

In the Matter of:  
**MISSOURI LANDOWNERS ALLIANCE, et al.**

v.

**GRAIN BELT EXPRESS, LLC, et al.**

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**EC-2021-0059, VOL. I**

*April 15, 2021*

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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

April 15, 2021

Jefferson City, Missouri

Volume 1

WebEx

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MISSOURI LANDOWNERS ALLIANCE,	)	
EASTERN MISSOURI LANDOWNERS	)	
ALLIANCE d/b/a SHOW ME	)	
CONCERNED LANDOWNERS, and	)	
JOHN G. HOBBS,	)	
	)	
Complainants,	)	File No. EC-2021-0059
	)	
vs.	)	
	)	
GRAIN BELT EXPRESS, LLC, and	)	
INVENERGY TRANSMISSION, LLC,	)	
	)	
Respondents.	)	

JOHN CLARK, Presiding  
REGULATORY LAW JUDGE

SCOTT T. RUPP,  
MAIDA J. COLEMAN,  
JASON R. HOLSMAN,  
COMMISSIONERS

REPORTED BY:  
Beverly Jean Bentch, CCR No. 640  
TIGER COURT REPORTING, LLC

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A P P E A R A N C E S

PAUL A. AGATHEN  
Attorney at Law  
485 Oak Field Court  
Washington, Missouri 63090  
636.980.6403  
FOR: Missouri Landowners Alliance,  
Show Me Concerned Landowners, and John G. Hobbs

ANDREW O. SCHULTE  
ANNE E. CALLENBACH  
Attorneys at Law  
POLSINELLI PC  
900 W. 46th Place, Suite 900  
Kansas City, Missouri 64112  
816.572.4754  
FOR: Grain Belt Express, LLC and  
Invenergy Transmission LLC

TRAVIS PRINGLE, Associate Counsel  
200 Madison Street, Suite 800  
PO Box 360  
Jefferson City, Missouri 65102-0360  
573.751.4140  
FOR: Staff of the Missouri Public Service Commission

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P R O C E E D I N G S

1  
2 JUDGE CLARK: We will go on the record now.  
3 Good morning. Today is April 15, 2021, and the current  
4 time is 9:02 a.m. This proceeding is being conducted by  
5 telephone and videoconference via WebEx. I'm going to  
6 ask that you please mute your line unless you are  
7 speaking. I'm going to ask as well, there's a chat  
8 function that is not part of the official record, and I  
9 ask that you not use it.

10 Additionally, there's a hand raise function  
11 and I don't always see that. So if you're wanting to  
12 get my attention, probably the best way to do it is to  
13 unmute yourself and let me know.

14 Now, the Commission has set aside this time  
15 for an evidentiary hearing In the Matter of the Missouri  
16 Landowners Alliance, Eastern Missouri Landowners  
17 Alliance d/b/a Show Me Concerned Landowners and John G.  
18 Hobbs, Plaintiffs vs. Grain Belt Express, LLC, and  
19 Invenergy Transmission, LLC as the Respondents, and the  
20 File No. in this case is EC-2021-0059.

21 My name is John Clark. I'm the Regulatory Law  
22 Judge presiding over this hearing. Also here today is  
23 the Commission. The members of the Commission are  
24 Chairman Ryan Silvey, Commissioner William Kenney,  
25 Commissioner Scott Rupp who is present, Commissioner

1 Maida Coleman who is present and Commissioner Jason  
2 Holsman who is present. At this time I'm going to ask  
3 that counsel for the parties enter their appearance for  
4 the record. On behalf of the Complainants?

5 MR. AGATHEN: Thank you, Judge. Paul Agathen  
6 from Washington, Missouri, and I represent the three  
7 Complainants whom you mentioned earlier.

8 JUDGE CLARK: Thank you, Mr. Agathen. On  
9 behalf of the Respondents?

10 MR. SCHULTE: Good morning, Judge Clark. This  
11 is Andrew Schulte at the Polsinelli Law Firm in Kansas  
12 City on behalf of the Respondents Invenergy Transmission  
13 LLC and Grain Belt Express LLC.

14 JUDGE CLARK: Thank you very much.

15 MS. CALLENBACH: Good morning, Judge.

16 JUDGE CLARK: Go ahead.

17 MS. CALLENBACH: Excuse me. Anne Callenbach  
18 with Polsinelli also on behalf of Respondents.

19 JUDGE CLARK: Thank you. And on behalf of the  
20 Staff of the Commission?

21 MR. PRINGLE: Good morning, Judge. Travis  
22 Pringle on behalf of Staff, Staff Counsel Department,  
23 200 Madison Street, PO Box 360, Jefferson City,  
24 Missouri.

