request for waiver when it files its application to amend its certificate of convenience and necessity.

3. As recognized in the July 13 Notice from the Commission, the Notice of Intent filed on July 12 was explicit as to Grain Belt Express' intent to file an amendment to its CCN and the purpose and general details of the amendment.

¹ The term "Office of the Commission" is defined as "commissioners, a commissioner, a member of the commission's advisory staff, or the commission's regulatory law judges." 20 CSR 4240-4.015(10).

4. On August 24, 2022, in accordance with the Commission’s directive in its July 13 Notice to utilize the new File No. EA-2023-0017, Grain Belt Express filed its Application to Amend its Existing Certificate of Public Convenience and Necessity (“Application”) to construct, install, own, operate, maintain, and otherwise control and manage an approximately 800-mile, overhead, multi-terminal ± 600 kilovolt (“kV”) high-voltage, direct current (“HVDC”) transmission line and associated facilities including converter stations and alternating current (“AC”) connector lines (the “Project”). In further accordance with the Commission’s instructions, Grain Belt Express renewed its request for waiver of the 60-day notice requirement at the time of filing its Application (“Request for Waiver”).

5. The August 24, 2022 Request for Waiver again noted that, because the Application is an amendment to an existing Certificate of Convenience and Necessity, the Commission could interpret the 60-day notice as not applicable. The Request for Waiver again noted that good cause exists for granting waiver and attached a second Verified Declaration of Shashank Sane in compliance with 20 CSR 4240-4.017(1)(D). Together, the Verified Declarations filed on July 12 and August 24, 2022 affirm that there was no communication with the Office of the Commission in the one-hundred and ninety-three (193) days immediately preceding the filing of the Application.

II. Statement of Law

6. Commission Rule 20 CSR 4240-4.017(1)(D) provides two alternative means of demonstrating good cause for waiver of the 60-day notice rule:

A party may request a waiver of this section for good cause. Good cause for waiver may include, among other things, a verified declaration from the filing party that it has had no communication with the office of the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case **or** that circumstances prevented filing the required notice and delaying the filing for sixty (60) days would cause harm.

(emphasis added).

7. It is important to note that the Commission has expressed a preference for demonstrating good cause through a verified declaration, as that most directly addresses the purpose of the Rule, which is to prevent *ex parte* communication that could improperly influence the Commission. As explained by the Commission:

The Commission established that notice requirement to ensure that no utility attempted to improperly influence the Commissioners before filing a pleading to commence the hearing process. For that reason, Laclede's representation that it has not had any communications about that application with any Commissioner, or Commission employees associated with the Commissioners, *is the most persuasive indication of good cause to waive the 60-day notice requirement.*²

8. The Commission routinely grants requests for waiver of the 60-day notice requirement based upon verified declarations.³

III. Argument

9. None of the parties responding to Grain Belt Express' Request for Waiver take issue with the accuracy or authenticity of the Verified Declarations in support of the Request for Waiver. MLA's vague and unsubstantiated reference to a "hint of impropriety"⁴ and the Association's requests for additional assurances that the Commission "has not been improperly influenced"⁵ are disingenuous and made merely for political theater. The Verified Declarations

² Order Granting Waiver of 60-Day Notice Requirement, p. 2, File No. GO-2012-0363 (May 17, 2012) (emphasis added).

³ *E.g.*, Order Granting Waiver of Depreciation Study for Five Years, p. 3, File No. GE-2020-0009 (Nov. 6, 2019); Order Granting Transfer of Assets and Granting Certificate of Convenience and Necessity, p. 5, File No. SM-2022-0130 (May 6, 2022); Order Approving Stipulation and Agreement, p. 3, Case Nos. GO-2021-0030, YG-2021-0020, GO-2021-0031, YG-2021-0021 (Nov. 12, 2020); Order Dismissing Joint Application, p. 3, File No. EM-2021-0114 (Feb. 17, 2021); Order Approving Transfer of Assets, p.3, File No. EM-2022-0292 (Aug. 24, 2022).

⁴ MLA's Opposition to Request for Waiver of 60-Day Notice, p. 10.

⁵ Associations' Joint Suggestions in Opposition to Grain Belt Request for Wavier of 60-Day Notice, p. 3.

affirm that, in the 193 days prior to filing the Application, no person acting on behalf of Invenergy Transmission LLC or Grain Belt Express had any substantive communication with the Office of the Commission regarding issues likely to be at issue in the amendment proceeding—other than a publicly filed annual update. Indeed, since Invenergy Transmission LLC acquired Grain Belt Express in early 2020, no person representing those entities has had any *ex parte* communication with the Office of the Commission.

