

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Linda McElwee,)
)
Complainants,)
) Case No. EC-2022-0059
)
v.)
)
)
)
Grain Belt Express LLC,)
)
Respondents)

RESPONSE TO FORMAL COMPLAINT

Grain Belt Express LLC (“Grain Belt” or the “Respondent”), pursuant to 20 CSR 4240-2.070(8) and the Commission’s August 30, 2021 Order Giving Notice of Complaint and Directing Responses, hereby files this Response to the Formal Complaint and Request for Expedited Treatment filed by Linda McElwee. In support of its Response, Respondent states the following:

I. Background and Summary of Complaint

1. On August 27, 2021, Complainant Linda McElwee (hereafter “Complainant” or “Ms. McElwee”) filed a formal complaint against Respondent. The Complaint contains two counts: (1) Count 1 alleges that, by not providing Complainant with “yes” or “no” answers to three of her questions, Respondent is allegedly in violation of the Code of Conduct, which was received in evidence in Case No. EA-2016-0358, and with which Grain Belt is bound to comply in accordance with the Commission’s March 20, 2019 Report and Order on Remand; and (2) Count 2 alleges that Respondent must abide by the terms of the Landowner Protocol, which provides for compensation terms for voluntary easements, in the event that voluntary easement negotiations are

unsuccessful and the matter proceeds to condemnation. In the latter claim Complainant requests that the Commission rule that Grain Belt is obligated to pay \$18,000 per structure plus a 10% adder, otherwise applicable only to voluntary easements, in a condemnation action.

2. This the fourth formal complaint against Grain Belt filed by the attorney for the Complainant in the last fifteen months. The attorney for the Complainant also filed a request for a declaratory action against Grain Belt in Randolph County, Missouri during that time period. All of the complaints and the declaratory action were resolved in favor of Grain Belt. The first action was voluntarily dismissed due to lack of evidence.¹ The Commission denied the second action in its entirety, with the Commission seeing “no basis” for the relief sought by complainants in that case.² The Commission also denied the third action in its entirety, finding that the complainants in that case “failed to meet their burden of proof.”³ The Circuit Court of Randolph County dismissed the declaratory action, finding “there is no cause of action before this Court authorizing it to grant the relief requested by Plaintiffs” and that Plaintiffs “fail to allege the essential elements for declaratory relief.”⁴ The Complainant is a member of the Missouri Landowners Alliance (“MLA”), which was a complainant in the first three complaints filed against Respondent with the Commission and in the declaratory judgment action in Randolph County.⁵ Complainant has

¹ See *Missouri Landowners Alliance and Gary Mareschal v. Grain Belt Express, LLC, et al.*, PSC Case No. EC-2020-0408, Motion to Withdraw Complaint (Jan. 12, 2021).

² *Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners, and John G. Hobbs v. Grain Belt Express LLC, et al.*, PSC Case No. EC-2021-0034, Report & Order, p. 13 (Jan. 20, 2021).

³ *Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners, and John G. Hobbs v. Grain Belt Express LLC, et al.*, PSC Case No. EC-2021-0059, Report & Order, p. 20 (Aug. 4, 2021).

⁴ *Missouri Landowners Alliance, et al., v. Grain Belt Express LLC, et al.*, 20RA-CV01317, Judgment of Dismissal, p. 7 (June 1, 2021).

⁵ Depo. Tr. at pp. 10-12. Ms. McElwee’s September 21, 2021 deposition transcript is attached to this Response as **Exhibit 1**. At Complainant’s counsel’s request, Respondent waived the Missouri Supreme Court Rule 57.03(f) signature requirement for Ms. McElwee’s deposition.

donated to MLA and has been a member of that organization since at least 2017.⁶ However, she “know[s]nothing about” the previous complaints, despite the fact that she is member and donor to MLA.⁷

3. The fifth time is not the charm. In fact, it is quite clear that this Complaint was not filed in good faith, but rather for the improper purpose of harassing the Respondent, causing unnecessary delay and needlessly increasing the cost of litigation, in violation of 20 CSR 4240-2.080(6). The Complainant and her attorney have ignored the multiple good faith attempts by Respondent to explain the easement acquisition process and Missouri’s statutory scheme governing condemnation and the reasons why “yes” or “no” answers to the Complainant’s questions are neither practical nor in anyone’s best interest. In fact, the attorney for Complainant has failed to fully inform Complainant of good faith attempts by Respondent to resolve the issues and avoid a baseless complaint, resulting in ethical violations that should not be condoned by this Commission. See ¶¶ 20-21 herein.