25 JUDGE CLARK: Thank you, Mr. Pringle. I'm

1 going to go over some brief preliminary matters. Things  
2 are a little bit different since we're doing this by  
3 WebEx and video. Obviously if you've looked at the  
4 schedule and have seen post-hearing briefs will not be  
5 due tomorrow. I'll address a date for post-hearing  
6 briefs at the end of the hearing. All witnesses, I'm  
7 going to ask that you remain present until you're  
8 excused. If anyone needs a break, please let me know.

9 I've received exhibit lists from all the  
10 parties. A big one for this hearing is it appears that  
11 there may be some confidential testimony and/or  
12 exhibits. We're going to be doing -- Because this is  
13 being done via video, we're going to be doing in camera  
14 sessions a little bit differently than we might in  
15 court. In a courtroom, what we would ask is we would  
16 ask the parties that are not authorized to hear the  
17 information leave the room. We're going to do it the  
18 opposite way here. What's going to happen is I'm  
19 relying heavily on the parties to let me know if we need  
20 to go in camera, and at that time I'll be doing what's  
21 called a breakout session, which means that those people  
22 who are authorized to certain information will receive  
23 an invitation to join a separate room where the in  
24 camera session will happen.

25 The people that remain behind, I'm just going



1 to warn you that you will want to stay muted, because  
2 anything you say will, in fact, be broadcast out over  
3 the Commission's live feed. Now, there's some  
4 advantages to that. The advantages are that nobody gets  
5 automatically disconnected and that we have a totally  
6 private room to discuss. The disadvantages of it are  
7 that it takes roughly a minute for everybody to get into  
8 the room and start the breakout session and likewise  
9 when the session is over it takes about a minute to  
10 transfer everybody back to what I'm going to call the  
11 main courtroom.

12 So because of that priming, I'm going to ask  
13 that we try and go in and out of in camera as little as  
14 is necessary. So if it looks like there are possibly  
15 exhibits or chunks of testimony that may be in camera  
16 and if we can keep those as chunks rather than going to  
17 in camera for a single question, I believe that would be  
18 very helpful.

19 Now, the Commission may have questions for the  
20 attorney and witnesses. I may have questions as well.  
21 I'd ask that the Commissioners just speak up anytime  
22 they have a question. And additionally, if the  
23 Commission asks -- Additionally, after each party gets  
24 an opportunity to question a witness, I will ask the  
25 Commissioners if they have any questions that they would

1 like to ask at that time.

2 Now, to start out I'm going to say that the  
3 Commission is going to take official notice of its  
4 Report and Order on Remand in File EA-2016-0358. Are  
5 there any objections to the Commission taking official  
6 notice of its prior Report and Order? I hear none.

7 Lastly, I'd like to address what happens if  
8 people become disconnected, which is a genuine  
9 possibility. If you become disconnected, please just  
10 rejoin the hearing again the same way you joined it this  
11 morning. If for some reason my internet goes down and I  
12 would be disconnected, Jackie Keely is designated as a  
13 co-host and so the hearing shouldn't shut down and I  
14 will return to the hearing as quickly as possible.

15 Now, at this time I'm going to address  
16 preliminary matters. Do the parties have any  
17 preliminary matters or pending motions that need to be  
18 addressed at this time? Complainants?

19 MR. AGATHEN: We do not, Your Honor.

20 JUDGE CLARK: Respondents?

21 MR. SCHULTE: Yes, Judge. Regarding the  
22 confidential sessions, it is our understanding that  
23 Mr. Lowenstein has not been designated as a subject  
24 matter expert with authorization for confidential  
25 information. So we would ask that he not be included in

1 the closed sessions, and I believe that that's agreeable  
2 to counsel for the Complainants.

3 JUDGE CLARK: Mr. Agathen, you're muted. You  
4 said something?

5 MR. AGATHEN: I'm sorry. That is correct.

6 JUDGE CLARK: That was my understanding as  
7 well.

8 MR. SCHULTE: I would also note that all --  
9 excuse me, Judge, if I may. All of the confidential  
10 information is Respondents' confidential information.  
11 In addition to Mr. Zadlo, Nicole Luckey is on the phone.  
12 She is VP of Regulatory Affairs for Invenergy  
13 Transmission. If she's allowed to be in the  
14 confidential sessions, we'd appreciate that if that can  
15 be accommodated.

