

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Landowners Alliance, and )  
Eastern Missouri Landowners Alliance, )  
d/b/a Show Me Concerned Landowners, )  
and John G. Hobbs, )

Complainants, )

Case No. EC-2021-0034

v. )

Grain Belt Express Clean Line LLC, and )  
Invenergy Transmission LLC, and )  
Invenergy Investment Company, )

Respondents )

**INITIAL BRIEF ADDRESSING LEGAL ISSUE**

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ATTORNEYS FOR RESPONDENTS

September 16, 2020

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Invenergy Transmission LLC (“Invenergy Transmission”), on behalf of itself and its parent company Invenergy Investment Company LLC (“Invenergy Investment”, collectively, “Invenergy”), together with Grain Belt Express LLC (“Grain Belt”) (together with Invenergy, the “Respondents”), in accordance with the Missouri Public Service Commission’s September 2, 2020 *Order Suspending Deadlines and Setting a Briefing Schedule*, hereby file their Initial Brief Addressing Legal Issue.

As explained below, the Complaint rests on a single legal question: whether the Commission’s Report and Order on Remand (“CCN Order”) in Case No. EA-2016-0358 (the “CCN case”) requires Grain Belt to initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN case. Since that question must be answered in the negative, the Complaint must be dismissed.

## **I. INTRODUCTION**

On August 10, 2020, Complainants filed a formal complaint against Respondents, alleging that Respondents altered the standard form easement used in negotiations with landowners, as opposed to the example easement form which (in the words of Complainants) “they insured [sic] the Commission in the CCN case they would present to landowners as part of the easement negotiations.”<sup>1</sup>

Complainants assert that, by altering the sample easement attached to the testimony of Clean Line witness Deann Lanz as Schedule DKL-4, Respondents are in violation of the CCN Order.<sup>2</sup>

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<sup>1</sup> Formal Complaint at ¶ 1.

<sup>2</sup> *Id.*

As noted in the Joint Motion to Suspend Current Deadlines and Establish Briefing Schedule and as adopted in the Commission's Order, Joint Movants have agreed to the following stipulations pertaining to the resolution of the legal question presented in the Complaint:

- (a) In their recent easement negotiations with Missouri landowners for easements on the proposed right-of-way of the Grain Belt line, Invenenergy's land agents have presented landowners with easement agreements in the form of that attached as Exhibit 2 to the Complaint, and/or the form of easement agreement attached as Exhibit 1 to the Joint Motion. The land agents are not currently presenting landowners with the form easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN proceedings;
- (b) In their respective legal briefs, Joint Movants may cite to any portion of the record in the CCN case to support their arguments; and
- (c) Joint Movants agree that the issue in this Complaint is limited to whether, as a condition of the CCN granted to Respondents in the CCN case, Grain Belt is required to initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN proceeding.

## **II. STATEMENT OF FACTS**

On March 20, 2019, the Commission issued its CCN Order granting Grain Belt's application for a Certificate of Convenience and Necessary ("CCN") in Case No. EA-2016-0358, which took effect on April 19, 2019. In its CCN Order, the Commission adopted and incorporated

the conditions agreed upon by Grain Belt and Commission Staff as set forth in Exhibits 205 and 206, which were attached to the CCN Order as Attachments 1 and 2, respectively.

In addition to the conditions placed upon Grain Belt in Exhibits 205 and 206, the CCN Order made the following statements in its ordering paragraphs, which amount to further conditions placed upon Grain Belt's CCN:

1. Grain Belt Express Clean Line LLC's application for a certificate of convenience and necessity filed on August 30, 2016, is granted.
2. The conditions to which Grain Belt Express Clean Line LLC and the Commission's Staff agreed in Exhibit 206 are approved and adopted. Exhibit 206 is attached as Attachment 1 and incorporated herein by reference as if fully set forth. Grain Belt Express Clean Line LLC is ordered to comply with the conditions in Exhibit 206.
3. The conditions to which Grain Belt Express Clean Line LLC and Rockies Express Pipeline LLC agreed in Exhibit 205 are approved and adopted. Exhibit 205 is attached as Attachment 2 and incorporated herein by reference as if fully set forth. Grain Belt Express Clean Line LLC is ordered to comply with the conditions in Exhibit 205.
4. Grain Belt Express Clean Line LLC's owners, including, but not limited to, Invenergy Transmission LLC, Invenergy Investment Company LLC, and any related subsidiaries, shall cooperate with the Commission's Staff in providing reasonable access to its un-redacted financial records until the completion or official abandonment of the Grain Belt Project.
5. If Grain Belt Express Clean Line LLC acquires any involuntary easement in Missouri by means of eminent domain proceedings ("easement") and does not obtain the financial commitments referred to in Section I(1) and Section I(1)(a) of the Conditions Agreed to by Grain Belt Express and Staff (Exhibit 206) within five years of the date that such easement rights are recorded with the appropriate county recorder of deeds, Grain Belt Express Clean Line LLC shall return possession of the easement to the fee simple title holder ("title holder") within 60 days and cause the dissolution of the easement to be recorded with the county recorder of deeds. In the event of such a return of the easement to the title holder, no reimbursement of any payment made by Grain Belt Express Clean Line LLC to the title holder shall be due.
6. 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.

7. If any outstanding studies included as conditions raise any new issue(s), then the Commission must be satisfied with how Grain Belt Express Clean Line LLC resolves the issue(s).
8. Grain Belt Express Clean Line LLC shall comply with the Missouri Landowner Protocol, including, but not limited to, a code of conduct and the Missouri Agricultural Mitigation Impact Protocol, and incorporate the terms and obligations of the Missouri Landowner Protocol into any easement agreements with Missouri landowners.
9. Grain Belt Express Clean Line LLC shall modify the Missouri Landowner Protocol relating to a decommissioning fund as directed herein. At the commencement of construction of the Project, Grain Belt Express Clean Line LLC shall establish a decommissioning fund in an amount reasonably necessary to perform the wind-up activities described below, at Grain Belt Express Clean Line LLC's sole cost and expense, for any portion of the Project that has been constructed and installed. The amount of the decommissioning fund shall be increased as construction of the Project progresses sufficient to cover wind-up activities for any Project facilities that have been constructed and installed. The decommissioning fund may be collateralized with a letter of credit or cash, or any combination thereof. In any circumstance in which the Project is retired from service or abandoned prior to service, Grain Belt Express Clean Line LLC shall promptly perform the following wind-up activities:
  - dismantling, demolishing and removing all equipment, facilities and structures;
  - terminating all transmission line easements and filing a release of such easements in the real property records of the county in which the property is located;
  - securing, maintaining and disposing of debris with respect to the Project facilities; and
  - performing any activities necessary to comply with applicable laws, contractual obligations, and that are otherwise prudent to retire the Project facilities and restore any landowner property.
10. Grain Belt Express Clean Line LLC shall construct the proposed Missouri converter station to be capable of the actual delivery of 500 MW of wind power to the converter station.

The Amended Report and Order in Case No. EM-2019-0150 approved the acquisition of Grain Belt by Invenergy subject to the same conditions placed upon Grain Belt in the CCN Order, including Exhibits 205 and 206.

Exhibits 205, 206, and the ten enumerated items above comprise the full complement of conditions that Invenergy and Grain Belt must adhere to in order to remain in compliance with the CCN Order, and Respondents remain mindful of their obligations to maintain compliance with the conditions.

### **III. ARGUMENT**

The singular legal issue before the Commission in this Complaint is whether, as a condition of the CCN granted to Respondents in the CCN case, Grain Belt is required to initiate easement negotiations by offering the same form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN proceeding.