10. Accordingly, it is undisputed that Grain Belt Express has not improperly influenced the Commission through *ex parte* communication, and it has therefore met the black-and-white requirements for demonstrating good cause for waiver. The Commission need not conduct any further analysis in order to grant Grain Belt Express’ Request for Waiver.

11. Nevertheless, because MLA, the Associations, and Staff go far beyond the simple application of the Commission’s Rule in their respective filings, Grain Belt Express is compelled to respond to certain false accusations and conclusory statements in more detail.

A. Additional Response to MLA

12. MLA posits that Grain Belt Express’ commitment to transparency is disingenuous and attempts to prove that claim by cataloging the many ways in which Grain Belt Express has publicly announced its intent to file an application to amend its existing CCN, including a press release two years ago that indicated Grain Belt Express would be increasing the capacity delivered to Missouri from 500 MW to 2,500 MW.⁶ Accordingly, by MLA’s own reckoning, Grain Belt Express has been transparent about its plans for over two years.

13. MLA also argues that Grain Belt Express could have filed its Notice of Intent “well in advance of June 5, 2022.” Although the “June 5, 2022” date is used repeatedly in both

⁶ MLA’s Opposition to Request for Waiver of 60-Day Notice, p. 5.

MLA's and the Association's filings, both parties appear to mean June 25, 2022, which is 60 days prior to August 24, 2022—the date that Grain Belt Express filed its Application. In any case, MLA's baseless speculation is not convincing. The timing of Grain Belt Express' public announcement on July 11 and Notice of Intent on July 12 was determined by the timing of negotiations for land rights necessary to construct a converter station in Monroe County and the subsequent routing analysis for the AC connector line, known as the Tiger Connector. The location of the converter station dictates the northern endpoint of the Tiger Connector, so significant routing analysis must follow the acquisition of land rights. Had Grain Belt Express made its public announcement in June and filed its Notice of Intent without knowing the location of the converter station or proposed route of the Tiger Connector, there would have been an outcry regarding the uncertainty created by such an announcement.

14. It is remarkably hypocritical of MLA to have filed a Formal Complaint decrying the 2020 press release as coming too early and to now complain that the 2022 public announcement came too late. Additionally, the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners—a similar organization as MLA and represented by the same counsel—previously criticized Grain Belt Express for allowing a purchase option for the converter station in Ralls County to expire.⁷ Grain Belt Express understandably hoped to avoid similar arguments related to the Monroe County converter station by negotiating for land rights in advance of the announcement.

15. Given the established standards for seeking waiver of the Commission's 60-day notice requirement, the Commission's routine granting of such waivers based on verified

⁷ File No. EA-2016-0358, Motion of the Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners to Offer an Additional Exhibit for the Record in This Case, and to Submit Additional Arguments Regarding Said Exhibit (Feb. 15, 2019).

declarations affirming lack of *ex parte* communication (as summarized in the Statement of Law section), and Grain Belt Express’ good faith desire to provide certainty at the time of its announcement, there should be no doubt that good cause exists for the timing of the Notice of Intent and the filing of the Application.

16. MLA also attempts to draw parallels between the current circumstances and the circumstances at the outset of File No. EA-2016-0358 in June-August 2016.⁸ However, the facts do not support MLA’s attempt. First, Grain Belt Express was under different ownership at the outset of File No. EA-2016-0358, so any issues with notice in 2016 cannot be imputed to current ownership. Second, Clean Line Energy Partners (“Clean Line,” owners of Grain Belt Express at the time) made no attempt to provide notice pursuant to the Commission’s Rule (which resided at 4 CSR 240-4.020—before it moved to its current home at 20 CSR 4240-4.017) and claimed that the Rule did not apply to Grain Belt Express because it was not yet a “regulated entity” subject to the Rule.⁹ Conversely, in the present case, Grain Belt Express filed a Notice of Intent and a Request for Waiver *in compliance with* the Rule. MLA ignores these material differences in its response.¹⁰ Third, consistent with the Commission’s precedent described above, when Clean Line eventually conceded to the applicability of the Rule and requested partial waiver, the Commission *granted* the waiver.¹¹

17. Finally, MLA’s assertion that the use of a Verified Declaration “ignores the basic purpose of the Notice Rule” itself ignores the express language of the Rule, which establishes the

⁸ Id. at pp. 8-9.