16 JUDGE CLARK: Okay. Thank you. I don't  
17 really have a problem with that. Does anybody else?

18 MR. AGATHEN: Is she going to be a witness or  
19 what's the purpose of her being there?

20 MR. SCHULTE: No, she will not testify. Just  
21 purely to listen.

22 MR. AGATHEN: That's fine.

23 JUDGE CLARK: Okay. Thank you, Mr. Agathen.  
24 Mr. Schulte, do you have any pending motions?

25 MR. SCHULTE: Well, we do we have -- We made a

1 motion to dismiss earlier in this case on March 12 after  
2 the Complainants did not file any direct testimony and  
3 we renewed that motion I think in a pleading on March  
4 18. We do not have -- That motion is not pending I  
5 don't believe, because the Commission had an opportunity  
6 to take it up and did not rule on it. But we may, after  
7 the close of the direct case, we may want to renew that  
8 motion at the appropriate time, but it's not pending at  
9 this moment.

10 JUDGE CLARK: Okay. Thank you. It's my  
11 intention to take that with the case. So I will  
12 certainly allow you to argue that at the end. Ms.  
13 Callenbach, anything else from Respondents?

14 MS. CALLENBACH: No, Judge. Thank you.

15 JUDGE CLARK: And finally, any preliminary  
16 matters or pending motions from Staff counsel?

17 MR. PRINGLE: Judge, just wanted to clarify  
18 with you if you're okay with the current numbering of  
19 the exhibits. I believe Complainants are 1 through 10  
20 and Staff is 100. Just want to see if that numbering is  
21 okay with you.

22 JUDGE CLARK: That numbering is fine with me.  
23 I don't have a problem with that. Given the low number  
24 of exhibits, I don't think that's going to be a  
25 difficulty.

1 MR. PRINGLE: And then also I wanted a  
2 reminder that if the Commission does request Witness  
3 Natelle Dietrich and Claire Eubanks, they're on the  
4 line. They're not witnesses for Staff. But if the  
5 Commission did have questions for them, they are  
6 available.

7 JUDGE CLARK: And I believe the other parties  
8 were on notice that they could be potential witnesses;  
9 is that correct, Mr. Agathen?

10 MR. AGATHEN: That is correct, Judge.

11 JUDGE CLARK: And Mr. Schulte and Ms.  
12 Callenbach?

13 MS. CALLENBACH: Yes, that is correct, Judge.

14 JUDGE CLARK: All right. Thank you. At this  
15 time, if there's nothing else, we're going to commence  
16 with opening statements. And according to the order  
17 that was filed by the parties, the Complainants will  
18 give their opening statement first.

19 MR. AGATHEN: Thank you, Judge. May it please  
20 the Commission. The evidence in this case shows that  
21 Respondents have already decided to build a transmission  
22 project which is materially different from the project  
23 which you approved in the CCN case. The major change is  
24 a result from how the power from the line would be  
25 distributed among different geographic areas.

1 Under the project you approved in the CCN  
2 case, the line was to deliver only 500 MW to Missouri,  
3 and there was no provision in the CCN case for any power  
4 to be delivered to the state of Kansas --

5 THE COURT REPORTER: I'm sorry, Mr. Agathen,  
6 you cut out in that sentence.

7 MR. AGATHEN: It made no provision for  
8 delivery of any power to customers in Kansas. Is the  
9 problem on my end?

10 JUDGE CLARK: I seem to be hearing you fine.  
11 I don't believe I lost any of that.

12 MR. AGATHEN: I'll now proceed then. If  
13 anyone has any trouble, please let me know. I was  
14 talking about the CCN order and how the power was to be  
15 delivered under that order. In contrast, the plan  
16 recently unveiled by the Respondents would deliver up to  
17 2,500 MW to Kansas and Missouri combined. This  
18 represents a five-fold increase to those two states in  
19 combination.

20 As a result, that revision will require  
21 material changes to the converter station which was  
22 supposed to supply the power to Missouri and will now  
23 supply the power to Kansas and Missouri. It will also  
24 require material changes to the interconnection  
25 originally proposed with MISO. Also, the project you

1 approved in the CCN case was to deliver 3,500 MW of  
2 power to the PJM states, those along the east coast and  
3 generally east of Illinois. With 2,500 MW now going to  
4 Missouri and Kansas, that leaves only 1,500 MW to be  
5 delivered to the PJM system. This represents well under  
6 one-half of the power which the Commission had approved  
7 in the CCN order.

8           Again, a change of this magnitude will require  
9 material changes to the converter station in Illinois  
10 which was to supply the power to the PJM footprint. It  
11 will also require material modifications to the  
12 interconnection originally proposed with PJM.

