

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



Missouri Landowners Alliance, Eastern)
Missouri Landowners Alliance d/b/a Show)
Me Concerned Landowners, and John G.)
Hobbs,)

Complainants,)

v.)

Grain Belt Express, LLC, and Invenergy)
Transmission, LLC,)

Respondents.)

File No. EC-2021-0059

REPORT AND ORDER

Issue Date: August 4, 2021

Effective Date: September 3, 2021

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Missouri Landowners Alliance, Eastern)
Missouri Landowners Alliance d/b/a Show)
Me Concerned Landowners, and John G.)
Hobbs,)

Complainants,)

v.)

Grain Belt Express, LLC, and Invenergy)
Transmission, LLC,)

Respondents.)

File No. EC-2021-0059

APPEARANCES

Appearing For Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs:

Paul A. Agathen, Attorney at Law, 485 Oak Field Court, Washington, Missouri 63090

Appearing For Grain Belt Express, LLC, and Invenergy Transmission, LLC:

Andrew O. Schulte and Anne E. Callenbach, Attorneys at Law, Polsinelli PC, 900 W. 46th Place, Suite 900, Kansas City, Missouri 64112

Appearing for the Staff of the Missouri Public Service Commission:

Travis Pringle, Associate Counsel, Governor Office Building, 200 Madison Street, Jefferson City, MO 65102

Senior Regulatory Law Judge: John T. Clark

REPORT AND ORDER

I. Procedural History

The Commission granted Grain Belt Express Clean Line LLC (Grain Belt) a certificate of convenience and necessity (CCN) to construct and operate a high voltage direct current transmission line and an associated converter station, also known as the Grain Belt Express Project (Project).

The Project is an approximately 780-mile (206 miles in Missouri), overhead, multi-terminal +600 kilovolt high-voltage, direct current transmission line. The Missouri portion of the Project will be located in Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe, and Ralls counties. One of three converter stations will be located in Missouri in Ralls County. The Project is to deliver 500 megawatts (MW) of wind-generated electricity from western Kansas to customers in Missouri, and another 3,500 MW to states further east.

This authority to construct and operate the Project was granted in the Commission's Report and Order on Remand (CCN Order), issued in File No. EA-2016-0358 (CCN Case), on March 20, 2019. The Commission subsequently approved Invenergy Transmission LLC's (Invenergy) acquisition of Grain Belt and the Project in File No. EM-2019-0150, effective September 21, 2019.

On September 2, 2020, the Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs (collectively "Complainants") filed a complaint against Grain Belt and Invenergy (collectively "Respondents"). The complaint alleged that Respondents violated the CCN Order by issuing a press release, and publishing on a website, changes to the Project not

approved by the Commission in the CCN Order. Complainants contend the described changes mean that Grain Belt has effectively abandoned the CCN that was granted to it and thus no longer can exercise the right of eminent domain. Complainants ask that the Commission issue an order declaring that: (1) because Grain Belt has announced that it plans to build something materially different from what the Commission authorized and approved in the CCN Case, at this time Grain Belt no longer has a valid CCN to build the Project; and (2) Respondents have no legitimate right to claim that they still have eminent domain in Missouri.

The Commission issued notice of the complaint and directed its staff (Staff) to file a report. The Commission also ordered Respondents to file an answer to the Complaint by October 3, 2020.

On September 29, 2020, Staff, Complainants, and Respondents jointly filed a motion to suspend the case and establish a briefing schedule. This was prior to the date Respondents answer to the complaint was due, so an answer and a Staff report were never filed. Staff, Complainants, and Respondents' joint motion proposed that the Commission decide the case based upon briefs filed by the parties. Public Counsel is a party to all Public Service Commission cases, but did not participate in this case.

After the parties filed briefs and reply briefs the Commission issued an order directing additional briefing on December 16, 2020. That order also directed:

Any party that believes presentation of further evidence is necessary to fully address the questions presented in the body of this order shall request such relief as the party deems necessary....

