

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' POSITION STATEMENT

Come now the Complainants, and for their Statement of Position on the two issues in this case state as follows:

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?

Yes, it does.

The press release in question (“the press release”) was included as Exhibit 1 to the Complaint, and also as Complainants’ Exhibit 1 of their direct case.

According to the press release, the transmission project described therein (the “revised project”) would deliver power directly to customers in Kansas.¹ However, the project as approved in EA-2016-0358 (“the CCN case”) was to deliver power only to

¹ Press Release, p. 1.

converter stations in Missouri and eastern Illinois.² No mention was made in that case of power being delivered to customers in Kansas.

Also, the original project was to deliver only 500 MW of power to Missouri, with 3,500 MW going to the Illinois converter station for delivery to the PJM market.³ In contrast, the revised project will deliver up to 2,500 MW to Kansas and Missouri combined, presumably leaving only about 1,500 MW for delivery to PJM.⁴

Thus Respondents are planning up to a five-fold increase in the project's delivery capability to Missouri and Kansas, while also planning to reduce its delivery capacity to the PJM system by more than fifty percent.

In its CCN Order, the Commission stated as follows:

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 Commission review and determination.⁵

Common sense, as well as the evidence presented in this case, clearly demonstrate that the major changes in power delivery to Kansas, Missouri and the PJM system cannot be accomplished without material changes to the design and engineering for the interconnections and the converter stations in both Missouri and Illinois.

In addition, the revised project is to include rural broadband expansion into Missouri and Kansas.⁶ There was no mention of such facilities in the project approved by the Commission in the CCN case. Accordingly, this change represents another material difference in the design of the project.

² CCN Order, p. 9, par. 7.

³ CCN Order, p. 9, par. 7; p. 25, par 75; and page 44.

⁴ See Press Release, p. 1.

⁵ CCN Order, p. 52, par. 6.

⁶ Press release, par. 1.; Complainants' Exhibit 2, response to item 3.c. and item 5.

Also, as indicated in a letter from Respondents to Missouri landowners, “Grain Belt has moved from monopole to steel lattice structures”⁷ This design change will produce a footprint for each lattice structure which is 20 times greater than the footprint for the monopole structures.⁸

In any event, Respondents resolved any question about the first issue in this case from their response to item 8 of Complainants’ First Set of Data Requests.⁹ The question and answer to that item 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.

Therefore, even aside from other evidence on this topic, Respondents’ answer to this data request concedes that the revisions to the project described in the press release constitute material changes which will be submitted for Commission approval under the terms of the CCN Order.

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?

Yes, it does.

To begin with, Respondents have every right to abandon the project approved in the CCN case if they choose to do so. The applicable CCN statute, § 393.170 RSMo,

⁷ Page 1 of Exhibit A to Complainants’ Exhibit 2.

⁸ According to Grain Belt testimony in the CCN case, a typical lattice structure has a footprint of .018 acres, while the typical footprint for a monopole structure is only .0009 acres. Chart at p. 14 of Arndt direct testimony, Exh. 101.

⁹ Shown at Exhibit 3 of Complainants’ direct case.

merely prohibits an electrical corporation from building its proposed facilities unless it first obtains Commission approval to do so. There is nothing in that statute (or any other statute) which provides that if a CCN is granted, then the utility is legally obligated to actually build the approved project.

This conclusion is consistent with the fact that Grain Belt's Application in this case only sought authorization to build the proposed project.¹⁰ Nowhere in the Application did Grain Belt indicate that it was obligating itself to build the project if the CCN was granted.

There is precedent for a utility deciding on its own to abandon a project for which a CCN had been issued. As discussed in an opinion from the state Supreme Court, Union Electric was granted a CCN in 1975 for the construction of two nuclear generating units in Callaway County, Missouri. But in 1981, the utility decided to abandon the second of the two units. The Court made no mention of Union Electric asking for or receiving Commission permission to abandon the CCN for the second unit.¹¹

This case reinforces the proposition that a utility may abandon a project if it decides on its own that it wishes to do so. And Respondents' intentions as announced in the press release are made clear from its answer to data request number 8, as quoted near the conclusion of Issue 1 above. As Respondents' clearly state there, they fully intend to seek Commission approval for the revised project, as described in their press release. Inasmuch as they cannot build both the original project and the revised project

¹⁰ See Grain Belt's Application for the CCN, filed April 30, 2016, pp. 1, 30-31. EFIS 34.

¹¹ *State ex rel. Union Electric Co. v. Public Service Comm'n*, 687 S.W.2d 162, 163-64 (Mo. banc 1985). Moreover, there does not appear to be a separate Commission case in which it approved the abandonment of the second nuclear unit.

concurrently, Respondents have expressly indicated that they do not intend to build the project as approved in the CCN case.

Given that Respondents do not intend to build the original project as approved by the Commission, that project has in effect been abandoned by the Respondents – much as Union Electric did with respect to their second nuclear unit. Respondents have every right to abandon the original transmission project, but in doing so the CCN for that project becomes nothing but a meaningless nullity. Once a project will no longer be built, there is no logical basis for concluding that the CCN somehow survives the abandonment of the project itself.

Complainants are not arguing here that the Commission has the authority to revoke Grain Belt's CCN. Instead, Complainants contend that by abandoning the original project, Grain Belt itself has voluntarily forfeited what has become a meaningless CCN.

If the Commission agrees that Grain Belt has voluntarily forfeited its CCN for the approved project, then of course at this point Respondents have no valid CCN to build anything in Missouri. That being the case, under Missouri law Grain Belt would no longer be an electrical corporation, and would therefore have no right to exercise the power of eminent domain.¹²

But as the evidence will show, Grain Belt still publically claims to have the power of eminent domain for property on the right-of-way in Missouri.¹³ If they do not actually have that power, then Respondents are continuing to pursue easements from Missouri

¹² See § 523.010, which grants the power of condemnation to electrical corporations and other entities.

¹³ See cite to Grain Belt's website at par. 14 and footnote 10 of the Complaint.

landowners under the guise of having a valid CCN and the accompanying power of eminent domain.

If Respondents have forfeited the CCN for the project, then Complainants respectfully submit that Respondents are violating the Commission's CCN order by publically claiming to have the power of eminent in Missouri when in fact they have no valid CCN to build anything in this state.

Requested Relief.

Based on the foregoing discussion of the issues, Complainants respectfully ask the Commission to issue an Order in this case which includes the following three findings:

(1) that Respondents have already decided they will not build the transmission project as originally approved in the CCN case, but are seeking instead to build a project which includes design and engineering changes which are materially different from that presented in Grain Belt's Application in the CCN case; (2) accordingly, Grain Belt has abandoned the project originally approved by the Commission, thus voluntarily forfeiting its CCN for that project; and (3) in the absence of a valid CCN, Grain Belt is in violation of the Commission's CCN order by pursuing easements with Missouri landowners under the guise of having the power of eminent domain with respect to its proposed transmission project.

Respectfully submitted

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Certificate of Service

I certify that a copy of the foregoing was served this 29th day of March, 2021 by email on counsel for all parties of record.

/s/ Paul A. Agathen
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