13           Now, the key to this case is that Respondents  
14 have already committed to making these changes to the  
15 original project. We know this because they told us so.  
16 They said so first in a press release this past August.  
17 Respondents expressly stated there that they plan to  
18 increase the project's delivered capacity to Kansas and  
19 Missouri up to 2,500 MW. In issuing that press release,  
20 Respondents clearly convinced top state officials in  
21 Kansas that they were committed to making this change.

22           Then in a letter to landowners just four  
23 months ago, Respondents specifically stated that, quote,  
24 Grain Belt Express has announced a proposed plan to  
25 increase the project's delivered capacity for Kansas and

1 Missouri consumers, end quote. It then went on to  
2 describe the same plan referred to in a press release.  
3 As Grain Belt's letter -- excuse me. As Grain Belt's  
4 letter to the landowners further confirmed, this new  
5 plan requires expanding the converter station in  
6 northeast Missouri beyond the capacity originally  
7 approved by the Commission.

8 So the original plan for the converter station  
9 is now history. Respondents couldn't have been clearer  
10 on that point. Also, in an answer to a data request  
11 from Complainants, Respondents confirmed that they plan  
12 to seek regulatory approval from the Commission for the  
13 changes which they had described in their press release.  
14 This could only mean that the plan described in the  
15 press release involves material changes to the project  
16 approved by the Commission in the CCN case.

17 After the position statements were filed,  
18 Respondents submitted a supplemental answer to that data  
19 request I just referred to. In it they essentially  
20 claimed that the changes announced in the press release  
21 are merely, quote, unquote, contemplated changes. I  
22 expect you will hear something along those same lines  
23 from Respondents' witness today, Mr. Zadlo.

24 With that explanation that they're merely  
25 contemplated changes misses the point. Respondents have



1 unequivocally announced that they intend to make major  
2 changes to the project which you approved in the CCN  
3 case. The details of that new plan may still be in a  
4 contemplated stage. As we sit here today taking  
5 Respondents at their word, we know that the final  
6 project will include the material revisions which they  
7 have already announced and committed to.

8           First question on the joint list of issues is  
9 whether the project's design and engineering is  
10 materially different from that approved by the  
11 Commission in the CCN case. If the major changes  
12 already announced by the Respondents of how those  
13 changes will affect the design and engineering in the  
14 project, the answer to the first question is definitely  
15 yes.

16           Our answer to the second question involves a  
17 successive series of propositions. First, if the  
18 Commission agrees with us, as I just discussed, that  
19 Respondents have already committed to building something  
20 materially different from the project approved in the  
21 CCN case, then Complainants submit that Respondents have  
22 voluntarily abandoned the original project as approved  
23 by the Commission. They can't still be planning to  
24 build the project you approved in the CCN case if  
25 they've already committed to building something else

1 instead.

2 Second, once the original project was  
3 overhauled, Complainants submit that Respondents  
4 voluntarily forfeited the CCN for this project which you  
5 had issued some two years ago now. A CCN for a project  
6 that will never be built in accordance with the terms of  
7 the CCN is logically nothing more than a hollow nullity.  
8 Next, the initial CCN had been voluntarily forfeited and  
9 at the present time Grain Belt has no authority to build  
10 anything in the state of Missouri. Accordingly, it has  
11 no power of eminent domain to take landowner property by  
12 condemnation.

13 Finally, Respondents continue to tell Missouri  
14 landowners on their website that they do have the power  
15 of eminent domain in this state. Plaintiffs contend  
16 that this claim is false and that Respondents are  
17 therefore violating the Commission's order in the CCN  
18 case. Unless there are any questions, that's all I  
19 have, Judge.

20 JUDGE CLARK: Thank you, Mr. Agathen. Any  
21 questions from the Commissioners? I hear none. I do  
22 have a few questions for you, Mr. Agathen. Given that  
23 it seems to be part of the topic of this case -- I'm  
24 sorry. Was somebody else --

25 Given it seems to be part of the main topic of

1 the case, I'm going to ask you, Mr. Agathen, what would  
2 you consider to be a material change in design and  
3 engineering?

4 MR. AGATHEN: I would take that in the normal  
5 dictionary sense, Judge. I don't think that material is  
6 a technical term in the engineering sense. So there was  
7 no further expansion on the definition of that term in  
8 the CCN order. So I would say it's to be taken in the  
9 normal dictionary sense.

10 JUDGE CLARK: Okay. When you say the normal  
11 dictionary sense, I think there are two and I just want  
12 to clarify that there's material lists and bricks and  
13 mortar and steel, actual nouns, things, and there's  
14 material as in significantly different. Which sense do  
15 you mean it in?