II. Response to Allegations in the Complaint

4. In response to the factual allegations in the Complaint, Respondent replies as follows:

Count 1 of the Complaint

- a. Respondent admits the allegations in Paragraph 1 of the Complaint.
- b. Respondent admits the allegation that Complainant is an owner of four parcels of real property in Caldwell County, whether as an owner in fee simple or as a trust

Respondent also notes that there will be two minor non-substantive changes to the transcript on an errata sheet which we can provide upon request.

⁶ Id.

⁷ Depo. Tr. At pp. 33-34.

beneficiary, and that Complainant's stated property address appears to be accurate. Respondent is without sufficient information to either admit or deny the factual statements that Complainant is the surviving spouse, or the prior ownership structure of the four parcels of real property, and therefore deny the same.

- c. Respondent admits the allegations in Paragraphs 3-6 of the Complaint.
- d. Respondent admits that a copy of a letter sent from Respondent's counsel to the McElwee Trusts is attached to the Complaint as Exhibit 1.
- e. Respondent admits the allegation in Paragraph 8 of the Complaint and further states that the 60-Day Notice Letter was mailed to Complainant on June 8, 2021.
- f. Respondent admits the allegations in Paragraphs 9-10 of the Complaint.
- g. Paragraphs 11 and 12 of the Complaint consist of a selective summary of the CCN Order and certain provisions of the Landowner Protocols. Respondent admits that Grain Belt was ordered to comply with the Landowner Protocol in the Commission's CCN Order. The full text of the CCN Order at p. 52, para. 8 is as follows: "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." Notably, the Commission did not impose any financial obligations upon Respondent in the context of a condemnation action. Respondent admits that the portion of Section 3 of the Landowner Protocol, beginning at p. 4 and entitled "Compensation" is accurately quoted by Complainant in paragraph 12. Respondent adds that the Landowner Protocol also states in its introductory

paragraph that “The Landowner Protocol is a comprehensive policy of how Grain Belt Express interacts, communicates, and negotiates with affected landowners.” (Emphasis added.) Negotiation with landowners occurs only during the voluntary easement process, and is not part of the statutory condemnation process.

- h. Respondent admits that the portion of Section 3 of the Landowner Protocol in paragraph 13 of the Complaint is accurately quoted.
- i. Respondent denies the allegation in Paragraph 14 of the Complaint, that Complainant has sought clarification from Respondent as to whether Respondent intends to pay the 10% adder and/or money for the support structures if Complainant does not sign a voluntary easement. Rather than clarification, Complainant is seeking an admission from Respondent that contravenes established Missouri law that determines landowner compensation in a condemnation action. Respondent denies the allegation in Paragraph 14 of the Complaint, that “without such clarification, Complainant cannot rationally compare the amount current being offered by Respondent for an easement, to the amount she might receive if Respondent files for condemnation.” There is no information Respondent can provide that will enable Complainant to compare the amount currently being offered by Respondent for an easement to the amount of compensation that will be determined by three as-yet to be appointed commissioners in an as-yet to be filed condemnation action.
- j. Respondent again denies the allegation in Paragraph 15, that Complainant is seeking “clarification.” As noted above in response to Paragraph 14 of the Complaint, Complainant is seeking an admission from Respondents, not

clarification. Respondent admits that on August 20, 2021, counsel for Complainant sent a letter to counsel for Respondent seeking answers to three questions.

- k. Respondent admits the factual statement in Paragraph 16 that counsel for Respondent sent a responsive letter to counsel for Complainant (except that the correct date is August 24, 2021, not 2014), and that such letter is attached as Exhibit 3 to the Complaint.
- l. Paragraph 17 of the Complaint is speculative and argumentative. The letter speaks for itself and Complainant's interpretation of the same is both immaterial and incorrect. Moreover, the allegation that Respondent "deliberately chose to leave Mrs. McElwee in doubt" is combative, untrue and is specifically denied by Respondent. The letter speaks for itself and Complainant's self-serving interpretation of the same is immaterial. Accordingly, Respondent denies the allegations in Paragraph 17 of the Complaint.
- m. The allegations in Paragraph 18 consist of Complainant's counsel's legal arguments and Respondent denies the same.
- n. Respondent admits the allegations in Paragraph 19 of the Complaint only to the extent that they summarize portions of the Landowner Protocol and Code of Conduct. Respondent denies the self-serving, argumentative statements in the last sentence of Paragraph 19.
- o. Respondent admits that the Direct Testimony of Deann Lanz referenced in Paragraph 20 of the Complaint speaks for itself. Respondent denies Complainant's counsel's interpretation of such testimony.
- p. Respondent admits the allegations in Paragraph 21.