Complainants issued a set of nine data requests to Respondents to gather further evidence. Those data requests became the subject of a motion to compel filed by Complainants. *Respondents' Response to Complainants' Motion to Compel* states that the data requests impermissibly extend the scope of the case beyond the Commission's statutory mandate. The Commission partially granted and partially denied the motion to compel. The Commission decided that an evidentiary hearing was necessary to determine whether Respondents violated any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission.

The Commission held an evidentiary hearing via WebEx on April 15, 2021. At the hearing, the Commission admitted the testimony of three witnesses and received 11 exhibits into evidence. Lewis Donald Lowenstein, President of the Missouri Landowners Alliance, testified for Complainants; Kris Zadlo, Vice President of Invenergy Transmission LLC, testified for Respondents; and Shawn Lange, Professional Engineer, testified for Staff. The parties submitted post hearing briefs on May 18, 2021.

II. Motion to Dismiss

Respondents filed a motion to dismiss this case on March 12, 2021, after Complainants filed exhibits without supporting testimony as their case-in-chief. The Commission determined that Complainants could potentially submit a case-in-chief without supporting testimony, and dispensed with the requirement to prefile testimony. At the evidentiary hearing, Respondents renewed their motion to dismiss asserting that Complainants have failed to meet their burden of production and have offered exhibits devoid of context, explanation, or sufficient foundation to form the basis of an act or

omission by Respondents that would be a violation under the statute governing Commission complaints. That motion will be addressed in this Report and Order.

III. Preliminary Matter

At the evidentiary hearing, the Commission took official notice of its Report and Order on Remand in File No. EA-2016-0358 (CCN Order), issued March 20, 2019.

IV. Findings of Fact

The Commission finds that any given witness's qualifications and overall credibility are not dispositive as to each portion of that witness's testimony. The Commission gives each item or portion of a witness's testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as are necessary.¹ Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.²

1. Grain Belt Express, LLC, is an electrical corporation and public utility regulated by this Commission.³

¹ Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony". *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

² An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009)

³ File No. EA-2016-0358, Report and Order on Remand, pages 37 and 38.

2. The Commission approved Grain Belt's CCN Application and Grain Belt was granted a CCN to construct the Project pursuant to Section 393.170.1, RSMo.⁴

3. The Project is an approximately 780-mile (206 miles in Missouri), overhead, multi-terminal +600 kilovolt high-voltage, direct current transmission line. The Missouri portion of the Project will be located in Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe, and Ralls counties. One of the three proposed converter stations will be located in Missouri in Ralls County. The Project is to deliver 500 megawatts (MW) of wind-generated electricity from western Kansas to customers in Missouri, and another 3,500 MW to states further east.⁵

4. On September 21, 2019, Invenergy acquired Grain Belt and the Project.⁶

5. Invenergy is subject to the same conditions placed on Grain Belt in the Report and Order in File No. EA-2016-0358.⁷

6. Grain Belt and Invenergy are both subject to the CCN Order issued on March 20, 2019 in File No. EA-2016-0358.⁸

7. On September 2, 2020, Complainants filed their formal complaint in this case. The complaint states that Respondents announced plans for changes to the project materially different from the Project approved by the Commission in the CCN Order. Complainants further state that because Respondents have publicly announced that they

⁴ File No. EA-2016-0358, Report and Order on Remand, page 50.

⁵ File No. EA-2016-0358, Report and Order on Remand, page 10.

⁶ File No. EM-2019-0150, Report and Order. The Commission approved the acquisition of Grain Belt by Invenergy subject to all conditions placed upon Grain Belt in File No. EA-2016-0358. The Commission takes official notice of the Report and Order issued in File EM-2019-0150.

⁷ File No. EM-2019-0150, Report and Order, page 16.

