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.	)	**File No. EC-2021-0034**
Grain Belt Express LLC, and Invenergy Transmission LLC, and Invenergy Investment Company, LLC,	)	
Respondents.	)	

REPLY BRIEF

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

INTRODUCTION

The Commission did not condition the Certificate of Convenience and Necessity ("CCN") granted to Grain Belt Express LLX, and Invenergy Transmission LCC, and Invenergy Investment Company, LLC ("Respondents")[1] on requiring Respondents to begin easement negotiations by only offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN proceeding. As addressed in Staff's *Initial Brief*, the Commission did not explicitly, or implicitly, order Respondents to use Schedule DKL-4 as part of the easement negotiations. While the Missouri Landowners Alliance, Eastern Missouri Landowners Alliance DBA

[1] *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage and Maintain a High Voltage, Direct Current Transmission Line and an Associated Converter Station Providing an Interconnection on the Maywood-Montgomery 345kV Transmission Line*, EA-2016-0358; *In the Matter of the Joint Application of Invenergy Transmission LLC, Invenergy Investment Company LLC, Grain Belt Express Clean Line LLC and Grain Belt Express Holding LLC for an Order Approving the Acquisition by Invenergy Transmission LLC of Grain Belt Express Clean Line LLC*, EM-2019-0150.

Show Me Concerned Landowners, and John G. Hobbs ("Complainants") spend much of their *Initial Brief* discussing the differences between Schedule DKL-4 and the easement agreements currently being shared with landowners,[2] they fail to address where in any Commission Order that Respondents were forbidden from making such changes. And while the formal complaint process as outlined in Commission Rule 20 CSR 4240-2.070 is always available for Missouri consumers to air any and all grievances against utilities throughout the state, it is not the only venue for Complainants to be heard; negotiation with Respondents remains an option.

DISCUSSION

1. The Commission did not condition the CCN granted to Respondents in EA-2016-0358 on requiring Respondents to begin easement negotiations by offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN proceeding, either explicitly or implicitly.

Staff's *Initial Brief* was adamant that nowhere in the Commission's Order from EA-2016-0358 was it explicitly stated that the CCN granted to Respondents was conditioned upon the exclusive use of Schedule DKL-4 as the standard form for easement agreements. This conclusion was supported by Respondents' *Initial Brief Addressing Legal Issue*, in which the Respondents listed each and every condition imposed on them, not just in the Commission's Order from EA-2016-0358, but the Commission's Order in EM-2019-0150 as well.[3] None of these conditions make any mention of Schedule DKL-4; however, this has not stopped Complainants from alleging that the

[2] *Initial Brief of Complainants*, pg. 4-11.
[3] *Respondents' Initial Brief Addressing Legal Issue*, pg. 5-7.

failure to use Schedule DKL-4 is a clear violation of the Commission's Order granting Respondents a CCN.

With no express language outlining such a requirement, Complainants argue that this condition was implicit in the Commission's Order, primarily because the Commission relied upon the testimony of Grain Belt witness Deann K. Lanz that Schedule DKL-4 would be the agreement "that it will present to landowners."[4] Again, this was not spelled out in the Commission's Order, and the testimony of a party witness cannot and should not be given the same weight as a direct Commission Order.

Complainants argue that they accepted the testimony of Ms. Lanz as being akin to holding Grain Belt "at its word, and assumed in the CCN case that the original easement agreement was being offered by Grain Belt as the document it would present to landowners in negotiating easements on the right-of-way."[5]

However, Respondents persuasively counter Complainants claim of taking Grain Belt "at its word" by pointing to the Complainants' own language from EA-2016-0358; the incorporation of the Missouri Landowner Protocol ("Protocol"), the Agriculture Impact Mitigation Protocol, and the Code of Conduct were all made explicit conditions to the CCN **at the request of the Complainants**.[6] If the use of Schedule DKL-4 was viewed as a required condition of the CCN, Complainants could have requested that it be made a condition at that time. They did not, and instead are engaged in a "tortured attempt to manufacture an 'implied' condition."[7]

[4] *Initial Brief of Complainants*, pg. 16.
[5] *Id*.
[6] Respondents' *Initial Brief Addressing Legal Issue*, pg. 10.
[7] *Id*, pg. 13.

The use of Schedule DKL-4 was never made a condition to Respondents CCN, and is not a condition today.

2. The differences between Schedule DKL-4 and the easement agreements currently being used in negotiations between Respondents and landowners are permitted under the CCN.