- q. Respondents deny the unsupported argument of Complainant's counsel in Paragraph 22 of the Complaint. The Commission has no jurisdiction or authority to modify the statutory condemnation process for determining landowner compensation, and for Complainant to suggest that the Commission do so encroaches upon the authority of Missouri district courts.
- r. Respondent admits to the allegation in Paragraph 23 only to the extent that page 4 of the Landowner Protocol is accurately quoted. Respondent denies that the quoted portion of the Landowner Protocol has any relevancy to this Complaint.
- s. Respondents deny the unsupported argument of Complainants' counsel in Paragraph 24 of the Complaint and again notes that the Commission has no jurisdiction or authority to modify the statutory condemnation process for determining landowner compensation
- t. Respondent denies the allegation in the first sentence of Paragraph 25, that Complainant was seeking "definitive yes or no answers to the questions posed in the letter of August 20" because Complainants' counsel had "difficulty" obtaining answers to the same questions raised with Respondent on behalf of a different client, Loren Sprouse. Mr. Sprouse has not filed a complaint with the Commission, which suggests that he did get definitive answers to his questions, just not the answer Complainants' counsel wanted to hear. Respondent admits to the remainder of Paragraph 25 to extent it summarizes the content of Exhibits 4, 5 and 6 to the Complaint, but is without sufficient information to either admit or deny any other allegation in Paragraph 25, and therefore denies the same.

- u. Paragraphs 26 and 27 of the Complaint consists of the speculation and unsupported argument of Complainants' counsel and Respondents deny the same. Complainant is not "in the dark" regarding a factor she deems "critical" in determining how to proceed in easement negotiations with Respondent. Complainant currently has all the information necessary to determine whether to accept a voluntary easement or proceed to condemnation. Rather, Complainant is attempting to circumvent how landowner compensation is determined pursuant to Missouri condemnation law.
- v. Respondent admits the allegations in Paragraph 28 of the Complaint. Respondent further notes that counsel for Respondent scheduled and held a conference call with Complainant's counsel on August 19, 2021 to provide additional explanation for Respondent's answers to Complainant's questions.
- w. Respondent admits the allegation in Paragraph 29 of the Complaint, that counsel for Complainant posed certain questions regarding the amount of easements obtained and yet to be obtained in the State of Missouri, and denies the remainder of Paragraph 29 as the unsupported and spurious conclusions of Complainants' counsel.
- x. Respondent denies is the unsubstantiated legal conclusions in Paragraph 30 of the Complaint and Respondent reiterates that Complainant has all the information required to make a "rational decision."

Count 2 of the Complaint

- 5. In response to Count 2 of the Complaint, Respondent replies as follows:
 - a. Respondent incorporates its responses to Paragraphs 1-30 in response to Paragraph 31 of the Complaint.

- b. Paragraph 32, 33, and 34 consist of the speculation and arguments of Complainants' counsel, and Respondent therefore denies the same.
- c. Respondent admits that in the CCN case Respondent agreed to the compensation provisions in the Landowner Protocol applicable to voluntary easements. Respondent denies the remainder of Paragraph 35 as arguments of counsel.
- d. Respondent admits that the Commission required Respondent to abide by the terms of the Landowner Protocol with respect to voluntary easements. As the Commission stated in its final Order dismissing the last complaint Complainant's counsel filed against Respondent, (File No. EC-2021-0059, at p. 14) "the Commission has no jurisdiction or authority to grant a public utility the power to exercise eminent domain." Respondent therefore denies the remainder of Paragraph 36 as argument.
- e. Respondent admits that both the portion of Exhibit 206 in the CCN case and the citation to the CCN Order appear to be accurately quoted in Paragraph 37 of the Complaint. The Commission has no jurisdiction or authority to grant a public utility the power to exercise eminent domain. Respondent therefore denies the remainder of Paragraph 37 asserting that Respondent's position in a condemnation action is an impermissible change to Respondent's right-of-way acquisition policies and procedures.
- f. Respondent admits that Ms. Deann Lanz' testimony in the CCN case and the quoted transcript sections in Paragraph 38 appear to be accurate. The testimony of Ms. Lanz was not incorporated into the CCN Order and was not made a condition of Respondent's CCN. Moreover, the Commission did not make compensation

provisions in the Landowner Protocol applicable to condemnation proceedings because it lacks the jurisdiction and authority to do so. Respondent therefore denies the remainder of Paragraph 38 as Complainants' arguments and unsupported legal conclusions.