16 MR. AGATHEN: In this case, it would certainly  
17 include both. I don't think it would matter. There's  
18 going to be material changes to the converter station  
19 certainly in Missouri. That's going to have a material  
20 impact in the design and engineering in a project, and  
21 that's just for an example. Converter station in  
22 Illinois, same situation would apply.

23 So I agree there are probably two different  
24 definitions of that term, if you would, but I don't  
25 think it matters which you use in this case.

1 JUDGE CLARK: Okay. Is there a kind of change  
2 to the project which you would consider to be not a  
3 material change to the engineering?

4 MR. AGATHEN: I don't have any of the details,  
5 Judge. The only details I have are those which I've  
6 mentioned and two other changes that they propose to  
7 make. They're going to add provision for installation  
8 of high speed internet, excuse me, on the line. That  
9 was never mentioned in the application in the CCN case  
10 nor was it mentioned anywhere in the Commission's order.  
11 And second, during the course of the proceedings, Grain  
12 Belt specifically stated that they would be using  
13 primarily monopoles structures. Now they have changed  
14 that to using primarily lattice structures which are  
15 much more bulky and take up a larger footprint than the  
16 monopole. Those are two other changes that they're  
17 making. I'm not aware of the details which I would say  
18 constitute non material changes.

19 JUDGE CLARK: Would it make a difference if  
20 they decided that they were going to paint all of the  
21 poles along the transmission line blue? Would you  
22 consider that a material change?

23 MR. AGATHEN: I think some landowners would  
24 certainly find that objectionable. I'm just guessing.  
25 To them it might be material. In the overall scheme of

1 things, just the color of paint on the poles I don't  
2 think would fall within either of the definitions that  
3 you mentioned earlier.

4 JUDGE CLARK: Okay. you had mentioned that  
5 there was some mention on the website of carrying high  
6 speed broadband; is that correct?

7 MR. AGATHEN: That's correct, Your Honor.

8 JUDGE CLARK: Given that the Commission  
9 doesn't regulate high speed broadband except in voice  
10 over internet protocol cases involving phone  
11 interconnection, why would that be a change that is  
12 material from the perspective of the Commission?

13 MR. AGATHEN: I would say, Judge, that that  
14 was never mentioned in the application filed by Grain  
15 Belt originally. That's really what drives the approved  
16 project here. There was no mention of that whatsoever.  
17 Now they're adding it to the project. That's certainly  
18 a change. I would call it a material change in the  
19 design of the project. It was not designed to  
20 accommodate high speed internet originally. Now  
21 apparently they're proposing that it will be.

22 JUDGE CLARK: You had mentioned that this  
23 would change the amounts of capacity, I believe, that  
24 will be delivered to the PJM system; is that correct?

25 MR. AGATHEN: That's correct, Judge.

1 JUDGE CLARK: The PJM system is not in  
2 Missouri?

3 MR. AGATHEN: That is correct.

4 JUDGE CLARK: So my question is, how is that a  
5 material change?

6 MR. AGATHEN: Well, the order of the  
7 Commission and, in fact, the application from Grain Belt  
8 both specifically mentioned that they are to deliver  
9 3,500 MW of power to the PJM system, and much of the  
10 economics was based upon the fact that the prices they  
11 could obtain in the PJM system were significantly higher  
12 than they could obtain in the MISO system. That was  
13 just one of the justifications at least mentioned by the  
14 Commission in approving the proposal from Grain Belt to  
15 build the project. If that changes, if they're no  
16 longer going to deliver the power that justified in part  
17 the approval of the project, I would say that's a  
18 material change regardless of where that substation  
19 happens to be located.

20 JUDGE CLARK: You indicated that there would  
21 have to be a change with the Missouri converter station  
22 due to that; is that correct?

23 MR. AGATHEN: That's correct, Judge.

24 JUDGE CLARK: But to your knowledge, that  
25 doesn't change whether or not they are building a

1 Missouri converter station?

2 MR. AGATHEN: I'm not sure they have  
3 specifically said what they're going to do, but they  
4 have said that they are going to expand beyond the 500  
5 MW in the original plan. They almost have to. If  
6 they're going to deliver up to 2,500 MW to Missouri and  
7 Kansas, they can't do that with a 500 megawatt converter  
8 station in Missouri.

9 JUDGE CLARK: I'm asking you these questions  
10 because I think you're in the best position to answer  
11 them. I'm not sure that your witness will be able to.  
12 If the Respondents -- If it turns out that the  
13 Respondents have not actually implemented any of the  
14 proposed changes, how is the relation of the  
15 Commission's Report and Order granting a CCN?

