

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 ) File No. EA-2023-0017  
Construct, Own, Operate, Control, Manage, and )  
Maintain a High Voltage, Direct Current )  
Transmission Line and Associated Converter )  
Station )

Motion for Summary Disposition

Pursuant to Commission Rule 20 CSR 4240-2.117, the Missouri Landowners Alliance (MLA) et al. hereby submit this Motion for Summary Disposition, requesting the Commission to summarily dismiss the Application filed in this case by Grain Belt Express LLC on August 24, 2022.<sup>1</sup>

The basic theory behind this Motion is that once Grain Belt filed for major modifications to the CCN granted by the Commission in Case No. EA-2016-0358, it abandoned that CCN. Accordingly, Grain Belt no longer has a valid CCN which might be amended in this proceeding.

Definitions

For purposes of this Motion, the following terms have the following meanings:

“Original Application” is the Application filed by Grain Belt on August 30, 2016 in File No. EA-2016-0358, EFIS 34.

“Original Project” is the HVDC transmission line and associated facilities described in the Original Application.

“Original CCN case” is File No. EA-2016-0358.

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<sup>1</sup> This Motion is being submitted 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 will be collectively referred to here as the MLA.

“Order in Original CCN case” is the Commission’s Report and Order on Remand, issued March 20, 2019 in File No. EA-2016-0358.

“Application to Amend” is the Application filed in the instant case by Grain Belt on August 24, 2022.

“Revised Project” is the HVDC transmission line and associated facilities described in the Application to Amend.

Undisputed Material Facts

As provided in Rule 20 CSR 4240-2.117, Movants contend that the following material facts are not in dispute:

1. On August 30, 2016, Grain Belt Express Clean Line LLC (hereafter “Grain Belt”) filed an Application with the Missouri Public Service Commission, seeking a certificate of convenience and necessity (“CCN”) pursuant to Section 393.170.1 RSMo and related Commission Rules to construct, own, operate, control, manage, and maintain electric transmission facilities within eight designated counties in Missouri, as well as a “converter station” in Ralls County, Missouri. (Order in Original CCN case, p. 5; Original Application p. 1).

2. In the Original Project, Grain Belt’s proposed transmission line would traverse approximately 206 miles in Missouri, which was one segment of a proposed line extending approximately 780 miles in total from western Kansas to the Sullivan Substation near the Illinois-Indiana border. (Original Application, par. 17; Application to Amend, par. 19c).

3. The Original project was to include three converter stations, which are large collections of electrical facilities capable of converting alternating current (AC) power to direct current (DC) power, or vice versa. (See Original Application, par. 18; Order in

Original CCN case, p. 9, par. 7; Direct testimony of Grain Belt witness Dr. Anthony Wayne Galli, p. 7 lines 7-8, EFIS 37 in Original CCN case; and description of the components of a converter station in the Direct testimony of Dr. Galli in Case No. EA-2014-0207, EFIS 7, p. 7 lines 9-14 and his Schedule AWG-1).

4. A typical converter station may require an area encompassing approximately 45 to 60 acres. (Direct testimony of Thomas Shiflett in Original CCN case, page 14, Sec. 2.1.1 of Schedule TFS-4).

5. The Missouri converter station proposed in the Original CCN case was to be essentially the same as described for a typical converter station in the preceding paragraph. (Id. at page 16, Sec. 2.1.4).

6. The 780-mile transmission line in the Original Project was to carry DC power from the converter station in Kansas to the converter station in Missouri and the converter station at the Illinois-Indiana border. (Order in Original CCN case, p. 9, par. 5; Application to Amend, p. 8, par 19c).

7. In the Original Project, the DC line was to have a capacity of 4,000 MW. (Application to Amend, pp. 6-7, par. 15; p. 13, par. 33).