- g. Respondent admits the statement in Paragraph 39 of the Complaint, that neither the Landowner Protocol nor the Code of Conduct includes the definitions specified in Paragraph 39. Respondent denies the remainder of Paragraph 39 as Complainants' argument and legal conclusions, and emphatically deny the allegation that "as to the matter of compensation, the Commission's adoption of the Protocol is in effect a 'binding link' between the Commission's CCN case and any subsequent condemnation proceedings."
- h. Respondent admits that the CCN Order is accurately quoted in Paragraph 40 of the Complaint, and denies the remainder as Complainants' argument and legal conclusions.
- i. Respondent denies the allegations contained in Paragraphs 41-44 of the Complaint to the extent they assert that the Commission has the jurisdiction and authority to extend the landowner compensation package applicable only to voluntary easements to the statutory condemnation process. Respondent denies the remainder of Paragraphs 41-44 as Complainant's unsubstantiated argument and legal conclusions.
- j. Respondent has no issue with the request that the Commission take official notice of the documents in the CCN proceeding, as reflected in Paragraph 45 of the Complaint.

Argument

A. Jurisdiction of the Commission and District Court

6. Respondent Grain Belt Express, LLC, is a public utility as defined by Section 386.020(43), RSMo.⁸ Respondent Grain Belt Express is an electrical corporation and public utility regulated by the Commission.⁹ The Commission has no jurisdiction or authority to grant a public utility the power to exercise eminent domain.¹⁰ Section 386.250 RSMo. provides that the Commission has jurisdiction over electric, gas, water, sewer, and telecommunications public utilities in Missouri.¹¹

7. Section 523.262 RSMo. governs eminent domain for public utilities.¹² When a condemnation action is initiated, Missouri district courts will appoint three disinterested commissioners who are residents of the county in which the real estate is situated, at least one of whom shall be a licensed real estate broker or a state-licensed or state-certified real estate appraiser. The Commissioners will then apply the fair market value definition contained in Section 523.001 RSMo., view the property, and return to the clerk of the court their report setting forth the amount of damages allowed to the person(s) owning the tract(s) of land to be condemned.¹³

⁸ File No. EC-2021-0059, at p. 5, referencing File No. EA-2016-0358, Report and Order on Remand, page 38.

⁹ File No. EC-2021-0059, at p. 13, referencing File No. EA-2016-0358, Report and Order on Remand, pages 37 and 38.

¹⁰ File No. EC-2021-0059, at p. 14.

¹¹ Id. at footnote 46.

¹² Id. at footnote 46.

¹³ 523.040 RSMo.

8. An easement is a form of private property that can be taken only upon payment of just compensation.¹⁴ Just compensation may be voluntarily negotiated and agreed to, or it may be determined by Missouri district courts. While the Commission has jurisdiction over Respondents and may require Respondents to adhere to their commitments in the Landowner Protocols and Code of Conduct, the Commission does not have jurisdiction over any portion of the condemnation proceeding, including any fair market value of property established in such a case. As the Commission has long recognized:

“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.”¹⁵

B. Response to Count 1

9. Complainant has acknowledged that Count 1 is only relevant if Respondents prevail on Count 2.¹⁶ That is, Count 1 is only relevant if Respondents are *not* under any obligation to pay \$18,000 per lattice structure and 110% of fair market value if land acquisition attempts proceed to condemnation. Accordingly, Complainant is asking Respondent to tell her—on a definitive basis—whether Respondent will make *voluntary* payments at some undefined point in the future and under undefined and unknown circumstances. Even if Respondent provided a definitive

¹⁴ *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).

¹⁵ *State ex rel. Harline v. Missouri Public Service Commission*, 343 S.W. 2d. 177, 181-82 (1960).

¹⁶ Complaint, p. 8, ¶ 30 (“If the Commission rules in Complainants favor on Count 2 of this Complaint, then this Count 1 is seemingly moot”).

answer, it would not be binding according to the basic tenants of contract law because there is no meeting of the minds and no consideration.

10. There are two fundamental unknowns that prevent Respondent from answering the Complainant's questions with definitive "yes" or "no" answers, as she demands: (1) Respondent is unable to know what the court-determined fair market value of Complainants' property will be in a yet-to-be filed condemnation action, as determined by three yet-to-be appointed disinterested Commissioners; and (2) Respondent is unable to know if a settlement can be reached with Complainant before any litigation concludes, at what point in the process such a settlement (if any) will occur (including how much in costs will be incurred by Grain Belt as a result of litigation), other requests and demands that the Complainant may make in relation to a voluntary easement, any evidence of fair market value that will come to light in the future, and myriad other factors that go into a settlement. These unknowns were discussed during the August 19, 2021 conference call discussed in paragraph 15 and 16 below. Because Respondent cannot look into the future, Respondent finds itself once again on the business end of another frivolous and baseless complaint.