16 MR. AGATHEN: I would say that's a difficult  
17 question admittedly. But if they have announced and  
18 committed to a plan, which they have, which is  
19 materially different from the original plan, then they  
20 have, in fact, abandoned the original plan. They're no  
21 longer going to build it. They've said so on several  
22 occasions. If they have abandoned the original plan, I  
23 think it follows that they forfeited the CCN for that  
24 original plan. I don't think you can have a CCN for a  
25 project which you've already stated you're not going to

1 build. And once they have forfeited that CCN, then they  
2 no longer have the right of eminent domain in Missouri  
3 and they're now claiming still to have the right of  
4 eminent domain. So the violation would occur in the  
5 fact that they are still claiming to have a CCN in  
6 Missouri, still complaining that they have the right of  
7 eminent domain. They're telling landowners that they  
8 have the right of eminent domain which does have an  
9 impact on negotiations for easements.

10 JUDGE CLARK: Along that same line of  
11 thinking, assuming and this makes an assumption,  
12 assuming that there's still time for the Respondents to  
13 come before the Commission and file an updated  
14 application for the changes, same sort of question. If  
15 that's the case, how is this a violation of the  
16 Commission's Report and Order?

17 MR. AGATHEN: The fact that they come in and  
18 file for approval of the updated project would not  
19 itself be a violation. Violation occurs because in the  
20 interim between today or several months ago and the time  
21 that they come in and file there's a gap in there where  
22 they do not have it in our possession a gap where they  
23 do not have a CCN to build anything in Missouri.  
24 They've abandoned the original project. They don't have  
25 approval for the new project. So they don't have a CCN



1 which is valid.

2 JUDGE CLARK: Okay. Thank you, Mr. Agathen.  
3 I believe that's all my questions. Are there any  
4 Commissioner questions at this point? I hear none. So  
5 at this time I'm going to move on to it is Respondents'  
6 turn for an opening statement. Respondents?

7 MR. SCHULTE: Thank you, Judge. Good morning,  
8 Chairman Silvey, if he's on the line, and the  
9 Commissioners. The Commission's rules for a complaint  
10 state in relevant part that a formal complaint may be  
11 made by a petition or a complaint in writing, setting  
12 forth any act or thing done or omitted to be done by any  
13 person, corporation, or public utility, in violation or  
14 claimed to be in violation of any provision of law or  
15 any rule or order or decision of the Commission, and  
16 that's 20 CSR 4240-2.070(4).

17 The act or thing done in this case is the  
18 issuance of a press release on August 25, 2020, and some  
19 language about potential for broadband expansion on the  
20 Grain Belt website. That is the only act or thing done  
21 claimed by the Complainants.

22 The law, rule, order or decision in this case  
23 is a single condition placed on Grain Belt's certificate  
24 of convenience and necessity which reads if the design  
25 and engineering of the project is materially different

1 from how the project is presented in Grain Belt's  
2 application, Grain Belt must file an updated application  
3 with the Commission for further Commission review and  
4 determination, and that's from the Report and Order in  
5 the CCN case which was noticed by Judge Clark earlier.

6 Counsel for the Complainants has argued a lot  
7 about intent. However, intent about future design and  
8 engineering of a project is not only speculative and  
9 fluid but it's not germane to the present design and  
10 engineering of the project. And the present design and  
11 engineering of the project and the final design and  
12 engineering of the project will only be determined when  
13 the project is constructed.

14 In a complaint case, the Complainants always  
15 have the burden of proof. Accordingly, in order to meet  
16 their burden of proof in this case, the Complainants  
17 must demonstrate that the press release and the language  
18 about broadband establishes that the design and  
19 engineering is presently materially different from how  
20 the project was presented during the CCN case.

21 In order to meet that burden of proof, the  
22 Complainants must meet the preponderance of evidence  
23 standard and to meet that standard they must convince  
24 the Commission that it is more likely than not that the  
25 design and engineering of the project is presently

1 materially different than as presented in the CCN case.

2           The Commission has previously noted that the  
3 burden of proof has two parts, the burden of production  
4 and the burden of persuasion. The burden of production  
5 requires that the Complainants introduce enough evidence  
6 on the material issue to have that issue decided by the  
7 Commission. The burden of persuasion is a requirement  
8 to meet the more likely than not burden. For an  
9 excellent discussion on the burden of proof in the  
10 context of a PSC complaint case, I refer you to a 2008  
11 Ameren complaint case, Case No. EC-2008-0329 and an  
12 order issued by the Commission on December 11, 2008.