⁹ Notably, between 2016 and the date of this Reply, the Rule was modified to apply to “Any person that intends to file a case” rather than “Any regulated entity that intends to file a case.”

¹⁰ MLA’s Opposition to Request for Waiver of 60-Day Notice, pp. 8-9.

¹¹ Order Regarding Request for Partial Waiver, File No. EA-2016-0358 (Aug. 3, 2016).

use of verified declarations as a means of demonstrating “good cause.” MLA’s claim is also in direct conflict with the Commission’s previously expressed preference for use of verified declarations over other demonstrations of “good cause,” as discussed in the Statement of Law section above.¹²

B. Additional Response to the Associations

18. The Association’s opposition to the Request for Waiver relies entirely on MLA’s arguments (which are rebutted above) and its unsubstantiated accusation that the Request for Waiver “appears to be an effort to avoid new requirements for electrical corporations regarding takings of agricultural property as set forth in House Bill 2005.” First, the accusation is irrelevant, because Grain Belt Express satisfied the requirement for demonstrating good cause by filing Verified Declarations. Second, the applicability of House Bill 2005 will be determined by the courts in eminent domain proceedings if voluntary negotiations are unsuccessful—thus the applicability of the Bill is not an issue for the Commission to decide. Third, if the Commission decides to entertain the Association’s accusations—despite the relevancy and jurisdictional problems with doing so—the accusations are false.

19. The Project is exempt from House Bill 2005 because its CCN has been in effect since 2019 and the Missouri Constitution bars the General Assembly from enacting any law that is retroactive in its operation, not because Grain Belt Express filed the Application to Amend prior to the effective date of the Bill. The Associations have publicly acknowledged that a

¹² Order Granting Waiver of 60-Day Notice Requirement, p. 2, File No. GO-2012-0363 (May 17, 2012) (emphasis added).

retroactive bill would not pass the Senate, stating “[House Bill 2005] is not retroactive, so that’s very unfortunate, when you look at the Grain Belt Express project.”¹³

20. To the extent there are questions about whether House Bill 2005 should apply to the Tiger Connector (because this AC portion of the Project was previously undefined¹⁴), Grain Belt Express has publicly pledged to abide by the compensation provisions of House Bill 2005, among other provisions, as recognized by the Associations’ filing.¹⁵

21. The Associations’ suggestion that Grain Belt Express could have filed its Application in June but did not do so because it wanted to keep the Project quiet during legislative debate is both irrelevant and nonsensical. It is irrelevant because Grain Belt Express has the right to file an application upon a date of its own choosing, so long as it complies with the Commission’s filing requirements and standards. It is also nonsensical, given the fact that the legislative session was over prior to June and House Bill 2005 was signed into law by the Governor on June 12, 2022. Further, Grain Belt Express’ consideration of expanding delivery capacity in Missouri has been public knowledge since 2020, as MLA notes in its filing.¹⁶

¹³ Brownfield Agricultural News, *MO Lawmakers Applaud Eminent Domain Reform*, May 13, 2022 (quoting Executive Vice President of the Missouri Cattleman’s Association, Mike Deering).

¹⁴ However, the existing CCN *already includes* an AC electric transmission line connecting the Missouri converter station to the AC grid. File No. EA-2016-0358, Report and Order on Remand, pp. 9-10; CCN Order Attachment 1 at Section III.3 (discussing the “Grain Belt-owned portion of the AC electric transmission line connecting the Grain Belt proposed Missouri converter station to the AC grid”).

¹⁵ Associations’ Joint Suggestions in Opposition to Grain Belt Request for Waiver of 60-Day Notice, pp. 2-3.

¹⁶ MLA’s Opposition to Request for Waiver of 60-Day Notice, p. 5 (“Furthermore, more than two years ago Grain Belt announced in a press release that it would be increasing the capacity delivered to Missouri from 500 MW to 2,500 MW – which it has now confirmed in its Application.”).

C. Additional Response to Staff

22. Although Staff’s filing is titled “Staff’s Response to Grain Belt’s Request for Waiver of 60-Day Notice,” Staff does not address any of the standards applicable to a request for waiver of 60-day notice. Instead, Staff makes extraneous statements about the style of the case, devoid of any analysis or explanation. These extraneous and unsupported statements should be dismissed as not properly before the Commission.