8. Of the total 4,000 MW mentioned in the preceding paragraph, 500 MW was to be delivered at the Missouri converter station for distribution in Missouri, and the remaining 3,500 MW was to be delivered to the converter station at the Illinois-Indiana border, for distribution in Illinois and points further east. (Original Application, p. 7, par. 14; Application to Amend, pp. 6-7, par. 15).

9. The capacity of the Missouri converter station in the Original Project was to be 500 MW, allowing for delivery of the proposed 500 MW of power in Missouri.

(Application to Amend p. 8, par. 19a).

10. Under Grain Belt's Revised Project, the capacity to be delivered into Missouri would be increased from 500 MW to 2,500 MW – a five-fold increase in power.

(Application to Amend, p. 9 par. 21 and p. 19 par. 41).

11. A converter station with a capacity of 2,500 MW would be larger than one with a capacity of 500 MW, and would cost approximately \$500 million more to build.

(File No. EC-2021-0059, testimony of Grain Belt witness Mr. Kris Zadlo, Tr. Vol. I, p. 80 lines 17-24 and p. 81 line 19 – p. 82 line 13).

12. In its Order in the Original CCN case, the Commission granted Grain Belt's Original Application, subject to certain specified conditions. (Order in Original CCN case, p. 50).

13. One condition referenced in the preceding paragraph was that Grain Belt was not permitted to install transmission facilities on easement property in Missouri until it obtained commitments for financing of the project in an amount equal to or greater than the total cost to build the entire multi-state transmission project. (Order in Original CCN case, Attachment A, Section I.i).

14. The condition referenced in the preceding paragraph effectively precluded Grain Belt from building the Missouri segment of the DC line until it had also obtained financing for the Illinois portion of the line, as well as the segments traversing Kansas and Missouri. (This fact is evident from the condition itself).

15. Another condition imposed by the Commission in the Original CCN case was as follows: “If the design and engineering of the project is materially different from how the Project is presented in Grain Belt Express Clean Line LLC’s Application, Grain Belt Express Clean Line LLC must file an updated application with the Commission for further Commission Review and determination.” (Order in Original CCN case, p. 52, par. 6).

16. On August 24, 2022, Grain Belt filed its Application to Amend in the instant case. (EFIS item 10 in the instant case).

17. Prior to filing the Application to Amend, Grain Belt had been sold to its present owner, Invenergy Transmission LLC (“Invenergy”). (Application to Amend, par. 12).

18. Prior to filing the Application to Amend, Grain Belt’s name had been changed from Grain Belt Express Clean Line LLC to Grain Belt Express LLC (both names referred to herein as “Grain Belt”). (Compare Order in Original CCN case, p. 1 line 1 and Application to Amend, introductory paragraph).

19. The Application to Amend asked the Commission to amend the CCN granted to Grain Belt in the Original CCN case. (Application to Amend, introductory paragraph).

20. Specifically, the Application to Amend sought Commission approval of the following material changes to the design and engineering of the Original Project:

“a. Relocating the Missouri converter station from Ralls County to Monroe County and increasing the capacity of the Missouri converter station from 500 MW to 2,500 MW;

“b. Relocating the AC connector line [which connects the Missouri converter station to the transmission system in Missouri] from Ralls County to Monroe, Audrain, and Callaway Counties, allowing for greater access of renewable power to Missouri and increasing benefits to Missouri; and

“c. Constructing the Project in two phases, allowing Missouri to realize the benefits of the Project earlier than it otherwise would.” (Application to Amend, pp. 1-2, par. 1).

21. The change described in subparagraph b of the preceding paragraph would require the construction of a 40-mile, high-voltage (345kv) AC line from the relocated converter station in Monroe County to new connection points on the Missouri transmission system in Callaway County. (Application to Amend, p. 8, par. 19b and p. 10 par. 25).

22. AC lines are used in the Project to connect the converter stations to the point of interconnection with the existing transmission system. (Application to Amend, p. 7, par. 16).