Respondents submit that the clear terms of the CCN Order, including the specific conditions placed upon the CCN, do not require Respondents to utilize a specific form of easement agreement. Respondents rebut the Complainants' assertion that its easement violates the CCN Order, and assert that nothing in the CCN Order, Exhibits 205 and 206, the Code of Conduct, the Missouri Landowner Protocol, or the Agricultural Impact Mitigation Protocol ("AIMP") either: (1) requires Respondents to utilize the sample easement attached to Ms. Lanz' testimony; or (2) prohibits Respondents from making revisions to the easement it presents to landowners as a starting point for negotiations.

**A. The Commission’s Findings of Fact in the CCN Order Did Not Require Respondents to Utilize a Particular Form of Easement**

In the CCN Order, the Commission made the following Findings of Fact pertaining to easements:

- (1) Grain Belt has acquired 39 easements for the transmission line from Missouri landowners;<sup>3</sup>
- (2) Grain Belt uses a standard form of agreement when acquiring easement rights from Missouri landowners. The agreement includes the right to construct, operate, repair, maintain, and remove an overhead transmission line and related facilities, along with rights of access to the right-of-way for the transmission line;<sup>4</sup>
- (3) The easement agreement limits the landowner’s legal rights and use of the easement property, including prohibiting any landowner activity that would interfere with Grain Belt’s use of the easement;<sup>5</sup>
- (4) Grain Belt developed the Missouri Landowner Protocol as part of its approach to right-of-way acquisition for the Project. The Landowner Protocol is a comprehensive policy of how Grain Belt Express interacts, communicates, and negotiates with affected landowners and includes: the establishment of a code of conduct, its approach to landowner and easement agreement negotiations, a compensation package, updating of land values with regional market studies, tracking of obligations to landowners, the availability of arbitration to landowners, the Missouri Agricultural Impact Mitigation Protocol, and a proposed decommissioning fund;<sup>6</sup>
- (5) For those landowners whose property the Project will cross, Grain Belt will offer three types of compensation: an easement payment, structure payments, and crop or damages payments. Grain Belt's compensation package is superior to that of most utility companies;<sup>7</sup>
- (6) If Grain Belt obtains an easement from a landowner, the property will still belong to the landowner and can be utilized for activities such as farming, recreation, and other activities that do not interfere with the operation of the transmission line. After construction of the facilities, the landowner will retain

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<sup>3</sup> Report and Order on Remand, ¶ 18, Case No. EA-2016-0358 (March 20, 2019) (hereinafter “CCN Order”).

<sup>4</sup> *Id.* at ¶ 19.

<sup>5</sup> *Id.* at ¶ 20.

<sup>6</sup> *Id.* at ¶ 109.

<sup>7</sup> *Id.* at ¶ 110.



the ability to continue agricultural production on the entirety of the easement area except for the relatively small footprint of the structures, which typically occupy less than 1% of the total easement area;<sup>8</sup> and

- (7) If Grain Belt and a landowner have reached agreement on the form of easement but are unable to reach agreement on the appropriate compensation, then at the landowner's request, Grain Belt will submit the issue of landowner compensation to binding arbitration under Missouri law. The option of binding arbitration typically costs less, has more simplified procedures, and results in a final decision more quickly than circuit court litigation.<sup>9</sup>

Notably, nowhere in the Commission's Findings of Fact regarding easements did the Commission find and conclude that Respondents were restricted to utilizing any particular form of easement agreement when negotiating with landowners. Nor did the Commission ever refer to the sample easement attached to the testimony of Deann Lanz as Schedule DKL-4 in the body of the CCN Order, much less proclaim that schedule as being the exclusive form of easement available for Respondents' use. Rather, the Commission noted that Respondents use "a" form of easement, and specifically discussed Grain Belt and a landowner reaching agreement "on the form of easement" in Paragraph 112 of the CCN Order. The absence of any reference to Schedule DKL-4 in the body of the CCN Order, coupled with the Commission's explicit references to "a form of easement" make it abundantly clear that Respondents' use of an easement agreement that differs from that presented by Clean Line in 2016 is absolutely permissible.

