

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 LLC, and )  
Invenergy Transmission LLC, and )  
Invenergy Investment Company, )  
Respondents )

**MOTION TO DISMISS FORMAL COMPLAINT**

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”), pursuant to 20 CSR 4240-2.070(7), hereby file this Motion to Dismiss Formal Complaint for failure to state a claim on which relief can be granted. In support of its Motion to Dismiss, Respondents state the following:

**I. Background and Summary of Complaint**

1. In Case No. EA-2016-0358 (the “CCN Case”), the Missouri Public Service Commission (“MPSC” or “Commission”) issued its Report and Order on Remand (the “CCN Order”), granting a Certificate of Convenience and Necessity (“CCN”) to Grain Belt Express

Clean Line LLC to construct a high voltage direct current transmission line and associated facilities (the “Project”) in the State of Missouri.

2. 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>

3. 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>

4. On September 1, 2020, Complainants, Staff, and Respondents filed a Joint Motion to Suspend Current Deadlines and Establish a Briefing Schedule. On September 2, 2020, the Commission issued an Order granting this Motion. Simultaneous initial briefs were filed by Staff, Complainants, and Respondents on September 16, 2020, and simultaneous reply briefs were filed on September 30, 2020.

5. All parties have stipulated that this Complaint rests on a single legal question: whether the Commission’s CCN Order requires Grain Belt to initiate easement negotiations by only offering the exact form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN Case.

## **II. Motion to Dismiss**

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<sup>1</sup> Formal Complaint, ¶ 1.

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

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.” The Complaint alleges violations of or lack of compliance with the CCN Order.

7. Rule 4 CSR 4240-2.070(7) provides that “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.”

8. As discussed in Respondents’ initial and reply briefs, if Grain Belt is not legally required to initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN Case, and both Respondents and Staff concur they are not, any alterations to the form of easement agreement are irrelevant and immaterial. As Staff’s conclusion in its Initial Brief most succinctly states:

Staff has found no evidence from either the Commission’s Report and Order on Remand or exhibits submitted in EA-2016-0358 that conditioned the granting of Respondents’ CCN to the exclusive use of Schedule DKL-4 during Respondents’ easement negotiation with landowners.<sup>3</sup>

9. Because the CCN Order neither expressly nor impliedly requires Grain Belt to initiate easement negotiations by offering Schedule DKL-4, the Complaint must be dismissed.

10. Missouri Courts have explained that “[a] motion to dismiss for failure to state a claim ... is solely a test of the adequacy of the petition.”<sup>4</sup> The decision maker must “accept all properly pleaded facts as true, giving the pleadings their broadest intendment, and ...construe all allegations favorably to the pleader ... ‘to determine if the facts alleged meet the elements of a

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<sup>3</sup> Staff Initial Brief, p. 7.

<sup>4</sup> *Chochorowski v. Home Depot U.S.A., Inc.*, 295 S.W.3d 194, 197 (Mo.App.E.D.2009).

recognized cause of action, or of a cause that might be adopted in that case.’’<sup>5</sup> Where a complaint is attacked by a motion to dismiss for failure to state a claim, the mere conclusions of the complainant are not admitted. The facts alleged, however, are taken to be true and the complainant is entitled to all favorable inferences fairly deducible therefrom. If such facts and such inferences, viewed most favorably from the complainant’s standpoint, show any ground for relief, the complaint should not be dismissed. A complaint is not to be dismissed for failure to state a claim unless it appears that the complainant can prove no set of facts in support of its claim which would entitle it to relief.<sup>6</sup>

11. Respondents acknowledge Complainants’ pleaded facts as true, and there is no factual dispute among the parties that Respondents have presented a form of easement agreement to landowners that differs from the sample easement agreement discussed in the CCN Case. However, both Respondents and Staff have demonstrated through their filed briefs that Complainants’ conclusions—that offering a different form of easement violates the CCN Order on multiple asserted grounds—have no evidentiary support whatsoever from the record in the CCN Case.

12. There is, therefore, no set of facts that would entitle Complainants to the relief sought: (1) that the Commission direct Grain Belt to tender only a copy of the original easement to Missouri landowners; or (2) that if Grain Belt is permitted to utilize a different form of easement agreement, that the Commission order Grain Belt to remove the specific easement

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<sup>5</sup> *Id.* (quoting *Nazeri v. Mo. Valley Coll.*, 860 S.W.2d 303, 306 (Mo. banc 1993)).

<sup>6</sup> *Ray v. Dunn*, 753 S.W.2d 652, 654, (Mo.App.S.D. 1988) (quoting *Maples v. Porath*, 638 S.W.2d 337, 338 (Mo.App.1982)); *American Drilling v. City of Springfield*, 614 S.W.2d 266, 271[2–4] (Mo.App.1981)

provisions complained of. Moreover, the allegations in the Complaint do not constitute any violation of law, rule or Commission Order as required by Section 386.390 RSMo.

WHEREFORE, Respondents respectfully requests that the Commission issue an Order granting this Motion to Dismiss Formal Complaint and for such further relief as the Commission may deem just and appropriate.

Respectfully submitted,

*/s/ Anne E. Callenbach*

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ATTORNEYS FOR INVENERGY INVESTMENT  
COMPANY LLC, INVENERGY TRANSMISSION LLC,  
AND GRAIN BELT EXPRESS LLC

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 12th day of October, 2020.

/s/ Anne E. Callenbach  
Attorney for Invenenergy Transmission LLC