Complainants outline 11 differences between Schedule DKL-4 and the easement agreements currently being used by Respondents.[8] These 11 differences, according to Complainants, are violations of the Commission's Order granting Respondents a CCN for the following two reasons:

i. The changes violate the conditions outlined in Exhibit 206,[9] specifically that "Grain Belt's right of-way acquisition policies and practices will not change regardless of whether Grain Belt does or does not yet possess a Certificate of Convenience or Necessity from the Commission;"[10] and

ii. The changes violate the Protocol because the failure to use Schedule DKL-4 constitutes a change in Respondents' approach to landowner negotiation.[11]

Again, these differences being in violation of either Exhibit 206 or the Protocol rely on there being a condition, ordered by the Commission, that Schedule DKL-4 be used by Respondents. As detailed in Staff's *Initial Brief*, nowhere in Exhibit 206 is Schedule DKL-4 mentioned.[12] Instead, when it comes to easement agreements,

[8] *Initial Brief of Complainants*, pg. 4-11.
[9] *Report and Order on Remand*, EA-2016-358, Exhibit 1.
[10] *Initial Brief of Complainants*, pg. 11.
[11] *Id*, pg. 14.
[12] Staff's *Initial Brief*, pg. 4.

Exhibit 206 simply states that each agreement must pertain to each individual owner's land, and contain a drawing of said land.[13] Complainants do not accuse Respondents of lacking either in the currently used easement agreement. As to whether Schedule DKL-4 falls under "right of way acquisition policies and practices," since there is no mention of Schedule DKL-4 in Exhibit 206, there is no basis for including Schedule DKL-4 as being part of such policies and practices. As stated by Respondents, if the parties intended for Schedule DKL-4 to be included as part of the "right of way acquisition policies and practices," the parties would have explicitly included it.[14]

As to the claim that the failure to use Schedule DKL-4 constitutes a violation of the Protocol, this again has no basis because the Protocol does not mention or cite Schedule DKL-4 at all.[15] The Protocol refers to best practices when conducting easement negotiations with landowners; if Schedule DKL-4 was viewed by the Commission as a best practice, the Commission would have explicitly said so. The Commission did not, and there is no basis in the record to support an implicit condition of Schedule DKL-4 being a part of the Protocol.

3. The formal complaint process is not the only venue through which Complainants can seek relief.

Complainants claim that, because there is no process for any one besides Respondents to review easement agreements before the agreements are shared with landowners, the only way to hold Respondents accountable and to protect the landowners is through the complaint process.[16] However, part of the reasoning behind the

[13] *Id*, pg. 3-4.
[14] Respondents' *Initial Brief Addressing Legal Issue*, pg. 13.
[15] Staff's *Initial Brief*, pg. 5.
[16] *Initial Brief of Complainants*, pg. 17.

Commission granting the sale of Grain Belt to Invenergy was because of Invenergy's history in managing contract negotiation and right of way issues.[17] In fact, Respondents make it clear that they are "committed to working diligently with Missouri landowners to negotiate the terms of easement agreements that address specific landowner concerns and reflect the unique character of the individual property owners' land. Respondents will continue their efforts to secure voluntary easements and will continue to adhere to all protocols and explicit conditions directed by the Commission, and will bring its extensive contract negotiation and right-of-way acquisition experience to bear in every landowner negotiation."[18]

At the heart of this complaint, the above is what at issue: how two parties can come together, negotiate, and come to a private agreement. If the Commission were to issue an order in this case forcing Respondents to ONLY use Schedule DKL-4 when negotiating with landowners, no one wins. Not only would Respondents be bound to using one document, but landowners would be stuck as well. This "one-size fits all" approach would go directly against the testimony of Ms. Lanz, in which she described the Respondents approach to each landowner negotiation as unique.[19]

As detailed by Respondents, entrapping both sides to the use of this one document at the onset of negotiations would, undoubtedly, be a clear violation of contracting rights.[20] As further outlined by Respondents, the Commission has itself questioned to what extent it could assert jurisdiction over private easement agreements, deferring to determine the

[17] Respondents' *Initial Brief Addressing Legal Issue*, pg. 17, citing *Report and Order*, EM-2019-0150, pg. 12-13.
[18] *Id*.
[19] Staff's *Initial Brief*, pg. 5-6.
[20] Respondents' *Initial Brief Addressing Legal Issue*, pg. 16.

enforceability of easements already possessed by Respondents when Invenergy moved to acquire Grain Belt in EM-2019-0150.[21]

Contractual negotiations, including those involving easements between Respondents and landowners, are private deliberations that the Commission should not infringe upon.

CONCLUSION

Staff has found no evidence from either the Commission's *Report and Order on Remand* or exhibits submitted in EA-2016-0358 that conditioned the granting of Respondents' CCN to the exclusive use of Schedule DKL-4 during Respondents' easement negotiation with landowners.

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

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[21] *Id*, pg. 17.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been emailed to all parties and/or counsel of record on this 30th day of September, 2020.

/s/ Travis J. Pringle