⁸ File No. EA-2016-0358, Report and Order on Remand, and File No. EM-2019-0150, Report and Order.

no longer plan to build the project for which the CCN was granted, they do not have a valid CCN to build anything in Missouri.⁹

8. The Complaint alleges three proposed changes to the Project not approved by the Commission:

- a. An increase in the project's delivery capacity to Kansas and Missouri to up to 2,500 megawatts (MW) of the line's 4,000-megawatt capacity which could make available as much as half or more of the Project's total capacity for Missourians.¹⁰
- b. Providing broadband expansion for rural communities along the line route in Missouri.¹¹
- c. Beginning construction of the Missouri portion of the Project before obtaining approval for the line from the Illinois Commerce Commission, which Complainants assert would violate the condition that Respondents not begin construction in Missouri until they have obtained commitments for funding of the entire multi-state project.¹²

9. By way of relief, the formal complaint asks that the Commission issue an order declaring that because Grain Belt has announced that it plans to build something materially different from what the Commission authorized, it no longer has a valid CCN to build the line originally proposed. The formal complaint also asks that the Commission

⁹ The Commission takes official notice of the formal complaint filed by Complainants on September 2, 2020, in this case.

¹⁰ File No. EC-2021-0059, Formal Complaint, page 3.

¹¹ File No. EC-2021-0059, Formal Complaint, page 4.

¹² File No. EC-2021-0059, Formal Complaint, page 4.

declare that Respondents do not have a valid CCN, and Respondents have no claim to a right of eminent domain.¹³

10. The Commission approved the Project to deliver 500 MW to the converter station in Missouri, and 3,500 MW to the converter station near the Illinois and Indiana border for delivery to the PJM¹⁴ system.¹⁵ The Commission's CCN Order provides: "Grain Belt Express Clean Line LLC shall construct the proposed Missouri converter station to be capable of the actual delivery of 500 MW of wind power to the converter station."¹⁶

11. Broadband expansion for rural communities along the line route in Missouri was not addressed in the CCN Order.¹⁷

12. The CCN Order directed:

The conditions to which Grain Belt Express Clean Line LLC and the Commission's Staff agreed in Exhibit 206 are approved and adopted. Exhibit 206 is attached as Attachment 1 and incorporated herein by reference as if fully set forth. Grain Belt Express Clean Line LLC is ordered to comply with the conditions in Exhibit 206." Exhibit 206 states that Grain Belt will not install transmission facilities on easement property in Missouri until it has obtained commitments for funds in an amount equal to or greater than the total cost to build the entirety of this multi-state transmission project.¹⁸

¹³ File No. EC-2021-0059, Formal Complaint, pages 5-6.

¹⁴ PJM is a regional transmission organization that manages the transmission of electricity through all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.

¹⁵ File No. EA-2016-0358, Report and Order on Remand, page 9.

¹⁶ File No. EA-2016-0358, Report and Order on Remand, page 53.

¹⁷ File No. EA-2016-0358, Report and Order on Remand.

¹⁸ File No. EA-2016-0358, Report and Order on Remand, page 51, and Attachment 1, condition I. 1.

13. The Commission's CCN Order provided that 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 Application¹⁹, Grain Belt Express Clean Line LLC must file an updated application with the Commission for further Commission review and determination.²⁰

14. Staff proposed the condition for the CCN Order that if the design and engineering of the Project is materially different the company must come back to the Commission due to Staff's concern about whether the Missouri converter station would be constructed.²¹

15. The failure to build a Missouri converter station would constitute a material change the design and engineering of the project.²²

16. On August 25, 2020, Respondents issued a press release that contained the following statements:

- a. As the new owner of Grain Belt, Invenergy Transmission plans to increase the project's delivery capacity to Kansas and Missouri to up to 2,500 megawatts of the line's 4,000-megawatt capacity.²³
- b. [The] Grain Belt [Project] will enable up to \$7 billion in electricity cost savings for Kansas and Missouri consumers by 2045. This projected energy cost savings is in addition to \$9 billion of total economic investment in Kansas and Missouri that is associated with Grain Belt.

