

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-2021-0059
)	
V.)	
)	
Grain Belt Express LLC and)	
Invenergy Transmission LLC,)	
)	
Respondents)	

**GRAIN BELT RESPONSE TO COMPLAINANTS’ OPPOSITION TO RESPONDENTS’
MOTIONS OF MARCH 12, 2021**

Invenergy Transmission LLC (“Invenergy Transmission”) and Grain Belt Express LLC (“Grain Belt” and together with Invenergy Transmission, the “Respondents”) hereby file this Response to Complainants’ Opposition to Respondents’ Motions of March 12, 2021 (“Complainants’ opposition”). In support of this Response, Respondents state as follows:

1. On September 2, 2020, Complainants filed a formal complaint against Respondents at the Missouri Public Service Commission (“Commission”), alleging that Respondents’ contemplated changes to the Grain Belt Express Project (the “Project”), as reflected in their August 25, 2020 press release and as briefly described on their website, invalidated the Certificate of Convenience and Necessity (“CCN”) granted to Respondent Grain Belt in Case No. EA-2016-0358 (the “CCN case”).

2. On March 12, 2021, Respondents filed a motion requesting that the Missouri Public Service Commission (“Commission”) dismiss this complaint proceeding. Respondents

asserted that Complainants, instead of filing direct testimony as ordered by the Commission, instead filed as their case-in chief ten exhibits consisting of Respondents' discovery responses and other information provided by the Respondents. Respondents argued that Complainants' failure to provide witness testimony, context for the filed exhibits, or any analysis or argument explaining Complainants' case-in-chief thus rendered it impossible for Respondents to file rebuttal testimony in this matter.

3. On March 15, 2021, the Commission issued an Order Directing Filing and a Response to Respondents' Motion to Dismiss. The Commission directed Complainants to either file direct testimony in support of their case-in-chief or file an explanation as to why they believe no such testimony is necessary.

4. Complainants filed their opposition to Respondents' Motion on March 17, 2021. Complainants assert that "the underlying premise of the Complaint in this case is that Respondents no longer intend to build the transmission project approved by the Commission in the CCN case."¹ Thus, Complainants argue, "the key question here is determining Respondents' true intent in this regard."² Complainants claim that in filing their ten exhibits, they could not have supported those exhibits with any meaningful testimony, because Complainants have no evidence regarding Respondents' intent.

5. Complainants dispute Respondents' assertion that the lack of direct testimony precludes Respondents from filing rebuttal testimony, suggesting that "even in the absence of direct testimony from Complainants, rebuttal testimony from Respondents would be useful to the

¹ Complainants' Opposition at p. 1.

² Id.

Commission in explaining questions inherently raised in the Exhibits filed by the Complainants.”³

6. Section 386.390 RSMo. authorizes the Commission to hear a complaint that sets forth an act or omission by a public utility to determine whether there has been a violation of “any provision of law subject to the [C]ommission's authority, of any rule promulgated by the [C]ommission, of any utility tariff, or of any order or decision of the [C]ommission.” Respondents’ “intent” is immaterial here, as it constitutes neither an act nor an omission that results in the violation of any law, rule or Commission Order.

7. In cases where a “complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, . . . the burden of proof at hearing rests with the complainant.”⁴ As the complaining party, MLA bears the burden of proving the allegations in its complaint. In order to carry the burden of proof, the Complainant must meet the preponderance of the evidence standard.⁵ To meet the preponderance of the evidence standard, MLA must convince the Commission that it is “more likely than not” that Respondents have violated a Commission law, rule or Order.⁶

³ Complainants’ Opposition at p. 2.

⁴ *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003). See also, December 11, 2008 Report and Order, Peter B. Howard v. Union Electric Company, d/b/a Ameren UE, Case No. EC-2008-0329 (hereafter “Ameren UE Report and Order.”)

⁵ *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109 -111 (Mo. banc 1996), citing to *Addington v. Texas*, 441 U.S. 418, 423, 99 S. Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

⁶ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109-111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

8. As previously noted by the Commission, the burden of proof has two parts: the burden of production and the burden of persuasion.⁷ The burden of production requires that the complainant introduce enough evidence on the material issue or issues to have that issue or those issues decided by the Commission, rather than the Commission deciding against the complainant in a peremptory ruling such as a summary determination or a determination on the pleadings.⁸ The burden of persuasion requires that the complainant convince the Commission to favor his position, and this burden always remains with complainant.⁹

9. By their own admission, Complainants have no evidence to support the allegations in their complaint. Indeed, if Complainants possessed any evidence they would have filed direct testimony, argument and analysis fully supporting their case-in-chief. Complainants have not done so. Complainants' assertion that rebuttal testimony from Respondents would be "useful" to explain the questions "inherently raised" in the exhibits filed by Complainants is nothing more than an effort to flip the burden of proof. This is not the standard in complaint proceedings. Respondents are not required to produce any evidence,¹⁰ and are under no obligation to either prove or support Complainants' case-in-chief.

10. "The Commission can only base its decision on the record evidence, and it must have competent and substantial evidence of a party meeting its burden of proof...and a party without evidence, or with insufficient evidence, may fail."¹¹

11. Complainants have failed to carry their burdens in this matter, both the burden of production and the burden of persuasion. Not only has the weight of Complainants' "evidence"

⁷ See, Ameren UE Report and Order at p. 11.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Ameren UE Report and Order at p. 12.

not tipped the balance in Complainants' favor, it lacks sufficient substance to register on the scales at all.

12. Complainants have failed to comply with the Commission's January 20, 2021 Order, imposing specific requirements for the filing of testimony and requiring all parties to comply with the Commission's rules pertaining to pre-filed testimony. Complainants have similarly shirked their obligation to comply with the Commission's February 24, 2021 Order directing Complainants to file Direct Testimony.

13. 20 CSR 4240-2.070(7) provides that, "The commission, on its own motion or the motion of any 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." Respondents hereby renew their March 12, 2021 request that the Commission dismiss this complaint due to Complainants' failure to comply with the Commission's orders and rules.

WHEREFORE, Respondents respectfully request that the Commission grant Respondents' Motion to Dismiss the complaint, and for any such further relief as the Commission may deem just and appropriate.

Respectfully submitted,

/s/ Anne E. Callenbach
Anne E. Callenbach MBN 56028
Andrew O. Schulte MBN 62194
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
Telephone: (816) 572-4760
Facsimile: (816) 817-6496 Fax
acallenbach@polsinelli.com
aschulte@polsinelli.com

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 18th day of March, 2021.

/s/ Anne E. Callenbach
Attorney for Respondents