**B. The Commission's Conclusions of Law in the CCN Order Did Not Require Respondents to Utilize a Particular Form of Easement**

In the CCN Order, the Commission made the following conclusions of law regarding easements:

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<sup>8</sup> CCN Order at ¶ 111.

<sup>9</sup> *Id.* at ¶ 112.

- (1) Grain Belt's 39 easements that it has signed with Missouri landowners are interests in real estate;<sup>10</sup>
- (2) Grain Belt owns its cash on hand and controls or manages the easement property under the easement agreement it executes with landowners, because those agreements grant Grain Belt certain rights to use the property and limit the landowner's use;<sup>11</sup> and
- (3) Any negative impacts of the Project on the land and landowners will be mitigated by (a) a landowner protocol to protect landowners; (b) superior compensation payments; (c) a binding arbitration option for easement negotiations; (d) a decommissioning fund; and (e) an agricultural impact mitigation protocol to avoid or minimize negative agricultural impacts.<sup>12</sup>

Moreover, in Ordering Paragraph 8 of the CCN Order, the Commission stated:

Grain Belt Express Clean Line LLC shall comply with the Missouri Landowner Protocol, including, but not limited to, a code of conduct and the Missouri Agricultural Mitigation Impact Protocol, and incorporate the terms and obligations of the Missouri Landowner Protocol into any easement agreements with Missouri landowners.<sup>13</sup> [Emphasis supplied.]

The condition that the Missouri Landowner Protocol be incorporated into any easement agreement was specifically requested in 2017 by the Missouri Landowners Alliance, one of the Complainants in the current proceeding. In its initial brief in the 2017 CCN proceeding, MLA acknowledged that Clean Line (the original Project developer) committed in surrebuttal testimony<sup>14</sup> to incorporate the Landowner Protocol, the AIMP, and the Code of Conduct into the Company's easement agreement. MLA requested that this commitment become an explicit condition upon Grain Belt's CCN, and the Commission complied.<sup>15</sup>

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<sup>10</sup> *Id.* at p. 37.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at p. 46.

<sup>13</sup> *Id.* at p. 52.

<sup>14</sup> *See* Surrebuttal Testimony of Deann Lanz, p. 5, Case No. EA-2016-0358.

<sup>15</sup> *See* Condition 3, MLA Initial Post-Hearing Brief at 80, filed April 10, 2017, Case No. EA-2016-0358.

At that time, MLA had the perfect opportunity to propose that Schedule DKL-4 be the required form of easement agreement, and it did not do so. Complainants cannot now bemoan the fact that Respondents are not required to use a particular form of easement when it failed to raise the issue during the CCN proceeding. MLA's request to make the Landowner Protocol, the AIMP, and the Code of Conduct *explicit* conditions demonstrate that MLA understands the importance of well-defined conditions. It is duplicitous for MLA to now argue for the enforcement of an *implicit* condition that does not have support in the plain language of the CCN Order. Moreover, for MLA to assert that the CCN Order should be interpreted in a manner entirely incongruous with the plain terms thereof amounts to a collateral attack upon the CCN Order itself, in violation of RSMo. 386.550<sup>16</sup> and RSMo 386.490.2.<sup>17</sup>

As with its statements in its Findings of Fact, the Commission's explicit reference in its Conclusions of Law to "any easement agreements" make it abundantly clear that Respondents are not bound to use any one particular form of easement agreement.

Section 393.170.3 RSMo provides that "the Commission may by its order impose such condition or conditions as it may deem reasonable and necessary." Referencing this statute, the Commission specifically made the following conclusion of law:

"the Commission finds that those conditions to which Grain Belt has agreed are reasonable and necessary, so those conditions will be imposed below. The

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<sup>16</sup> RSMo 386.550 provides that "In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive." RSMo 386.550 has long been held by Missouri appellate courts to be "declaratory of the law's solicitude for the repose of final judgments." *State ex rel. Harline v. Public Serv. Comm'n*, 343 S.W.2d 177, 184 (Mo. App. W.D. 1960).