¹⁹ The Commission takes official notice of Grain Belt's CCN Application filed by Grain Belt in File No. EA-2016-0358, filed June 30, 2016.

²⁰ CCN Order, Ordering Paragraph 6.

²¹ Transcript, page 111.

²² Transcript, pages 111 and 112.

²³ Exhibit 1, page 1.

This includes investment in the transmission line and associated new renewable energy generation, which will support thousands of jobs during construction, generate revenues for local governments and landowners, and expand rural broadband at a critical time for both states' economies.²⁴

- c. Building upon the unanimous regulatory approvals from Kansas and Missouri in 2019, Grain Belt Express will seek approvals to the extent necessary for expanded delivery to Kansas and Missouri as well as for beginning the first phase of project construction prior to Illinois regulatory approval.²⁵

17. As of January 14, 2021, the Grain Belt website, www.grainbeltexpress.com, contained the following statements that the Project would provide:

- a. Up to 2,500 MW of low-cost clean energy delivered to Missouri and Kansas customers, including delivery to 39 municipal utilities across Missouri.²⁶
- b. Broadband infrastructure for rural communities along the line route.²⁷

The Grain Belt website also stated the following regarding Illinois approval:

- c. Grain Belt Express does not have a pending or proposed regulatory filing in Illinois and is evaluating options for the project in the state.²⁸

²⁴ Exhibit 1, page 1.

²⁵ Exhibit 1, page 1.

²⁶ Exhibit 2, page 2.

²⁷ Exhibit 2, page 2.

²⁸ Exhibit 2, page 2.

18. On December 8, 2020, a landowner update letter was sent to a Missouri landowner indicating that Grain Belt would be moving from monopole structures to steel lattice structures. The letter states that landowners will receive \$18,000 for each lattice tower instead of \$6,000. Each lattice tower will have a footprint of 40 by 40 feet. Grain Belt estimates there will be four structures per mile.²⁹

19. Grain Belt's CCN Application states:

"Consistent with 4 CSR 240-3.105(1)(B)³⁰, the Company states that it plans to use three types of structures for the Project: lattice, lattice mast, and tubular steel monopole. The structures chosen will be based on specific conditions at particular locations or in particular segments of the Project."³¹

20. Complainants did not submit any blueprints, engineering documents, or engineering studies for Staff's review.³² No blueprint or engineering evidence of changes was offered as evidence in this complaint.

21. Kris Zadlo, Vice President of Invenergy Transmission LLC, is responsible for the design and engineering of the Project.³³

22. At the time of hearing in the complaint case, Respondents had not begun implementing any of the changes proposed in either the press release or Grain Belt's website.³⁴

23. Respondents have not started the engineering and design of the converter stations, and are only approximately 30 percent done with the engineering and design for

²⁹ Exhibit 2, Attached exhibit A.

³⁰ This regulation has been moved and is now in 20 CSR 4240-20.045.

³¹ File No. EA-2016-0358, Grain Belts CCN Application, page 24.

³² Transcript, page 115.

³³ Transcript, page 75.

³⁴ Transcript, page 95.

the Project. That 30 percent has been focused on the Commission certificated transmission route.³⁵

24. Respondents' witness, Kris Zadlo, credibly testified that the press release was a marketing exercise to indicate Respondents openness to providing more power to Missouri.³⁶

25. Kris Zadlo testified that Invenenergy hired a consulting firm to analyze market impacts of increasing the capacity of the converter station and the amount of electricity delivery in Missouri beyond 500 megawatts. He testified that the point of the press release was to announce those consumer benefits publicly and announce an openness by Grain Belt to increase the converter station and dropoff in Missouri.³⁷

26. Kris Zadlo testified that the press release concerned proposed changes in the Project and not actual changes.³⁸

27. Kris Zadlo credibly testified that Respondents have not committed to a larger converter station or delivery of more than 500 megawatts in Missouri.³⁹

28. Kris Zadlo credibly testified that there have been no changes to the design and engineering of the Project.⁴⁰

29. Kris Zadlo credibly testified that Respondents have no intent to abandon the current CCN.⁴¹

³⁵ Transcript, pages 95 and 97.

