

PUBLIC VERSION

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.	)	
	)	Case No. EC-2021-0059
Grain Belt Express LLC, and	)	
Invenergy Transmission LLC,	)	
	)	
Respondents	)	

COMPLAINANTS’ OPPOSITION TO RESPONDENTS’  
MOTIONS OF MARCH 12, 2021

Pursuant to the Commission’s Order of March 15, 2021, Complainants respectfully submit this Opposition to the Motions filed by Respondents on March 12, 2021.

Issue of the need for direct testimony from Complainants.

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.<sup>1</sup> Thus the key question here is determining Respondents’ true intent in this regard. This is a difficult task for Complainants, because they have no first-hand information regarding Respondents’ intent with respect to their transmission project. Therefore, in filing their ten Exhibits on March 10, 2021, Complainants could not have supported those

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<sup>1</sup> Case No. EA-2016-0358, issued March 20, 2019.

Exhibits with any meaningful testimony which would have added to what Respondents themselves said in those Exhibits.

The Exhibits were all prepared and/or affirmed by the Respondents. Thus the Exhibits speak for themselves. Accordingly, any testimony from the Complainants beyond what was said in those Exhibits would have been meaningless in explaining the true intent of the Respondents with respect to the proposed transmission project.

Complainants recognize that the Commission Order of February 24, 2021 did provide for Complainants to file direct testimony. However, Complainants assumed that the Commission was not directing the Complainants to file testimony as part of their direct case if that testimony would serve no useful purpose. They could not file what they did not have.

The most that Complainants could have added to the Exhibits by way of relevant testimony would have been to briefly summarize the content and source of those exhibits. However, that objective was accomplished through the two documents which accompanied the ten Exhibits filed by Complainants on March 10.

In short, no direct testimony was necessary in conjunction with the filing of the ten Exhibits on March 10 because any such testimony would have served no useful purpose.

Respondents contend that the lack of some type of direct testimony from Complainants precludes them from filing rebuttal testimony. However, Complainants submit that even in the absence of direct testimony from Complainants, rebuttal testimony from Respondents would be useful to the Commission in explaining questions inherently raised in the Exhibits filed by the Complainants.

Perhaps most significantly, data request number 8, and Respondents' answer thereto, as shown in Complainants' Exhibit 3, were as follows:

8. Do Respondents presently plan to eventually seek regulatory approval from the Missouri Commission for the changes described in the press release attached as Exhibit 1 to the Complaint in this case, assuming no other significant changes are proposed to the project as originally approved?

Response:

Yes.

By this response, Respondents have acknowledged that they presently plan to seek approval for changes to the original project. Therefore, by definition they are also conceding that they no longer plan to build the project as initially approved in the CCN case. Accordingly, in the absence of further explanation from Respondents, they have in effect conceded the underlying premise of the Complaint. If they disagree with that conclusion, they have the opportunity in rebuttal to say so.

Also, the basic assumption in the CCN case was that the wind generation for the proposed line would all originate from western Kansas.<sup>2</sup> However, the document at Exhibit 4 indicates that the power will come from "Western Kansas and the surrounding area ...." On its face this statement could be taken to mean that Respondents' revised plan is to gather wind from sources other than those contemplated in the project originally approved by the Commission.

In fact, the document at Exhibit 4 could conceivably mean that the wind generation could even come from the state of Oklahoma. Without further explanation from Respondents, Exhibit 4 raises the possibility of another major change being made

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<sup>2</sup> CCN case, pp. 25-27.

from the project originally approved by the Commission. This potential change would merit further explanation in rebuttal testimony.

Similarly, in the plan originally approved in the CCN case the western terminus of the Project was to be located near Dodge City, Kansas.<sup>3</sup> However, as indicated in Complainants' Exhibit 6, in an email to an individual apparently with the office of the Governor of Kansas, mention is made of the fact that the transmission line will originate in Spearville, Kansas. It is not clear whether this difference does or does not represent a significant change in Respondents' plans for the project, but it is a subject which would be worth further explanation in rebuttal testimony.

As another example, the Invenenergy press release joined in by the Kansas state officials strongly suggests that the announced changes in the line would include the delivery of 2,500 MW of power to Missouri and Kansas, a portion of which would be delivered directly to citizens in Kansas.<sup>4</sup> \*\* Confidential Information Removed

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In the original Invenenergy press release, an entity identified as "PA" is said to have estimated that rates in the first 20 years of the line's operation would be reduced in eastern Kansas and Missouri by approximately \$7 billion.<sup>5</sup> \*\* Confidential Information Removed

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<sup>3</sup> CCN case, par. 86.

<sup>4</sup> Exhibit 1, p. 1 par. 5 and p. 2 par. 1.

<sup>5</sup> Exhibit 1, p. 1 par. 6.

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Finally, in an internal email at Exhibit 10 (confidential) discussing the press release, a vice president of Invenenergy makes the following statement (among others):

\*\*Confidential Information Removed

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In short, the lack of direct testimony in Complainants' case does not prevent Respondents from submitting rebuttal testimony on issues which are inherently raised in the Complainants' Exhibits, the clarification of which might prove beneficial to the Commission.

Issues related to the procedural schedule.

If the Commission does not grant their Motion to Dismiss, Respondents request that the Commission waive the filing of their rebuttal testimony, cancel the evidentiary hearing and proceed directly to briefing.

Complainants suggest that for the reasons stated above, Respondents are not precluded from submitting rebuttal testimony in response to issues raised in the ten Exhibits filed by Complainants. That decision is up to them.

If Respondents do file rebuttal testimony, then Complainants would suggest that the evidentiary hearing is clearly needed. If they choose not to file rebuttal, Complainants would still ask that a brief hearing be held, if for no other reason than to allow Complainants to offer their ten Exhibits into evidence.

As the Commission said earlier, “Based upon all pleadings filed in this case, the Commission finds it unlikely that the current procedural proposals will lead to a disposition of this case on briefs without an evidentiary hearing.”<sup>6</sup> That is just as true at this point as it was when those words were written.

WHEREFORE, Complainants respectfully ask the Commission to reject the Motions filed by Respondents on March 12, 2021, and to proceed with the procedural schedule adopted by the Commission on February 24, 2021, or as modified pursuant to Complainants’ suggestions as referenced above.

Respectfully submitted

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Certificate of Service

I certify that a copy of the foregoing was served this 17th day of March, 2021 by email on counsel for all parties of record.

/s/ Paul A. Agathen  
Paul A. Agathen

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<sup>6</sup> See footnote 2 to Commission’s Order of March 15, 2021.