23. Staff’s statements are not only devoid of analysis and explanation, but they are also contrary to the analysis and explanation that Grain Belt Express provided in its Application and Staff’s own prior position. Grain Belt Express addresses the appropriateness for filing an amendment in the Application at Paragraphs 17-18 and 105-107. Additionally, Staff affirmed the appropriate process for amending the CCN in Briefs filed in response to MLA’s Complaint regarding the 2020 press release (which announced the potential for a significant increase to delivery capabilities in Missouri—the modifications of the same nature that Grain Belt Express now seeks to implement). In the Complaint case, Staff stated:

So long as Grain Belt obtains prior Commission approval of any design or engineering materially different from that already approved, there is no violation of either Section 393.170 or the Commission’s condition [that Grain Belt Express file an updated application if the design and engineering of the Project is materially different].¹⁷

Staff also opined:

Grain Belt’s issuing of a press release detailing proposed changes to its current transmission project, *and its commitment to seek regulatory approval for those proposed changes from the Commission as needed*, does not constitute a cause of action that would lead to the invalidation of its CCN.¹⁸

¹⁷ File No. EC-2021-0059, Staff’s Initial Brief, p. 5 (Oct. 23, 2020)

¹⁸ File No. EC-2021-0059, Staff’s Reply Brief, p. 3 (Oct. 30, 2020) (emphasis added).

Staff provides no explanation for why it now believes that an amendment to implement modifications of the same nature as discussed in the 2020 press release is improper.

24. Staff also provides no explanation for how an amendment (rather than a “new” CCN) causes any procedural harm to any parties whatsoever. The procedure followed by Grain Belt Express to request an amendment does not curtail the due process rights of landowners along the Tiger Connector, or any other stakeholders. Grain Belt has conducted a full routing process for the Tiger Connector, including landowner outreach and open houses in Audrain and Callaway Counties, as required by Commission regulations.¹⁹ Grain Belt Express anticipates that the Commission will schedule local public hearings in those two counties—just as it would for a new CCN. Likewise, the Application and supporting testimony fully address how the increased delivery into Missouri satisfies the Tartan Factors and the Commission has full authority and latitude to evaluate that aspect of the Project. Staff has not and cannot allege that Grain Belt Express’ Application is in any way deficient or out of compliance with the Commission’s filing requirements set forth at 20 CSR 4240-2.060 or 20 CSR 4240-20.045.

25. Finally, Staff’s conclusory statement that the existing CCN “may no longer be valid in any case” is baseless speculation that completely ignores what Staff knows to be the extensive effort and activity that Grain Belt Express has undertaken and continues to undertake to develop the Project as approved in File No. EA-2016-0358. Notably, prior to Staff filing its “Response to Grain Belt’s Request for Waiver of 60-Day Notice,” Grain Belt Express provided a detailed

¹⁹ Grain Belt Express’ public outreach and routing process for the Tiger Connector is discussed at length in the Direct Testimonies of Kevin Chandler and Andrew Burke. Grain Belt Express is in full compliance with the public notice requirements of 20 CSR 4240-20.045(6)(K).

account of its development activities in response to Staff's Data Request No. 1, which asked how Grain Belt Express has exercised its CCN.²⁰

26. Finally, Staff does not make any attempt to square its conclusory statements with the Commission's Order in File No. EC-2021-0059, which found that, "The Commission has no authority to terminate a CCN"²¹, or Grain Belt Express' affirmation "that it continues to actively develop the Certificated Project under the existing CCN and has not abandoned or otherwise relinquished its existing CCN by filing this Application to Amend or by any other means."²²

IV. Conclusion

WHEREFORE, Grain Belt Express respectfully requests the Commission grant its Request for Waiver of the 60-Day Notice Requirement and for any further relief that the Commission deems appropriate.

Respectfully submitted,

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²⁰ Grain Belt Express' Response to Staff DR No. 1, attached hereto as **Exhibit 1**.

²¹ File No. EC-2021-0059, Report and Order, p. 14 (August 4, 2021).

²² Grain Belt Express' Application to Amend, ¶ 104.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties listed on the official service list by email, this 14th day of October, 2022.

/s/ Andrew O. Schulte _____
Andrew O. Schulte