³⁶ Transcript, page 76.

³⁷ Transcript, page 94.

³⁸ Transcript, page 96.

³⁹ Transcript, pages 94-95.

⁴⁰ Transcript, page 76

⁴¹ Transcript, page 96.

30. Kris Zadlo credibly testified that Respondents are continuing to pursue the Commission certificated version of the Project.⁴²

V. Conclusions of Law

A. Grain Belt is a public utility as defined by Section 386.020(43), RSMo.⁴³

B. Grain Belt is an electrical corporation as defined by Section 386.020(15), RSMo.⁴⁴ Therefore, it is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

C. In its Findings of Fact in the CCN Order, the Commission found:

Grain Belt and Invenergy agreed that if there are any material changes in the design and engineering of the Project from what is contained in the application, Grain Belt will file an updated application subject to further review and determination by the Commission.

D. The Commission's CCN Order conditions:

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.⁴⁵

E. Section 386.390, RSMo provides that a person may file a complaint against a regulated utility setting forth any act or thing done or omitted to be done by any public utility in violation of any provision of law subject to the commission's authority, any rule promulgated by the commission, any utility tariff, or any order or decision of the

⁴² Transcript, page 77.

⁴³ File No. EA-2016-0358, Report and Order on Remand, page 38.

⁴⁴ File No. EA-2016-0358, Report and Order on Remand, page 37.

⁴⁵ File No. EA-2016-0358, Report and Order on Remand, page 52.

commission. Therefore, the Commission has authority over this complaint.

F. The Commission has no jurisdiction or authority to grant a public utility eminent domain.⁴⁶

G. The Commission has no jurisdiction and does not regulate the construction or operation of rural broadband.⁴⁷

H. Section 393.170, RSMo concerning CCNs provides that no electrical corporation shall begin construction of an electric plant without first having obtained the permission and approval of the Commission. It also provides that the Commission may by its order impose such conditions as it deems reasonable and necessary. Unless the authority conferred by the CCN is exercised within a period of two years from the granting of a CCN, it is null and void.

I. The Commission has no authority to terminate a CCN.⁴⁸

J. Missouri Court Rule 59.01(b), concerning the effect of a request for admissions, provides that any matter admitted pursuant to Rule 59.01 is conclusively established.

K. Complainants bear the burden of proof to show by a preponderance of evidence that Respondents have violated a law subject to the Commission's authority, a Commission rule, or an order of the Commission.⁴⁹

⁴⁶ Section 386.250, RSMo provides that the Commission has jurisdiction over electric, gas, water, sewer, and telecommunications public utilities in Missouri. Section 523.262 RSMo governs eminent domain for public utilities.

⁴⁷ Section 386.250, RSMo provides that the Commission has jurisdiction over electric, gas, water, sewer, and telecommunications public utilities in Missouri.

⁴⁸ *State ex rel. City of Sikeston v. Public Service Com'n of Missouri*, 82 S.W.2nd 105 (1935). The Court held that the Commission did not have the authority to terminate authority granted to the Missouri Utilities Company.

⁴⁹ Section 386.390 RSMo, and *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003). Stating that in cases "complainant alleges that a

VI. Decision

Complainants allege that by publicly announcing that they plan to build something materially different from what was authorized by the Commission, Respondents have violated the CCN Order. Complainants also allege that Respondents are acquiring easements without a valid CCN. Complainants argue that because Grain Belt has announced that it plans to build something materially different from what the Commission authorized and approved in the CCN Case, Respondents no longer have a valid CCN to build the Project.