11. On June 7, 2021, Respondent sent an update letter to every Missouri landowner impacted by the transmission project, including the Complainant, which was made Exhibit 4 to Ms. McElwee's deposition and which is attached hereto as **Exhibit 2** (the "Update Letter"). The Update Letter includes the following explanation:

As with any public utility project, every landowner has the opportunity to reach agreement on easement terms and compensation through voluntary negotiation with Grain Belt Express. The Grain Belt Express compensation offer has several benefits not typical of transmission compensation offers, including:

- **An easement payment premium of 110%** of the market value of land in easement areas;
- **Structure payments of \$18,000** per-structure; and

- Options to receive both the easement and structure payments as either lump sums or **annually escalating payment streams over the life of the Project**, the latter of which significantly enhance value.

These benefits are not otherwise part of transmission compensation offered by utilities or awarded by Kansas and Missouri courts in legal proceedings involving right-of-way acquisition.

12. The Update Letter clearly indicates that the structure payments and 10% adder are part of the offer for a *voluntary easement*, but they are not otherwise part of compensation in condemnation proceedings.

13. On July 29, 2021, counsel for Complainant sent a letter to counsel for Respondent on behalf of another landowner who is not a complainant in this case, Mr. Loren Sprouse. The letter requested “yes” or “no” answers to the following three questions: “(1) If the matter does go to condemnation, will Grain Belt still pay for support structures which are built on the right-of-way?; (2) If the answer to the first questions is “yes”, will the payment still be in the amount of \$18,000 per lattice structure?; (3) If the matter goes to condemnation, will Grain Belt still pay 110% of the fee value of the property on the easement?” See Exhibit 4 to Complaint.

14. On August 5, 2021, counsel for Respondent sent a letter to counsel for Complainant, explaining that the structure payments and 10% adder are required by the Missouri Landowner Protocols in the context of *voluntary easements*. The letter explained that, conversely, the involuntary easement process, condemnation, is under the jurisdiction of Missouri district courts and not the Commission, and that district courts will determine the “fair market value” according to statute.

15. On August 13, 2021, counsel for Complainant sent 60- an email to counsel for Respondent, stating “unless you change your position, we will likely be filing a complaint with the PSC for what I consider a failure to directly answer the three questions I raised in my letter to you of July 29.” See **Exhibit 3** attached hereto. On the same day, counsel for Respondent

responded by requesting “a call to understand and respond to your client’s concerns before you initiate a formal complaint.” *See Id.* The call was scheduled for 3:00 pm on August 19, 2021 and later moved to 2:30 pm on August 19, 2021 to accommodate attendance by members of Commission Staff.

16. On August 19, 2021, counsel for Complainants, counsel and representatives of Respondent, and members of Commission Staff participated in a conference call. During the 45-minute call, representatives of Respondent discussed why Respondent cannot answer the questions posed with “yes” or “no,” including discussion of the unknowns outlined in Paragraph 10 above. During the call, counsel for Complainant asked several times if he could “quote” the statements made by representatives of Respondent. When asked directly why he was asking for quotes, counsel for Complainant stated that he was looking for quotes to include in his complaint. Representatives of Respondents informed counsel for Complainant that he was not approaching the conversation in good faith.

17. On August 20, 2021, counsel for Complainant sent a letter to counsel for Respondent on behalf of Complainant, requesting “yes” or “no” answers to essentially the same three questions as those presented behalf of Mr. Sprouse on July 29, 2021: “(1) if the matter goes to condemnation, will Grain Belt pay Mrs. McElwee for support structures which are built on the right-of-way?; (2) if the answer to the first question is “yes”, will payment still be in the amount of \$18,000 per lattice structure?; and (3) if the matter goes to condemnation, will Grain Belt still pay Mrs. McElwee 100% of the fee value of the property on the easement?” Exhibit 2 to the Complaint.

