

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

Linda McElwee,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. EC-2022-0059</u></b>
	)	
Grain Belt Express, LLC,	)	
	)	
Respondent.	)	

**STAFF’S RESPONSE TO ORDER GIVING NOTICE OF COMPLAINT  
AND DIRECTING RESPONSES, STAFF’S INVESTIGATION REPORT,  
AND MOTION TO DISMISS COUNT II**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Response to Order Giving Notice of Complaint and Directing Responses, Staff’s Investigation Report, and Motion to Dismiss Count II*, states as follows:

1. On August 27, 2021, Complainant Linda McElwee filed her *Complaint* charging that Respondent Grain Belt Express, LLC, violated conditions contained in the Commission’s *Order* of March 20, 2019, in Case No. EA-2016-0358, granting a CCN to Grain Belt, by (1) not providing definitive answers to three questions posed by Complainant’s attorney in a letter of August 20, 2014, addressed to Grain Belt’s attorney, and (2) to rule, if the matter of the easement goes to condemnation, that Respondent is still obligated under the terms of the Commission *Order* in Case No. EA-2016-0358, and the documents and testimony submitted therein by Grain Belt, to make the payments for structures and the 10% adder in accordance with the terms of the Landowner Protocol.

2. On August 30, 2021, the Commission issued its *Order Giving Notice of Complaint and Directing Responses*, stating “No later than October 6, 2021, Staff shall [file] a pleading indicating how long it will take to investigate this complaint and file a report with the Commission.”

3. On September 29, 2021, Respondent filed its *Answer*,<sup>1</sup> denying any violation of the Commission’s *Order*.

4. Staff now states for its Investigation Report that, assuming the conduct cited under Count I occurred as claimed by Complainant, it is Staff’s opinion that it does not constitute a violation of the Commission’s *Order* of March 20, 2019, in Case No. EA-2016-0358.

6. Staff further states, with respect to Count II of the *Complaint*, that it appears to be in the nature of a request for a declaratory judgment, to-wit: “under Count 2 Complainant respectfully asks the Commission to rule that if the matter of her easement goes to condemnation, then Respondent is still obligated under the terms of the Commission Order in the CCN case, and the documents and testimony submitted there by Grain Belt, to make the payments for structures and the 10% adder in accordance with the terms of the Landowner Protocol.” The Missouri Supreme Court has held that administrative tribunals such as the Commission may not render declaratory judgments. ***State Tax Commission v. Administrative Hearing Commission***, 641 S.W.2d 69, 76 (Mo. banc 1982). Because the Commission lacks subject matter jurisdiction to grant the relief requested in Count II of the *Complaint*, the Commission should dismiss that count.

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<sup>1</sup> Entitled “Response to Formal Complaint.”

**WHEREFORE**, Staff prays that the Commission will accept Staff's investigation report and dismiss Count II of the *Complaint* for lack of subject matter jurisdiction; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

**KEVIN A. THOMPSON**

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### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing was served electronically, or by First Class United States Mail, postage prepaid, upon the parties herein according to the Service List maintained by the Commission's Data Center, **on this 6th day of October, 2021.**

/s/ Kevin A. Thompson