Section 393.170, RSMo gives the Commission the authority to grant CCNs, and provides that no electrical corporation shall begin construction of an electric plant without first having obtained the permission and approval of the Commission. Section 393.170, RSMo does not provide a mechanism for the Commission to revoke a CCN once it has been granted. The Supreme Court of Missouri has also determined that the Commission does not have the authority to revoke a CCN.⁵⁰ Likewise, there is no statutory provision for a public utility to abandon a CCN. A CCN is only a grant of authority. Complainants claim that because Respondents announced plans to build something different from the authority granted, Respondents have abandoned their CCN. Since there is no provision for Respondents to affirmatively relinquish their CCN, prior to a two-year expiration due for inaction, the CCN Order's original grant of authority continues. The authority conferred

regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, . . . the burden of proof at hearing rests with the complainant."

⁵⁰ *State ex rel. City of Sikeston v. Public Service Com'n of Missouri*, 82 S.W.2nd 105 (1935).

in the CCN Order for the originally certificated Project remains valid. Therefore, Respondents have a valid CCN.

The Commission's statutory authority in complaint cases, pursuant to Section 386.390, RSMo, is limited to determining whether a public utility committed any act or failed to act in violation of any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission. Complainants allege that Respondents have violated the Commission's CCN Order by publicly announcing that they plan to build something materially different from what was authorized. Accordingly, there are two issues for the Commission to decide when determining whether Respondents have violated the CCN Order:

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?

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

For the Commission to find that Respondents have violated the CCN Order the Commission must find that at least one proposed change, if implemented, was materially different in engineering and design from what was approved, and that the announcement of those proposed changes in the press release and website was a violation of the Commission's CCN Order.

"Materially different" as used in the CCN Order is not a legal term of art. Staff proposed that Respondents be required to seek approval of any changes to the design

and engineering of the Project as a condition for granting the CCN. That condition was subsequently adopted by the Commission in the CCN Order. Staff proposed this condition because it was concerned that the Missouri converter station might not be built. This concern that the converter station would not be built was the only evidence presented at the complaint hearing as to what would constitute a change in the design and engineering of the project that would be materially different.

No one disputes that Respondents made statements on their website and in a press release proposing changes to the Project. That fact was stipulated to in the *Joint Motion to Suspend Deadlines and Establish Briefing Schedule*, and the Respondent admitted as much in their answer to a request for admissions. The August 25, 2020, press release was also received into evidence without objection and speaks for itself. It is indisputable that Respondents made the public announcements that Complainants allege.

Complainants assert that Respondents have announced they will be increasing the Project's delivery capacity to Kansas and Missouri to up to 2,500 MW instead of the 500 MW to the converter station in Missouri as originally proposed, and that this is materially different in design and engineering from what was approved. Complainants hypothesize that there could not be an increase in power delivery to Missouri without a change in the size of the converter station, which they see as a material change. However, beyond speculation that the converter station would have to be larger, Complainants provided no evidence that the delivery of more capacity to Missouri materially changes the design and engineering of the project.

Complainants assert that Grain Belt's website states that the Project will provide broadband expansion for rural communities along the line route in Missouri. They explain that this proposed change is materially different because it was not mentioned in the CCN application nor approved in the CCN Order. Complainants did not explain how this is a material change in engineering and design, only that it is outside what was approved in the CCN Order. Complainants presented no evidence that the delivery of rural broadband would result in any alteration in the design and engineering of the Project.

Complainants assert that Grain Belt is changing transmission poles from monopole structures to steel lattice structures, which Complainants believe is a material change from what was approved. However, Grain Belt's CCN Application states that it plans to use three types of structures for the Project: lattice, lattice mast, and tubular steel monopole. Complainants did not explain or provide evidence that this change to the Project would be materially different in design and engineering from what the Commission approved in the CCN Order.

