

**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.)

File No. EC-2021-0059

INITIAL BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), through the undersigned counsel, and for its *Initial Brief* respectfully states:

BACKGROUND

Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs (“Complainants”) filed a formal complaint¹ against Grain Belt Express LLC, and Invenergy Transmission LLC (“Grain Belt” or “Respondents”) on September 2, 2020, alleging noncompliance with the Certificate of Convenience and Necessity (“CCN”) granted by the Commission to Grain Belt in Case No. EA-2016-0358 (“CCN case”). Complainants allege, via press release on August 25, 2020² as well as announcements on its website, that Grain Belt has shown “that they no longer plan to build the project for which the CCN was granted,

¹ 20 CSR 4240-2.070(4) states the basis for filing a formal complaint:
A formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission.

² *Formal Complaint* (September 2, 2020), Exhibit 1.

[and] at this point Grain Belt does not have a valid CCN to build anything in Missouri.”³

Complainants base this allegation on the proposed changes listed below:

- An increase in the project’s delivery capacity to Kansas and Missouri up to 2,500 megawatts of the line’s 4,000 megawatt capacity;⁴
- Grain Belt’s intention to provide broadband expansion for rural communities along the line route in Missouri;⁵ and
- Grain Belt’s intention to begin construction of the Missouri portion of the line before obtaining approval from the Illinois Commerce Commission.⁶

Complainants further allege that, because Grain Belt no longer has a valid CCN to operate in Missouri, Grain Belt is no longer able to exercise the right eminent domain in negotiations with landowners.⁷ Complainants have requested that the Commission (1) declare Grain Belt’s CCN no longer valid, and (2) that Grain Belt no longer has the right to exercise eminent domain.⁸

Similar to the process agreed to by Complainants, Grain Belt, and Staff (collectively, “the Parties”) in Complainants’ prior complaint, EC-2021-0034, the Parties will forego the process outlined in Commission Rule 20 CSR 4240-2.070 in favor of a briefing schedule.⁹ The Parties agreed that:

³ *Formal Complaint*, pg. 3, ¶ 7.

⁴ *Id.*, pg. 3, ¶ 8, citing Exhibit 1, pg. 1.

⁵ *Id.*, pg. 4, ¶ 12.

⁶ *Id.*, pg. 4, ¶ 13, citing Exhibit 1, pg. 1.

⁷ *Id.*, pg. 5, ¶ 14.

⁸ *Id.*, pg. 5-6.

⁹ *Joint Motion to Suspend Current Deadlines and Establish a Briefing Schedule* (September 29, 2020).

“[T]he issue in this Complaint is limited to whether Respondents’ contemplated changes to the Project invalidate the CCN granted to Grain Belt in the CCN case.”¹⁰

The Commission again agreed to suspend the formal complaint schedule, and ordered the Parties to file simultaneous briefs limited to the above issue no later than October 23, 2020.¹¹ However, the Commission ordered the Parties to instead file briefs:

“[L]imited solely to whether a Complaint that Grain Belt published a plan not authorized by its current CCN states a cause of action for the invalidation of its CCN.”¹²

STATEMENT OF FACTS

On March 20, 2019, the Commission issued its CCN Order granting Grain Belt’s application for a CCN in Case No. EA-2016-0358, which took effect on April 19, 2019.

On August 25, 2020, Grain Belt issued a press release detailing proposed changes to its transmission project. The press release included the following statement:

“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.** This will accelerate and enhance substantial economic development for Kansas and Missouri at a critical time for both states’ economies (emphasis added).”¹³

Grain Belt has not yet sought Commission approval or permission to make changes to the Project as it was approved in the CCN Case.

DISCUSSION

1. Grain Belt’s publishing of a plan not authorized by its current CCN via press release is not a cause of action for the invalidation of its CCN.

¹⁰ *Id.*, pg. 3, ¶ 4(g). Whether Grain Belt has eminent domain authority is beyond the scope of this proceeding.

¹¹ *Order Partially Granting Motion to Suspend Deadlines and Establish a Briefing Schedule* (October 5, 2020).

¹² *Id.*, pg. 3, ¶ 4.

¹³ *Formal Complaint*, Exhibit 1, pg. 1.

Complainants attach to their complaint a press release, issued on August 25, 2020, detailing a list of changes to the project approved by the Commission in the CCN case. Complainants allege that these changes are “materially different”¹⁴ enough that the CCN as issued is no longer valid, and that, per the Commission’s order in the CCN case, Grain Belt “must file an updated application with the Commission for further Commission review and determination.”¹⁵

The issue here is whether the mere proposal of these changes, via press release and letters to landowners, constitutes a cause of action for invalidating the current CCN issued to Grain Belt. It does not.

The power of the Commission to issue CCNs is derived from statute, under Section 393.170, RSMo (2018). Section 393.170.1, RSMo (2016) prohibits Grain Belt from “begin[ning] construction” of electric plant without a certificate. Grain Belt did not “begin construction” when it issued a press release.

Moreover, the statute authorizes the Commission to “impose such condition or conditions as it may deem reasonable and necessary.”¹⁶ In the CCN Case, the Commission chose to do just that, by including the following condition on its approval of Grain Belts’ CCN:

“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.”¹⁷

¹⁴ *Formal Complaint*, pg. 2-3.

¹⁵ *Id.*, pg 2, citing *Report and Order on Remand* issued on March 20, 2019 in the CCN case, pg. 52, ¶ 6.

¹⁶ *Id.*

¹⁷ *Report and Order on Remand* issued on March 20, 2019 in the CCN case, pg. 52, ¶ 6

Grain Belt has explicitly acknowledged, within the press release attached to the complaint, that it will seek approvals as needed for the proposed changes to its CCN. Doing so would comply with the Commission's condition.

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. Once Grain Belt comes before the Commission, Staff will have a chance to thoroughly analyze and review any applications, and better determine if these proposals are "materially different" from the project approved in the CCN Case and whether they are necessary or convenient for the public service.

Section 393.170.1, RSMo (Sup. 2018) governs construction of gas plant, electric plant, water systems and sewer systems, not telecommunications plant or systems. Whether and to what extent Grain Belt is permitted to provide broadband service to rural Missourians is beyond the scope of the line certificate granted to Grain Belt by the Commission under Section 393.170.1. The arguments raised by Complainants about the broadband proposal are inapposite.¹⁸

For the reasons stated above, it is Staff's conclusion that Complainants have not raised a cause of action that would invalidate the CCN issued to Grain Belt.

¹⁸ *Id.*, pg. 4, ¶ 12.

CONCLUSION

Staff concludes that Grain Belt's issuing of a press release detailing proposed changes to its current transmission project, and its commitment to seek regulatory approval for those proposed changes from the Commission as needed, does not constitute a cause of action that would lead to the invalidation of its CCN.

WHEREFORE, Staff submits this *Initial Brief* for the Commission's consideration and information.

/s/ Travis J. Pringle

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been emailed to all parties and/or counsel of record on this 23rd day of October, 2020.

/s/ Travis J. Pringle