<sup>17</sup> "Every order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission..." RSMo 386.490.2.

Commission concludes that the remaining proposed conditions are unreasonable, unnecessary, or moot, so those will not be adopted.<sup>18</sup>

Had the Commission wished to require Respondents to utilize the form of easement attached to Ms. Lanz' testimony as its starting point for negotiations with landowners, the Commission certainly could have, and would have, done so. Complainants' attempt to create an "implied" condition in the CCN Order is inappropriate and should be rejected.

**C. Complainants Are Prohibited From Creating an "Implied" Condition That Has No Basis in Fact**

Complainants' singular allegation in the Complaint is that the easement agreements presented to landowners do not match the example easement agreement provided in 2016 by Clean Line witness Dianne Lanz. Complainants do not assert any explicit violations of the Landowner Protocols, AIMP, Code of Conduct, Exhibit 205, Exhibit 206, or any other condition imposed by the Commission. Rather, Complainants rely on conjecture and supposition to conclude that specific language in several of these documents create an "implicit"<sup>19</sup>, if not express, condition in the CCN Order. Respondents do not agree that the Commission "implied" certain conditions that were not explicitly set forth in its CCN Order, and reiterates that the Commission's CCN Order contained no conditions that were not made explicit.

In Paragraph 13 of the Complaint, Complainants allege that Grain Belt is in violation of the CNN Order based upon three grounds:

- (1) that Section VII.7 of Exh. 206 states that "Grain Belt's right-of-way acquisition policies and practices will not change regardless of whether Grain Belt does or does not yet possess a Certificate of Convenience and Necessity from the Commission", which, as interpreted by Complainants, means that Grain Belt is prohibited from presenting an easement that differs from DKL-4;

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<sup>18</sup> CCN Order at pp. 47-48.

<sup>19</sup> Complaint at ¶ 19.

- (2) Section 2, page 4 of the Missouri Landowner Protocol requires that “Grain Belt Express’ approach to landowner negotiations will not change regardless of when these negotiations take place”, which, as interpreted by Complainants, means that Grain Belt is prohibited from presenting an easement that differs from DKL-4; and
- (3) that in 2016 Clean Line witness Deann Lanz represented to the Commission that the standard form easement attached to her testimony as Schedule DKL-4 is the document Grain Belt will present to landowners, and in presenting a different form of easement, Respondents are in violation of the CCN Order.

Regarding Complainants’ first allegation, Respondents submit that the term “right-of-way acquisition policies and practices” refers to the rest of Section VII of Exhibit 206, the Landowner Protocols, the AIMP, and the Code of Conduct. There is no basis for Complainants’ assumption that the term “right-of-way acquisition policies and practices” includes an example easement agreement that is not referenced anywhere in Exhibit 206, the Landowner Protocols, the AIMP or the Code of Conduct. If the Parties negotiating the conditions intended that “right-of-way acquisition policies and practices” include the example easement agreement, such easement would have specifically been referenced, attached, or made a part of Exhibit 206, the Landowner Protocols, the AIMP or the Code of Conduct. Complainants’ tortured attempt to manufacture an “implied” condition should be rejected by the Commission.

Section VII of Exhibit 206, entitled “Landowner Interactions and Right-of-Way Acquisition” contains the following conditions:

- The certificate is limited to the construction of this line in the location specified in the application, and as represented to the landowners on the aerial photos provided by Grain Belt, unless a written agreement from the landowner is obtained, or the company gets a variance from the Commission for a particular property, provided, however, minor deviations to the location of the line not exceeding 500 feet will be permitted as a result of surveying, final engineering and design, and landowner consultation, so long as the line and required easements stay within the property boundaries of that landowner and do not involve a new landowner.
- Absent a voluntary agreement for the purchase of the property rights, the transmission line shall not be located so that a residential structure currently occupied by the property

owners will be removed or located in the easement requiring the owner to move or relocate from the property.

