

**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,)	
)	<u>File No. EC-2021-0059</u>
v.)	
)	
Grain Belt Express, LLC, and Invenergy)	
Transmission, LLC,)	
)	
Respondents.)	

**ORDER REGARDING MOTION FOR CLARIFICATION AND
SUSPENSION OF REQUIREMENT TO FILE PROCEDURAL SCHEDULE**

Issue Date: January 6, 2021

Effective Date: January 6, 2021

On September 2, 2020,¹ Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs (Complainants) filed a complaint with the Missouri Public Service Commission against Grain Belt Express, LLC, and Invenergy Transmission, LLC (Grain Belt). On September 3, the Commission issued its Notice of Formal Complaint and Order Directing Staff to File a Preliminary Report. On September 29, the parties filed a Joint Motion to Suspend Deadlines and Establish Briefing Schedule (Joint Motion). Therein they proposed the Commission would dispose of all issues in this case with a ruling on whether a press release Grain Belt issued on August 25, a letter Grain Belt mailed to Missouri landowners on September 24 and 25, and a sample landowner letter Grain Belt posted

¹ All date references will be to 2020 unless otherwise indicated.

on its website (collectively, the publications) constitute “contemplated changes to the Project [that] invalidate the CCN granted to Grain Belt in the CCN case.”

On October 5, the Commission issued its order partially granting the Joint Motion. Therein the Commission stated that “[a]ssuming as true that Grain Belt has published a plan for a project its current CCN does not authorize, the question is whether that publication entitles complainants to their requested relief, i.e., an order invalidating Grain Belt’s CCN.” The Commission issued its order requiring the parties to brief solely the question of whether a complaint alleging Grain Belt published a plan not authorized by its CCN states a cause of action for invalidation of its CCN.

The parties then filed their briefs. On December 16, the Commission issued its Order Directing Additional Briefing. This Order required the parties to address the following questions in their briefs:

1. Does the Respondents’ conduct, as described in the pleadings and stipulation, violate the Report and Order on Remand issued in File No. EA-2016-0358?
2. Whether Respondents’ contemplated changes to the Project invalidate the CCN granted to Grain Belt by the Report and Order on Remand issued in File No. EA-2016-0358?
3. Based upon the conduct, as described in the pleadings and stipulation, may the Commission revoke Respondent’s CCN issued by the Report and Order on Remand issued in File No. EA-2016-0358?

The Commission’s December 16 order for additional briefing stated that if any party believed additional evidence needed to be presented to fully respond to the order, that party could request such relief as the party deemed necessary. On December 17, the

Complainants filed a Motion to Revise Procedural Schedule. It stated that in response to the December 16 order Complainants had submitted a set of nine data requests to Respondents. Complainants' December 17 motion explained that all of the information requested was designed to seek evidence relevant to their basic proposition in the case: "that Respondents have already committed to build the project described in the press release, in lieu of the project approved by the Commission." Citing to the Commission's December 16 Order, Complainants argued that "the responses to the data requests may well constitute additional evidence which would allow Complainants to fully respond to the Commission's Order of December 16."

On December 22, Respondents filed a Response to Complainants' Motion to Revise Procedural Schedule. Therein they argued that Complainants' data requests had unilaterally revised the parties' original agreement presented in their Joint Motion that the Complaint was limited to a legal question that could be resolved based on the stipulated facts set out in the Joint Motion. They argued, further, that the question that Complainants claimed their data requests addressed had no basis in law, citing Section 393.170, RSMo, in support of their argument that regardless of what discovery might show, a CCN could not be revoked "on an uncertain date, based on unspecified and subjective evidence of a company's intent to commit to a project."²

On December 23, Commission issued its Order Cancelling Briefing Schedule and Directing Filing. Therein the Commission stated it found it unlikely that the current procedural proposals would lead to a disposition of the case on briefs without an evidentiary hearing. The Commission cancelled the briefing schedule and ordered the

² Respondents' Response to Complainants' Motion to Revise Procedural Schedule, p. 4, citing to Staff's Reply Brief, p. 2.

parties to file a procedural schedule suggesting an evidentiary hearing date and a post-hearing briefing schedule.

On January 4, 2021, the parties filed a Joint Motion for Clarification and Suspension of Requirement to File Procedural Schedule. Therein they stated that they could not agree upon the scope and purpose of the evidentiary hearing. They stated it was Complainants' position that all pending discovery disputes must be resolved prior to an evidentiary hearing and Respondents' position that Complainants' discovery requests impermissibly expanded the scope of issues beyond those contained in the original Complaint and beyond the questions set forth in the Commission's Order Directing Additional Briefing, and were, thus, irrelevant.

The Commission will overrule the request to suspend the requirement to file a procedural schedule. The Commission has ordered the parties to file a proposed procedural schedule. The evidentiary hearing is the opportunity for the parties to be heard and present evidence related to the allegations of the Complaint. A list of issues submitted by the parties focuses the scope of the hearing. A stipulation of facts can limit evidence presented at the hearing. It is clear the parties have a discovery dispute and they anticipate that its resolution or disposition might affect their preparations for and presentations at an evidentiary hearing. A discovery dispute concerning the permissible scope and relevance of discovery is not an occurrence unique to this case and is no basis for suspending the order to file a proposed procedural order. Further, as described in their filings, the parties' discovery dispute should be presented to the Commission in the ordinary way per Rule 20 CSR 4240-2.090(8) and not in a motion to suspend a requirement they file a proposed procedural schedule. Following the parties' compliance

with this rule and notwithstanding any prior agreements between the parties or Commission orders that certain specific issues be briefed, the Commission will dispose of discovery disputes as in any case, looking to the scope of the pleadings and complying with the dictates of applicable law.

THE COMMISSION ORDERS THAT:

1. The parties' request that the requirement to file a procedural schedule be suspended is overruled.
2. No later than January 11, 2021, the parties shall file a proposed procedural schedule proposing dates for an evidentiary hearing; deadlines for pre-filed testimony; pleadings and revised pleadings, if any; last day to request discovery; stipulation of facts; issues statements; position statements; and a post-hearing briefing schedule.
3. In the event the parties cannot agree upon a joint statement of issues, then they shall file a joint statement of the issues upon which they can agree and file separate statements of the issues upon which they cannot agree.
4. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Paul T. Graham, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 6th day of January, 2021.