18. On August 24, 2021, counsel for Respondent sent a responsive letter to counsel for Complainant. Similar to the August 5, 2021 letter, Respondent explained that the compensation

being offered for voluntary easements is set forth in the Missouri Landowner Protocols, and compliance with such Protocols in the context of voluntary easements was made an express condition of the CCN. Conversely, Respondent noted, the involuntary condemnation process is under the jurisdiction of the Missouri district courts, not the MPSC, and it is the district courts that determine the “fair market value” of property to be condemned. The letter also referenced the August 19, 2021 conference call, in which Respondent provided detailed explanations of its position, and stated that the purpose of the questions is not in the spirit of good faith negotiations, but rather to set up a baseless complaint at the Commission.

19. On August 27, 2021, Complainant filed the Complaint.

20. Complainant stated at her September 21, 2021 deposition that she was not informed by her counsel of the August 19, 2021 conference call. [Depo Tr. at pp. 40]. The Complainant also stated at her deposition that she did not discuss the August 24, 2021 letter with her counsel. [Depo Tr. at pp. 43-44]. The explicit purpose of the August 19, 2021 conference call was for Respondent to understand and respond to the concerns raised in the letters prior to the filing of a formal complaint. The explicit purpose of the August 24, 2021 letter was to respond to the questions counsel posed on behalf of the Complainant and it explicitly referenced the “detailed explanations” provided on August 19, 2021. By the Complainant’s own admission, she did not even attempt to understand Respondent’s explanations for why it cannot provide “yes” or “no” answers to her questions. More concerning, counsel for Complainant did not fully inform his client of directly relevant information, which was necessary for the Complainant to make an informed decision as to whether to bring a complaint, before filing a formal complaint on her behalf.¹⁷ This

¹⁷ See Missouri Rules of Professional Conduct, Rule 4-1.4(b) (“A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation”).

follows an established pattern whereby counsel for Complainant(s) files formal complaints in the name of his alleged clients without reasonably informing them of the nature, purpose, or implications of the complaints. Despite being a donating member of MLA, Complainant “know[s] nothing about” any of the four previous actions filed by MLA. This is a highly alarming abuse of the Commission’s formal complaint process, not to mention the significant time and resources expended by Respondents, the Commission, and the Commission Staff responding to such baseless actions.

21. These facts make it strikingly clear that this Complaint was not filed in good faith, but to harass Respondent and cause unnecessary delay and costs. As a result, the Commission should dismiss the Complaint for failure to comply with 20 CSR 4240-2.080(6).¹⁸ Dismissal is also appropriate under 20 CSR 4240-2.116(4).¹⁹

22. Complainant contends that Respondent is mandated by the Landowner Protocol to provide definitive answers to Complainants three questions, and the “ambiguous” answers provided by Respondent contravene the Commission’s CCN Order. In support of its contention, Complainants reference the direct testimony in the CCN case of Clean Line’s Vice President for Land, in which Ms. Lanz assured the Commission that Grain Belt “will respond promptly and courteously to any landowner’s or tenant’s (or their designated representative or counsel) inquiry, comments, or questions. Complainant speculates that this statement “surely implies that those answers will definitely and unambiguously answer the landowner’s questions.”²⁰ There can be no

¹⁸ 20 CSR 4240-2.070(7) (“The commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted or *failure to comply with any provision of these rules* or an order of the commission, or may strike irrelevant allegations.” *emphasis added*).

¹⁹ “A case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved.” 20 CSR 4240-2.116(4).

²⁰ *Id.* at paragraph 21.

straight-faced argument that in all communications with Complainant’s counsel, agents for the Respondent have been anything but prompt and courteous. To theorize that Ms. Lanz’ testimony required “yes” or “no” responses to every question far exceeds the bounds of both Ms. Lanz’ testimony and the Commission’s CCN Order (not to mention the bounds of logic and reasonableness).

23. If Complainant had her way, Respondent would be faced with two untenable choices: either (a) answer “yes,” which would commit Grain Belt to making payments to every landowner who forces it into litigation, when it is under no obligation to make such payments (as explained further in response to Count II); or (b) answer “no,” which would purport to predetermine the final outcome of condemnation proceedings before they are filed and/or impose a cap on the amount of payment Grain Belt is able to offer after the condemnation proceedings commence. Neither outcome is within this Commission’s authority to mandate and neither outcome is in the public interest.

24. Complainant suggests that “there is no language in the Landowner Protocol, the Code of Conduct, or in the Commission Order in the CCN case, which states or implies that the obligations set forth in those documents terminate when Respondent begins the condemnation process by mailing the 60-day or 30-day statutory notices of possible condemnation.”²¹ Complainant further asserts that the Landowner Protocol at p. 4 specifically states that “Grain Belt’s approach to landowner negotiations will not change regardless of when these negotiations take place.”²²

²¹ Complaint at paragraph 22.