23. In the Original Project, the Missouri converter station was to be located “near” the Ameren transmission line to which the converter station would be connected. (Order in Original CCN case, p. 10 par. 8; Direct Testimony of Grain Belt witness Dr. Anthony Wayne Galli, Case No. EA-2014-0207, EFIS 7, p. 5 lines 5-7).

24. The AC connector line in the Original Project would only need to traverse the distance between the Missouri converter station and the nearby Ameren transmission line. (This fact is self-evident).

25. The two phases of the Revised Project referred to in paragraph 20c above would mean building the Kansas portion and approximately 156 miles of the Missouri portion of the line in phase I, as well as the Tiger Connector line. (Application to Amend, p. 8, par. 19c; direct testimony of Mr. Carlos Rodriguez, p. 6 lines 8-12; direct testimony of Mr. Shashank Sane, p. 8 lines 15-18).

26. Phase II of the Revised Project would consist of the Illinois portion of the line, and the approximately 58-mile portion of the line in Missouri between the Missouri converter station and the Missouri-Illinois border. (Application to Amend, p. 8, par. 19c; direct testimony of Mr. Carlos Rodriguez, p. 7 lines 3-4).

27. If the Commission approves construction of the line in two phases, as requested by Grain Belt, Grain Belt would be able to avoid the Commission-imposed condition referenced in paragraph 13 above. (This fact is self-evident).

28. In the Application to Amend, Grain Belt stated that it is proposing to increase the overall capacity of the HVDC line from the 4,000 MW proposed in the Original CCN case to 5,000 MW for the Revised Project. (Application to Amend, p. 13, par. 33).

29. The estimated cost of the Original Project, including the cost of network upgrades, was \$2.9 billion. (\$2.35 billion plus \$550 million, as referenced in the Order in the Original CCN case, p. 24, par. 70)

30. The estimated cost of the Revised Project, including the cost of network upgrades, is now \$5.7 billion. (Direct Testimony of Grain Belt witness Mark Repsher, p. 18 lines 10-11).

Legal Memorandum in Support of Motion for Summary Disposition

Pursuant to Rule 20 CSR 4240-2.117, the MLA hereby submits this Legal Memorandum explaining why summary disposition is appropriate in this case.

The MLA's underlying position is that once Grain Belt decided to build a project materially different from the one originally approved by the Commission, Grain Belt effectively abandoned the project for which it was granted the CCN. That being the case, Grain Belt does not have a CCN which may be amended in this proceeding.

On its face, this argument is similar to one rejected by the Commission in a recent complaint case, *MLA et al. v. Grain Belt Express et al.*, File No. EC-2021-0059.

However, the relevant facts have changed significantly since that case was decided. The Commission ruled against the Complainants in that case in large part on the ground that Grain Belt had not actually decided at that time to make the modifications to the Project cited by the Complainants.<sup>2</sup>

Now, however, as evidenced by and described in their Application to Amend, Grain Belt has publicly confirmed its decision to build a project significantly different from the one approved by the Commission. So unlike in the Complaint Case, the formal Application to Amend in this case is not a mere press release. It is a formal declaration by Grain Belt that it intends to build something other than the project for it was granted a CCN some three and a half years ago.

And Grain Belt has the absolute right to abandon the Original Project, and to do so without permission from the Commission. The relevant statute, Section 393.170.1 RSMo, merely prohibits an electric corporation from building its proposed facilities without Commission permission to do so. But nothing in that statute, or any other statute,

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<sup>2</sup> See Report and Order in the Complaint Case, *supra*, issued August 4, 2021, pp.19-20.

either states or implies that once a line CCN is granted, the utility is legally obligated to actually build that line. Nor is there any statutory provision giving the Commission the authority to require that a certified line actually be built. That being the case, Grain Belt certainly has the right, if it so chooses, to abandon the project approved in the Original CCN case in favor of something more to its liking.

There is precedent for a utility to unilaterally abandon a project for which the Commission had issued a CCN. As discussed in an opinion from the state Supreme Court, Union Electric was granted a CCN in 1975 for the construction of two nuclear generating units in Callaway County, Missouri. Due to changing circumstances, in 1981 the utility decided to abandon the second of the two units.