13           The Complainants in this case have failed to  
14 meet the first part of its obligation. They have failed  
15 to present any meaningful evidence that the design and  
16 engineering is presently different. The only thing that  
17 they have presented are arguments from counsel and  
18 arguments from counsel are not evidence. In fact, the  
19 Complainants have failed to file any direct testimony  
20 explaining their case in chief as required by the  
21 Commission's rules and orders and today is the  
22 Complainant's last chance to meet the two-part burden of  
23 proof.

24           First they must meet their burden of  
25 production by introducing enough evidence on the

1 material issue to have that issue decided by the  
2 Commission. In an attempt to meet that burden of  
3 production, the Complainants plan to introduce  
4 Mr. Donald Lowenstein as their only witness. However,  
5 Mr. Lowenstein is not an engineer. He has never worked  
6 for a utility. He has no experience regarding electric  
7 transmission, and he has no expertise on the material  
8 issue in this case which is whether the design and  
9 engineering is materially different.

10 Mr. Lowenstein also does not have any  
11 first-hand knowledge of the facts relevant to this  
12 proceeding. Accordingly, my colleague Anne Callenbach  
13 will be requesting to voir dire Mr. Lowenstein at the  
14 appropriate time after which it will be clear that he is  
15 not qualified to testify on any matter relevant to this  
16 case.

17 Further, because the Complainants have failed  
18 to present any qualified witness, they will have failed  
19 to meet their burden of production and Respondents will  
20 at that time renew their motion to dismiss. We ask that  
21 the Commission keep in mind that the Complainants have  
22 been engaged in proceedings before this Commission since  
23 2014. They have hired counsel that has practiced before  
24 this Commission for decades. They introduced expert  
25 witnesses in the CCN case, including an engineer, and

1 they have raised money for their lobbying efforts at the  
2 State Capitol.

3           Accordingly, this case is the antithesis of a  
4 pro se complaint with a billing dispute. If the  
5 Complainants in this proceeding believed that they had a  
6 legitimate case based on evidence, they could have and  
7 would have presented it. They have failed to do so and  
8 so the case must be dismissed. I'd be happy to answer  
9 any Commissioner questions.

10           JUDGE CLARK: Any questions from the  
11 Commission? Okay. I have a couple questions for you,  
12 Mr. Schulte. Maybe just one depending on how it's  
13 answered. Similar question for you. What do the  
14 Respondents consider to be a material change in design  
15 and engineering for this project?

16           MR. SCHULTE: The design -- I think the design  
17 and engineering will only be known 100 percent once the  
18 project is complete. Now, obviously the Respondents  
19 would not wait until the project is complete to request  
20 a modification to their CCN if they knew in advance that  
21 design and engineering was going to be materially  
22 different and were mindful that we need to do that with  
23 enough time for the Commission to consider those  
24 proposed material changes if, in fact, it decides to do  
25 those material changes.

1           What is a material change is not clearly  
2 defined. There's some room for interpretation. We  
3 would concede that increasing the converters, or moving  
4 the location of the converter station certainly, or  
5 significantly changing the route of the line would be a  
6 material change in the design and engineering.  
7 Increasing the size of the converter station the Report  
8 and Order only requires that a converter station be  
9 constructed that's capable of delivering at least 500  
10 MW. So if the converter station size was increased and  
11 that was the only change, we may or may not have a  
12 material change. If the converter station is moved and  
13 the route to the line changes as a result, that's  
14 probably a material change.

15           There's some wiggle room in the Commission's  
16 CCN order about working with the landowners and micro  
17 siding the towers. So those types of changes would not  
18 be a material change. The change in the converter  
19 station in Kansas, if that moved to locations in Kansas,  
20 then that's probably not a material change on the design  
21 and engineering of the project in Missouri. But there's  
22 certainly room for interpretation, but the Respondents  
23 are certainly mindful and if they do have material  
24 changes will certainly be before the Commission to  
25 request authority to do so.

1 JUDGE CLARK: Is the condition that Grain Belt  
2 receive approval from Illinois before beginning  
3 construction, is that a material change to engineering?

4 MR. SCHULTE: The requirement -- there's a  
5 requirement to finance the full line. I'm not aware of  
6 a requirement to obtain approval from the Illinois  
7 Commission before beginning construction. But if  
8 phasing was to occur so that the Missouri and Kansas  
9 portion of the line was built before the Illinois and  
10 Indiana portion of the line, then we would likely  
11 consider that a material change and be before the  
12 Commission.