- Grain Belt shall survey the transmission line location after construction and record the easement location with the Recorder of Deeds in the appropriate counties. Grain Belt shall also file a copy of its survey in this case.
- Every landowner from whom Grain Belt requires an easement will be contacted personally, and Grain Belt will negotiate with each such landowner in good faith on the terms and conditions of the easement. Each landowner will receive an Easement Agreement pertaining to such landowner's land, which Easement Agreement will contain a drawing that shows the location of the easement. [Emphasis supplied.]
- After construction is completed, every landowner will be contacted personally to ensure construction and clean-up was done properly, to discuss any concerns, and to settle any damages that may have occurred.
- If a landowner so desires, Grain Belt will give the landowner a reasonable period of time in advance of construction to harvest any timber the landowner desires to harvest.
- Grain Belt's right-of-way acquisition policies and practices will not change regardless of whether Grain Belt does or does not yet possess a Certificate of Convenience or Necessity from the Commission.<sup>20</sup>

The plain and clear meaning of Section VII of Exhibit 206 is that each of the enumerated conditions, when taken together, constitute Respondents' "right-of-way acquisition policies and procedures." Complainants have no rational or reasonable basis to conclude that a change to the example easement agreement attached as Schedule DKL-4 constitutes a change in the "right-of-way acquisition policies and procedures", particularly when one of the elements of the policies and procedures is that each landowner will receive "an" easement agreement, not a specific form of easement agreement, and Grain Belt and the landowner will negotiate "in good faith on the terms and conditions of the easement."

Complainants next assert that Respondents are in violation of Section 2, page 4 of the Missouri Landowner Protocol, which requires that "Grain Belt Express' approach to landowner

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<sup>20</sup> Exhibit 206, pp. 5-6.

negotiations will not change regardless of when these negotiations take place.” Complainants submit that by presenting landowners with a different easement form, Respondents are in breach of this requirement.

Similar to the “right-of-way acquisition policies and procedures” discussed above, Respondents’ “approach to landowner negotiations” is a dynamic compilation of best practices to ensure that Respondents conduct easement negotiations in a fair manner that is respectful of property rights. The commitment that Grain Belt’s “approach to landowner negotiations will not change” is simply referring back to the approach outlined in the preceding paragraphs of Section 2 of the Missouri Landowner Protocols. Conspicuously absent from the best practices that comprise Respondents’ “approach to landowner negotiations” is any mention of the specific form of easement Respondents will utilize.

Finally, none of the witnesses in the CCN case ever committed to initiating negotiations with landowners using a form of easement agreement that would remain unchanged in perpetuity. Regardless, the CCN Order is controlling, and as discussed throughout this brief, does not require a particular form of easement agreement.

**D. Easement Negotiations Regarding Content of Easement Agreements Involve Private Contract Rights**

Negotiating easements with landowners involves private contract rights between two parties. “An easement, strictly speaking, does not carry any title to the land over which it is exercised; it is rather a right to use the land for particular purposes.”<sup>21</sup> Although an easement does

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<sup>21</sup> *St. Charles County v. Laclede Gas Company*, 356 S.W. 3d 137 (Mo. Banc. 2011), quoting *Blackburn v. Habitat Dev. Co.*, 57 S.W.3d 378, 389 (Mo.App.2001) (internal quotations omitted); *Bedard v. Scherrer*, 221 S.W.3d 425, 430–431 (Mo.App.2006).

not vest title, an easement is a form of private property that can be taken only upon payment of just compensation.<sup>22</sup>

Respondents respectfully submit that the Commission may not possess the jurisdiction to require a specific form of easement to be utilized in landowner contractual negotiations, as such an action may be construed as intruding upon the property rights of Respondents and impermissibly infringing upon management's right to conduct its business.