²² Id.

25. Respondents agree that the Landowner Protocol contains this language, but the initiation of the condemnation process naturally assumes that efforts at negotiation have either stalled or failed, and the negotiation process for determining landowner compensation therefore transitions into the statutory process for determining landowner compensation pursuant to Chapter 523, RSMo. “Section 523.010 authorizes the filing of a condemnation proceeding only in cases where the condemnor and property owners cannot agree upon the proper compensation to be paid. Because necessity is the underlying basis for the sovereign’s exercise of the power of eminent domain, a condemning authority must prove that negotiations have been attempted and have failed.”²³

26. Complainant argues that if Respondents obligations under the Landowner Protocol and Code of Conduct are deemed to terminate upon the filing of the 60-day or 30-day notices for condemnation, then “Respondent could completely escape all obligations under those documents by simply sending the statutory notices to all landowners who have not signed a voluntary agreement.”²⁴ Respondent does not take the obligations imposed by the Landowner Protocol and Code of Conduct lightly, and specifically designed these governing principles to convey its intent to conduct voluntary easement negotiations in a consistent and equitable manner with all landowners. As Respondent has consistently maintained, it is Respondent’s top priority to voluntarily secure the easements necessary for the project through respectful and truthful interactions with landowners and condemnation is Respondent’s very last resort. Respondent only sends 60-day notices in three circumstances: (1) when a landowner unequivocally states that they will not agree to a voluntary easement; (2) when no response is received from a landowner, despite

²³ *City of Richmond Heights v. Waite*, 280 S.W. 3d 770, 776 (Mo.App.E.D. 2009)(internal citations omitted.)

²⁴ Complaint at paragraph 24.

numerous attempts to contact them; or (3) when it is clear that negotiations will not result in a voluntary easement despite Respondent's repeated good faith attempts. By the time a landowner receives a 60-day notice letter, they have had ample time to consider the benefit from the voluntary compensation package offered by Respondents.

C. Response to Count 2

27. Complainants' allegations in Count 2 of the Complaint are equally baffling. Count 2 suggests that "under other circumstances, Respondent might be correct in arguing that these payments need not be made if the matter goes to condemnation. However, in this instance, Respondent has waived any statutory right it may have to not make those payments."²⁵ First, Complainant fails to articulate what "other circumstances" might be present such that Respondent is correct that it need not make the payments if the matter goes to condemnation. Second, there are no statutory rights at issue in this matter, so Complainants' reliance on Missouri law discussing waiver of statutory rights is erroneous and misguided.

28. As Complainant acknowledges, Respondent voluntarily offered and explicitly agreed to the compensation provisions in the Landowner Protocol.²⁶ As expressly stated in the Landowner Protocols, "The Landowner Protocol is a comprehensive policy of how Grain Belt Express interacts, communicates, and negotiates with affected landowners"²⁷ and "[t]he goal of these policies [including offering a fair and comprehensive compensation package for transmission line easements] is to obtain voluntary transmission line easements."²⁸ By its clear terms, the Landowner Protocol applies to the process of negotiation of voluntary easements. Once

²⁵ Complaint at paragraph 33.

²⁶ Id. at 35.

²⁷ Missouri Landowner Protocol, Schedule DKL-1, at p. 4. Emphasis supplied.

²⁸ Missouri Landowner Protocol, Schedule DKL-1, at p. 4. Emphasis supplied.

negotiations prove not to be fruitful, the process for obtaining a voluntary easement ceases, and the matter proceeds to condemnation. There is absolutely no support for Complainant's unsubstantiated claim that "under the express compensation provisions of Respondents' own Protocol, it voluntarily waived any right it may otherwise have had not to make those payments."²⁹

29. Equally preposterous is Complainants' assertion that "the Commission did not directly or by implication state in the CCN Order that the Landowner Protocol ceased to apply once a notice of condemnation was sent to a landowner."³⁰ No need existed for the Commission to either explicitly or implicitly state that the Landowner Protocol would not apply once condemnation proceedings begin. As discussed above, the Commission's jurisdiction over voluntary easement negotiation or compensation ceases and passes to the Missouri district courts upon the initiation of the condemnation process via the statutorily mandated issuance of the 60-day and 30-day notice letters sent to Complainant. As is clearly expressed in the July 20, 2021 30-day notice letter to Ms. McElwee, it is a notice of intended acquisition and written offer pursuant to RSMo. 523.253, and after the expiration of such 30-day period, which has in fact occurred, Grain Belt may file a condemnation petition to obtain the easement it seeks through the courts pursuant to Missouri law.

