

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' POSITION STATEMENT

Invenergy Transmission LLC (“Invenergy Transmission”) and Grain Belt Express LLC (“Grain Belt”) (together with Invenergy Transmission, the “Respondents”) hereby submit their Position Statement pursuant to the Procedural Schedule established by the Missouri Public Service Commission (“Commission”).

I. Statement of the Case

On October 23, 2020, based on the briefing schedule agreed upon by the parties to this case and approved by the Commission, Respondents and the Staff of the Commission (“Staff”) filed briefs arguing that the Complainants failed to state a claim upon which relief can be granted. Reply briefs were filed on October 30, 2020, in which Respondents and Staff further supported their positions that Complainants failed to state a claim upon which relief can be granted and rebutted Complainants’ arguments to the contrary. The Complaint was ripe for a decision at that time. Over the last five months, despite their earlier agreement that there were *no facts at issue in this case*, the Complainants have been given the opportunity to issue

discovery in an attempt to build a case-in-chief. They have failed to do so. Respondents' position is the same as it was on October 30, 2020: the Complainants have failed to state a claim upon which relief can be granted, and further, they have now utterly failed to present any evidence in support of their unsubstantiated claim.

II. Statement of Position on the Issues

1. *Does the evidence show that Grain Belt's website and press release demonstrate the Project's design and engineering is materially different from what was approved in the Report and Order on Remand issued in File No. EA-2016-0358?*

Complainants have not presented *any* evidence explaining their case-in-chief.¹ Even if the Complainants had presented evidence or will present useful evidence explaining their case-in-chief (which is doubtful²), a press release and a website's reference to broadband expansion, developed by the marketing department, cannot possibly demonstrate anything of substance about the "design and engineering" of a future, approximately 800-mile, high voltage direct current transmission line. This is particularly true when the project design discussed in the press release and on Grain Belt's website is fluid and conceptual and subject to multiple assumptions and business scenarios still under consideration.

¹ Order Directing the Filing of Direct Testimony and Modifying the Procedural Schedule, EFIS Item No. 35, p. 2 ("Complainants have provided exhibits that, devoid of context, do not explain their case-in-chief") (Mar. 19, 2021).

² Complainants themselves have admitted that the testimony they plan to present at the evidentiary hearing will "serve no useful purpose." Complainants' Motion for Waiver of Commission Requirement for Filing of Direct Testimony, or Alternatively, for Extension of Current Procedural Schedule, EFIS Item No. 36, p. 3 (Mar. 21, 2021).

2. *Did the public announcement of those contemplated changes violate the Commission's Report and Order on Remand granting Grain Belt a certificate of convenience and necessity ("CCN") in File No. EA-2016-0358?*

Once again, Complainants have not presented *any* evidence addressing how a press release and a website could possibly violate the Commission's Report and Order on Remand in File No. EA-2016-0358. The only condition referenced in the Complaint states, "if the design and engineering of the Project is materially different from how the Project is presented in Grain Belt Express Clean Line LLC's Application, Grain Belt Express Clean Line LLC must file an updated application with the Commission for further review and determination."³ As Staff has recognized, "So long as Grain Belt obtains prior Commission approval of any design or engineering materially different from that already approved, there is no violation of either Section 393.170 or the Commission's condition."⁴ As Respondents have stated many times, Grain Belt will file for an amendment to its CCN if and when contemplated changes are more certain and formalized, which would be well in advance of construction.⁵ Accordingly, there is no violation of the Commission's Report and Order on Remand in File No. EA-2016-0358.

³ Report and Order on Remand, issued on March 20, 2019 in File No. EA-2016-0358, p. 52, ¶ 6.

⁴ Staff's Initial Brief, EFIS Item No. p. 5.

⁵ *See, e.g.*, Joint Motion to Suspend Deadlines and Establish a Briefing Schedule, ¶ 5(c); Respondents' Initial Brief, ¶ 27; Respondents' Response to Complainants' Motion to Compel, ¶ 6.

WHEREFORE, Respondents respectfully request that the Commission accept this
Position Statement.

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 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 29th day of March, 2021.

/s/ Andrew O. Schulte

Attorney for Respondents