

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Landowners Alliance, and)
Eastern Missouri Landowners Alliance)
DBA Show Me Concerned Landowners, and)
John G. Hobbs,)
)
Complainants,)
)
V.)
)
Grain Belt Express LLC, and)
Invenergy Transmission LLC,)
)
Respondents)

Case No. EC-2021-0059

COMPLAINANTS' MOTION FOR WAIVER OF COMMISSION REQUIREMENT
FOR FILING OF DIRECT TESTIMONY, OR ALTERNATIVELY, FOR EXTENSION
OF CURRENT PROCEDURAL SCHEDULE

For the reasons set forth below, pursuant to Rule 20 CSR 4240-2.205

Complainants respectfully request that the Commission waive its rule requiring that
Complaints file testimony as part of its direct case in this proceeding, and to reconsider
its Order of March 19, 2021¹ in which it ruled that the filing of such testimony is
required.

Alternatively, if the Commission denies said request, Complainants respectfully
ask that the procedural schedule be extended so as to allow Complainants ten days from
the date of the operative Commission Order in which to file their direct testimony.

Background. By Order of February 24, the Commission adopted a revised
procedural schedule in this case which specified that Complainants direct testimony was
to be filed by March 11.

¹ All dates herein are for the year 2021.

On March 10 Complainants filed their direct case, consisting of ten Exhibits (three of which were designated as “confidential” by Respondents), along with two cover sheets summarizing and/or explaining the contents of the ten exhibits.

On March 12, Respondents filed a Motion requesting, among other things, that the Complaint be dismissed on the ground that Complainants had not filed testimony as a part of their direct case.

On March 15 the Commission issued an Order directing Complainants to either file direct testimony in support of their direct case, or to explain why they believed no such testimony is necessary.

In response to the Commission’s Order of March 15, On March 17 Complainants filed their Opposition to Respondents’ Motions of March 12. Complainants argued, in general, that because their direct case consisted of exhibits generated by Respondents, that the addition of testimony from Complainants was unnecessary in that it would have served no useful purpose.

On March 19 the Commission issued an order rejecting Complainants’ argument, and directing them to file direct testimony by Tuesday, March 23. As the Commission stated, Rule 20 CSR 4240-2.130(7)(A) provides that direct testimony “shall include all testimony and exhibits asserting and explaining that party’s entire case-in-chief.”

Request for Waiver of Commission Rule Regarding Direct Testimony. To the extent that the Commission rules normally require that a party file actual “testimony” as part of its case-in-chief, Complainants respectfully ask that said rules be waived here. In effect, Complainants are respectfully requesting that the Commission reconsider its Order of March 19 directing Complainants to file direct testimony by March 23.

For the reasons set forth in their filing of March 17, under the unique circumstances of this case, where Complainants' case-in-chief consists of documents generated by the opposing side, additional testimony would serve no useful purpose here. Furthermore, Complainants have already asserted and explained their case-in-chief in the Complaint itself, and in subsequently filed pleadings.

Therefore, good cause exists for a waiver of Commission rules which would normally require that the case-in-chief include actual testimony from a witness.

If the Commission does not modify its Order of March 19, for a number of reasons Complainants regrettably must inform the Commission that they will be unable to file direct testimony by March 23 which meets accepted standards for such testimony. The Complainants mean no disrespect in failing to comply with the Commission's Order of March 19, but simply feel they will be unable to comply by March 23 with the normal standards for testimony at the Commission. Complainants' problem is complicated to some extent here because a portion of its direct case consists of Exhibits designated as "confidential" by the Respondents. This fact creates at least potential problems and delays in the distribution of the confidential documents to potential witnesses under Commission Rule 20 CSR 4240-2.135(6).

Complainants acknowledge that if they had planned at the outset for the filing of direct testimony as part of their direct case, that the timing issue they now face would not have been a problem. However, Complainants were proceeding under the assumption (obviously deemed incorrect by the Commission) that due to the nature of their direct case, actual testimony would not be necessary.

If the Commission does grant Complainants' request here to eliminate the filing of direct testimony, they respectfully suggest that the case could proceed without disruption of the modified procedural schedule set forth in the Commission Order of March 19.

Request For Modification of Existing Procedural Schedule. If the Commission reaffirms its decision that Complainants must file direct testimony in this case, Complainants respectfully ask that the procedural schedule be modified so as to allow Complainants ten days from the date of the operative Commission Order in which to file direct testimony. If the Commission agrees with this alternative proposal, it could of course direct the parties to propose the remaining elements of a new procedural schedule.

Any delay in deciding this case would only act to the detriment of Complainants, in that they are the ones requesting the Commission to find that Respondents have abandoned the project originally approved in the CCN case. In the meantime, Respondents are permitted to proceed with the proposed project as they see fit. And given that Respondents have not even asked yet for Commission approval of the major modifications they are contemplating, any delay in a decision in this case would not act to the prejudice of Respondents.

WHEREFORE, Complainants respectfully ask the Commission to permit this case to proceed without the filing of direct testimony by the Complainants; or alternatively, to revise the procedural schedule to allow Complainants ten days from the date of a Commission Order in which to file such testimony.

Respectfully submitted

/s/ Paul A. Agathen

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Certificate of Service

I certify that a copy of the foregoing was served this 21st day of March, 2021 by email on counsel for all parties of record.

/s/ Paul A. Agathen

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