30. Complainant contrives an elaborate argument in support of her conjecture that Grain Belt may not reduce the amount of an offer of easement compensation in the event the matter later goes to arbitration or the courts. In support of this farce, Complainant quotes again from the Direct Testimony and transcript examination of Deann Lanz in the 2014 CCN proceeding. As this Commission has previously recognized in an earlier complaint proceeding filed against

²⁹ Complaint at paragraph 35.

³⁰ Id. at paragraph 36.

Respondents, “the CCN Order required Grain Belt to comply with the conditions identified in Exhibits 206 or 205, which were adopted by and made a part of the CCN Order in its Ordering Paragraphs 2 and 3.”³¹

The Commission further found that:

“Neither Attachment 1 nor 2 mentions the Schedule DKL-4 Easement Agreement or the testimony of Deann Lanz...

While the Ordering Paragraphs then ordered compliance with the Protocol (Schedule DKL-1) and the Code of Conduct (Schedule DKL-2), the Ordering paragraphs did not expressly condition the CCN on the use of the DKL-4 Easement Agreement or otherwise require its use, nor did the Protocol or Code of Conduct, whose use the CCN Order’s Ordering Paragraphs expressly required, even mention the DKL-4 Easement Agreement.”

Thus, the Commission, on the one hand, by mandating the use of the Protocol and Code of Conduct, made how Grain Belt was to treat all landowners during negotiations an express condition of the CCN. The Commission, on the other hand, did not mandate or restrict Grain Belt as to what terms to offer in the course of negotiations, except to require that each agreement expressly pertain to the land and contain a drawing of the easement location in question.³²

31. The Commission’s findings in the complaint proceeding referenced above confirm that the Commission will rely upon the plain language of the CCN Order, the Code of Conduct, and the Protocols, and will reject any reliance upon testimony that was not made a part of the final order, the Code of Conduct, or the Protocols. Far from being the “aha moment” Complainants suggest, whatever Ms. Lanz did or did not say in the 2014 CCN proceeding is inconsequential. Ms. Lanz’ statements were not adopted by the Commission in either the Landowner Protocols or

³¹ January 20, 2021, Report and Order, File No. EC-2021-0034 at p. 11, footnote 33, referencing the 2019 CCN Order, p. 51, Ordering Paragraphs number 2 and 3, referencing the CCN Order’s Attachments 1 and 2, which are, respectively, Exhibits 206 and 205.

³² January 20, 2021, Report and Order, File No. EC-2021-0034 at pp. 11-12.

the CCN Order, were not made an express standalone condition of the CCN, and were not even mentioned in the CCN Order.

32. Complainant next argues that, “As to the matter of compensation, the Commission’s adoption of the Protocol in effect is a ‘binding link’ between the Commission’s CCN case and any subsequent condemnation proceedings.”³³ There can be no such “binding link” between the Protocols governing voluntary easement negotiations with landowners and the condemnation process set forth in Chapter 523 RSMo. because the Commission, as it has recently recognized, does not possess jurisdiction over eminent domain.³⁴ For Complainant to suggest that the Commission may impose compensation requirements on Respondent in a condemnation matter that lies exclusively within the jurisdiction of the Missouri district courts is absurd. Respondents believe that neither the Commission nor the district courts would consent to such “hybrid” jurisdiction, even if such consent was within their authority to grant.

Response to Motion for Expedited Treatment

33. Respondent agrees with Complainant that expedited treatment is warranted in this proceeding, and supports Complainant’s request that the Commission dispose of this matter at its earliest convenience. Respondent disagrees that Complainant is entitled to any “meaningful relief” from the Commission, however, and reiterates that the relief sought, that is a ruling from the Commission that Respondent is obligated to make the payments for structures and the 10% adder if the matter goes to condemnation, is not within the Commission’s jurisdiction to grant.

³³ Complaint at p. 12.

³⁴ See, August 4, 2021 Report and Order, File No. EC-2021-0059 at p. 14.

WHEREFORE, Respondents respectfully request that the Commission: (1) accept this Response; (2) immediately dismiss this Complaint, as any further consideration of this baseless complaint will only encourage continued abuse of the Commission's formal complaint process; and (3) for such further relief as the Commission may deem just and appropriate.

Respectfully submitted,

/s/ Anne E. Callenbach _____

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ATTORNEYS FOR RESPONDENTS

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 29th day of September, 2021.

/s/ Anne E. Callenbach

Attorney for Respondents