No mention was made in the court's decision of Union Electric asking for or receiving the Commission's permission to abandon unit number 2.<sup>3</sup> It simply decided on its own to abandon the second unit. This case reinforces the proposition that a utility such as Grain Belt may choose to abandon a project for which it had been granted a CCN.

Here, Grain Belt has made it abundantly clear in its Revised Application that it intends to build a project which is substantially different from the one approved in the Original CCN case. And it cannot build both projects at this point. Depending upon which Grain Belt document one is looking at, the Missouri converter station will have a capacity of 500 MW, or a capacity of 2,500 MW. The converter station will be located in Ralls County, or it will be located in Monroe County. The line will be built as a single

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<sup>3</sup> *State ex rel. Union Electric Co. v Pub. Serv. Comm.*, 687 S.W.2d 162, 163-64 (Mo. Banc 1985). Moreover, there does not appear to be a separate Commission case in which it approved the abandonment of the second nuclear unit.

*See also State ex rel. Transport Delivery Co. v. Pub. Serv. Comm.*, 382 S.W.2d 823, 827 (Mo. App. 1964) where the appellants argued that a transportation CCN issued by the Commission had been abandoned. The court found there was no showing that the CCN had actually been abandoned, but in addressing the argument the court clearly recognized the possibility that a CCN could be abandoned.

project, or it will be built in two separate phases, with no obligation on Grain Belt's part to even build the second phase. The capacity of the main HVDC line will be either 4,000 MW, or 5,000 MW. The Missouri converter station will connect to the existing transmission system via a short AC connection to Ameren's system in Ralls County, or it will connect to transmission facilities in Missouri through a new 40-mile, high voltage AC line running through Monroe, Audrain and Callaway Counties. And Grain Belt will be building a project with an estimated cost of \$2.9 billion, or one costing nearly double that amount. Grain Belt has clearly announced which of these multiple-options it has chosen.

Once Grain Belt decided to make these changes, as described in its verified Application to Amend, it necessarily conceded that it was no longer seeking to build the project approved in the Original CCN case.

And once Grain Belt decided it would build something materially different from the project for which it was granted the CCN, that CCN became a meaningless nullity. Once a project will no longer be built, there is no logical basis for concluding that the CCN somehow survives the abandoned project itself.

There appears to be no case law on this proposition one way or the other. That no doubt reflects the fact that utilities in Missouri tend to know what transmission facilities they will build before they initiate and complete the time-consuming process of seeking a CCN from the Commission.

Grain Belt gratuitously states near the end of its Application to Amend that it has not abandoned its existing CCN for the project.<sup>4</sup> However, that claim is belied by the 42

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<sup>4</sup> Amended Application, p. 43, par. 104.

pages in the Application which precede it, where Grain Belt implores the Commission to let it build something other than the project it had already approved.

Notably, nowhere in the forty-five pages of its Amended Application does Grain Belt state that it will build the Original Project if the Amended Project is not approved. Its silence on this point is a telling indication of Grain Belt's intentions with respect to its original CCN.

For the foregoing reasons, the MLA submits that Grain Belt no longer has a valid CCN which is subject to amendment in this proceeding.

WHEREFORE, the MLA respectfully asks the Commission to grant this Motion, and to summarily dismiss the Application to Amend which was filed in the instant case by Grain Belt on August 24, 2022

Respectfully submitted,

/s/ Paul A. Agathen  
Paul A. Agathen  
Attorney for the MLA  
485 Oak Field Ct.  
Washington, MO 63090  
(636)980-6403  
[Paa0408@aol.com](mailto:Paa0408@aol.com)  
MO Bar No. 24756

Certificate of Service

I certify that a copy of this pleading was sent by electronic mail this 28th day of October, 2022, to all parties of record.

/s/Paul A. Agathen  
Paul A. Agathen