

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)

RESPONDENTS' RESPONSE IN OPPOSITION TO COMPLAINANTS'
MOTION OF MARCH 21, 2021

Invenergy Transmission LLC (“Invenergy Transmission”) and Grain Belt Express LLC (“Grain Belt” and together with Invenergy Transmission, the “Respondents”) hereby file this Response in Opposition to Complainants’ Motion for Waiver of Commission Requirement for Filing of Direct Testimony, or Alternatively, for Extension of Current Procedural Schedule. 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.

2. Pursuant to the Commission's procedural schedule in effect at the time, Complainants' direct testimony was due no later than March 11, 2021. Complainants failed to meet that deadline. Therefore, on March 12, 2021, Respondents filed a Motion to Dismiss Complaint, or in the Alternative, Motion to Waive Filing of Rebuttal Testimony, Cancel Evidentiary Hearing, and Proceed to Briefing. After the parties filed cross-pleadings in response to the March 12, 2021 Motion, the Commission issued an Order Directing the Filing of Direct Testimony and Modifying the Procedural Schedule. The Commission's new procedural schedule gives the Complainants another opportunity to file direct testimony by March 23, 2021.

3. On March 21, 2021, again evading the Commission's directive to file direct testimony, Complainants filed their Motion for Waiver of Commission Requirement for Filing of Direct Testimony, or Alternatively, for Extension of Current Procedural Schedule ("March 21 Motion"). The March 21 Motion indicates that Complainants will not file direct testimony on March 23, 2021 and, without providing any good cause, instead asks the Commission to reverse itself on its Order issued just two days prior. Alternatively, Complainants' March 21 Motion asks the Commission for yet another extension of time for Complainants to file direct testimony. However, Complainants are noncommittal about filing such testimony, as they continue to claim that it "would serve no useful purpose". March 21 Motion, p. 2.

4. On March 22, 2021, the Commission issued an Order Shortening Time for Responses, giving Respondents and Commission Staff until March 23, 2021 to file a response to the Complainants' March 21 Motion.

5. Respondents oppose either form of relief sought by Complainants in their March 21 Motion, and any other continuing effort by Complainants to evade the Commission's orders and applicable rules. The Commission's rules require pre-filed direct testimony to support the

Complainants' case-in-chief. 20 CSR 4240-2.130(7)(A). Additionally, the original Order establishing an evidentiary hearing schedule, issued January 20, 2021, required that Complainants file direct testimony by February 26, 2021. The January 20, 2021 Order set forth specific procedural requirements, including numerous references to the Complainants' obligation to file direct testimony. The date for the Complainants to file direct testimony was extended to March 11, 2021 by the Commission's Order Modifying the Procedural Schedule and Denying Motion to Suspend the Procedural Schedule, issued on February 24, 2021. Complainants did not seek reconsideration or clarification of either the January 20, 2021 Order or the February 24, 2021 Order. Accordingly, Complainants have already been given ample notice and numerous opportunities to file direct testimony, and have waived their right to another extension at this late hour.

6. The Complainants inability to file direct testimony reveals the hollowness of their case. In fact, Complainants' March 21 Motion admits that during the pendency of this case, "Respondents are permitted to proceed with the proposed project as they see fit." March 21 Motion, p. 4. Complainants further state that "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." *Id.* Completely undermining the fundamental basis of their Complaint, Complainants admit that the Respondents are merely "contemplating" modifications and will file for approval if and when such modifications become more certain. Complainants, along with all other interested parties, will have an opportunity to evaluate the contemplated modifications at that time, based on pre-filed testimony and evidence that complies with the Commission's rules. More to the present point, it

is now clear, based not only on the law and the facts but on Complainants' own admission, that there is no basis for this case.

7. Based on the foregoing and the reasons set forth in Respondents' prior pleadings, the Commission should not reverse its order directing the Complainants to file direct testimony. Further, there is no good cause to extend the deadline to file direct testimony yet again. Instead, the Complaint must be dismissed if Complainants fail to meet the already-extended deadline to file direct testimony on March 23, 2021.

8. If the Commission nevertheless extends the deadline for Complainants to file direct testimony, Respondents must be given an opportunity to seek further procedural relief.

WHEREFORE, Respondents respectfully request that the Commission deny Complainants' Motion for Waiver of Commission Requirement for Filing of Direct Testimony, or Alternatively, for Extension of Current Procedural Schedule, and for any such further relief as the Commission may deem just and appropriate.

Respectfully submitted,

/s/ Andrew O. Schulte

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

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 23rd day of March, 2021.

/s/ Andrew O. Schulte
Attorney for Respondents