Finally, Complainants assert that Respondents plan to begin the first phase of project construction prior to Illinois regulatory approval, which they say violates the condition that Respondents obtain commitments for funds in an amount equal to or greater than the total cost to build the Project. Complainants put on no evidence that Respondents have begun the first phase of construction.

The Commission cannot determine that the changes proposed by Respondents are materially different in the design and engineering of the Project because there is insufficient evidence to make that determination. With the exception of hypothesizing the need for a larger Missouri converter station, Complainants offered evidence to show only

that the proposed changes were not exactly as approved, not that the proposed changes would be materially different in design and engineering.

The Commission is aware of the value of a press release, which may be less a statement of fact than a statement of aspiration. Respondents have undertaken a marketing exercise to ascertain how their openness to changes in the Project would be received. Respondents may actually desire to make the proposed changes contained in the press release and website, but Respondents did not begin construction of an unauthorized project when they issued the press release. Respondents testified that they have not abandoned their CCN and they continue to pursue the Commission certificated Project. Complainants' primary evidence of Respondents' public announcement of changes to the Project, the press release, expressly acknowledges that Respondents will seek the authority necessary to implement proposed changes to the Project.

If Respondents were to take action outside the design and engineering authority granted by the CCN Order they could be found in violation of the condition that Respondents seek approval of any design and engineering that is materially different from what was presented in Grain Belt's CCN Application. The CCN Order does not provide any time limitation for Respondents to seek the necessary authority to implement any design and engineering changes that are materially different, but logically any request for authority would need to be approved prior to the implementation of any material design and engineering changes.

Complainants have the burden to show that the Respondents have violated the CCN Order. Complainants have presented evidence that Respondents are contemplating changes to the Project, but failed to provide sufficient evidence from which the

Commission could find those changes, if implemented, would be materially different in the design and engineering of the Project. Further, they have failed to meet their burden to show that the Respondents have taken any concrete actions to implement any such changes apart from a press release and website statements indicating that such changes are being considered. Mere speculation by the Respondents about possible future actions cannot violate the Commission's order. Complainants have not pointed to any instance where Respondents are currently building anything that would require them to apply to the Commission for additional authorization. Therefore, Complainants have failed to meet their burden of proof and the Commission must rule in favor of Respondents.

THE COMMISSION ORDERS THAT:

1. The Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs's complaint is denied.
2. Grain Belt Express, LLC, and Invenergy Transmission, LLC's motion to dismiss is denied as moot.
3. This order shall become effective on September 3, 2021.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Clark, Senior Regulatory Law Judge


STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 4th day of August, 2021.





Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 4, 2021

File/Case No. EC-2021-0059

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel
Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opc@opc.mo.gov

Grain Belt Express, LLC
Anne E Callenbach
900 W. 48th Place, Suite 900
Kansas City, MO 64112
acallenbach@polsinelli.com

Grain Belt Express, LLC
Andrew O Schulte
900 W. 48th Place, Suite 900
Kansas City, MO 64112-6411
aschulte@polsinelli.com

Invenergy Transmission LLC
Anne E Callenbach
900 W. 48th Place, Suite 900
Kansas City, MO 64112
acallenbach@polsinelli.com

Invenergy Transmission LLC
Andrew O Schulte
900 W. 48th Place, Suite 900
Kansas City, MO 64112-6411
aschulte@polsinelli.com

John G. Hobbs
Paul A Agathen
485 Oak Field Ct.
Washington, MO 63090
paa0408@aol.com

Missouri Landowners Alliance
Paul A Agathen
485 Oak Field Ct.
Washington, MO 63090
paa0408@aol.com

Missouri Public Service Commission
Travis Pringle
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Travis.Pringle@psc.mo.gov

Show Me Concerned Landowners
Paul A Agathen
485 Oak Field Ct.
Washington, MO 63090
paa0408@aol.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.