As stated by the Kansas City Court of Appeals<sup>23</sup>

The Missouri Public Service Commission is an administrative body of limited jurisdiction, created by statute. It has only such powers as are expressly conferred upon it by the statutes and reasonably incidental thereto. Those powers are purely regulatory. The dominating purpose in the creation of the Public Service Commission was to promote the public welfare. To that end the statutes provided regulation which seeks to correct the abuse of any property right of a public utility, *not to direct its use*. Exercise of the latter function would involve a property right in the utility. The law has conferred no such power upon the Commission.

The utility's ownership of its business and property includes the right of control and management, subject, necessarily, to state regulation through the Public Service Commission. The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare. [Italics in original.] [Internal citations omitted.]

The Commission itself has questioned the extent of its jurisdiction over private easement agreements, noting:

Landowners contend that the easements are no longer enforceable because of additional conditions placed upon the company by the Commission regarding the

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<sup>22</sup> *St. Charles County v. Laclede Gas Company*, *supra*, quoting *Panhandle E. Pipe Line Co. v. State Highway Comm'n*, 294 U.S. 613, 617-18, 55 S.Ct. 563, 79 L.Ed. 1090 (1935); *State ex rel. Britton v. Mulloy*, 332 Mo. 1107, 61 S.W.2d 741, 743 (1933).

<sup>23</sup> *State ex rel. Harline v. Missouri Public Service Commission*, 343 S.W. 2d 177, 181-82 (1960).



landowners. The Commission ordered Grain Belt to incorporate the Missouri Landowner Protocol in any easements to provide additional protections for landowners. Grain Belt owned those 39 easements before the Commission ordered those conditions. Additionally, Landowners argue that Grain Belt does not control the property on which it has an easement until it begins to construct the proposed transmission line in Missouri. The Commission is not a court of law and its powers are limited to those conferred by statute. The Commission is not authorized under Section 393.190, RSMo, to interpret the rights of the parties to those easements, nor may it for purposes of this case. The Commission simply notes that the easements are possessed by Grain Belt and does not determine the enforceability of the easements.<sup>24</sup> [Emphasis supplied.]

The Commission has previously recognized Invenenergy's impressive record in its CCN Order, noting "Invenenergy's project management team has extensive experience in construction of energy generation projects, contract negotiation, material procurement, right-of-way issues, utility interconnections, and construction of electrical transmission and substations."<sup>25</sup> [Emphasis supplied.]

Respondents have consistently committed to working diligently with Missouri landowners to negotiate the terms of easement agreements that address specific landowner concerns and reflect the unique character of the individual property owners' land. Respondents will continue their efforts to secure voluntary easements and will continue to adhere to all protocols and explicit conditions directed by the Commission, and will bring its extensive contract negotiation and right-of-way acquisition experience to bear in every landowner negotiation.

Negotiations regarding the contents of the easement agreement should remain within the province of management, consistent with the *Harline* Court's statement that a utility retains the

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<sup>24</sup> Report and Order, Case No. EM-2019-0150, pp. 12-13 (June 5, 2019).

<sup>25</sup> CCN Order, p. 20.

lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare.

#### **IV. CONCLUSION**

Neither the clear and specific terms of the CCN Order, nor the explicit conditions placed on Grain Belt's CCN, contain a requirement that Grain Belt must initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN case. Because there is no requirement to utilize a specific form of easement in landowner negotiations, there is no legal basis for the Complaint and it should be dismissed.

Respectfully submitted,

*/s/ Anne E. Callenbach* \_\_\_\_\_

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all parties of record by email or U.S. mail, postage prepaid, this 16<sup>th</sup> day of September, 2020.

/s/ Anne E. Callenbach  
Attorney for Respondents