13 JUDGE CLARK: Okay. Thank you. I have no  
14 further questions. If there are no questions for the  
15 Commission, I'm going to move on to Staff. And Staff,  
16 please present your opening.

17 MR. PRINGLE: Thank you, Judge. May it please  
18 the Commission. On September 2, 2020, MLA filed a  
19 formal complaint against Grain Belt in which it alleged  
20 that Grain Belt is purportedly making changes to its  
21 original transmission project, a project approved by the  
22 Commission in EA-2016-0358.

23 The Commission attached a variety of  
24 conditions to its order approving the project, including  
25 condition 6 which detailed the materially different from

1 the project presented. MLA alleges that this condition  
2 was violated via press release issued by Grain Belt on  
3 August 25, 2020. MLA highlights that within the press  
4 release Grain Belt announced that it was contemplating  
5 changes to the project which included an increase in the  
6 project's delivery capacity to Kansas and Missouri up to  
7 2,500 MW of the line's 4,000 megawatt capacity, as well  
8 as Grain Belt's intention to begin construction of the  
9 Missouri portion of the line before obtaining approval  
10 from the Illinois Commerce Commission. MLA alleges that  
11 the publication of these and other contemplated changes  
12 are evidence that Grain Belt no longer plans to build a  
13 project for which the Commission granted Grain Belt a  
14 CCN and thus no longer have a valid CCN to build the  
15 project in Missouri.

16           There is one thing about Grain Belt's press  
17 release that MLA left out of its complaint and that is  
18 the following statement, which I quote, building upon  
19 unanimous regulatory approvals from Kansas and Missouri  
20 in 2019, Grain Belt Express will seek approvals to the  
21 extent necessary for expanded delivery to Kansas and  
22 Missouri, as well as for beginning the first phase of  
23 project construction prior to Illinois regulatory  
24 approval, end quote.

25           This Commission is the sole state authority to



1 issue CCNs under Section 393.170, RSMo. Section  
2 393.170.1 prohibits Grain Belt from beginning  
3 construction of electric plant without a certificate.  
4 From the evidence put forward by MLA, Grain Belt did not  
5 begin construction of an unauthorized project when it  
6 issued a press release. Moreover, the statute  
7 authorizes the Commission to impose such condition or  
8 conditions as it may deem reasonable and necessary.

9           As acknowledged by Grain Belt within the very  
10 same press release that MLA alleges the violations  
11 occurred, Grain Belt will seek the approvals necessary  
12 if Grain Belt decides to move forward with the  
13 contemplated changes. As long as Grain Belt obtains  
14 Commission approval of any design or engineering  
15 materially different from that already approved, there  
16 is no violation of either Section 393.170 or the  
17 Commission's condition, and Grain Belt has repeatedly  
18 indicated throughout this process that's exactly what it  
19 will do.

20           As to the invalidation of Grain Belt's CCN,  
21 Section 393.170 is also quite clear on that note. A CCN  
22 is invalidated if a utility does not exercise it within  
23 two years of the effective date of the Commission order  
24 granting that CCN. There is no provision in Section  
25 393.170 to revoke a CCN on an uncertain date based on

1 unspecified and subjective evidence of a company's  
2 intent to commit to a project. And though MLA has  
3 claimed that Grain Belt has abandoned the project  
4 approved by this Commission, Grain Belt has explicitly  
5 denied any intent to abandon its original CCN and this  
6 Commission should not stack inferences on top of  
7 assumptions to find otherwise.

8 Today Staff Witness Shawn Lange, who's a  
9 Professional Engineer in Staff's engineering analysis  
10 department, is here to testify on his experience in  
11 monitoring transmission projects for Staff and how there  
12 has been no evidence presented to signify that Grain  
13 Belt has taken action on a project materially different  
14 from that approved by the Commission in EA-2016-0358.

15 However, he is strictly a factual witness. He  
16 cannot testify as to legal interpretations around  
17 Section 393.170. Those arguments have already been put  
18 forward in Staff's initial and reply briefs filed  
19 earlier in October 2020. If you have any questions  
20 about the statute and its application in this case,  
21 please ask those questions of me.

22 In conclusion, it is Staff's position that the  
23 mere publication of a press release detailing  
24 contemplated changes to the project approved by this  
25 Commission is not a violation of any Commission

1 conditions and does not meet any statutory requirement  
2 that would invalidate a CCN. That being said, as the  
3 project does move forward, if Staff were to discover  
4 evidence that the plan has materially changed and that  
5 Grain Belt has acted on those material changes without  
6 subsequent Commission approval, Staff would bring its  
7 own complaint against Grain Belt. Simple fact today,  
8 though, at this time there is no evidence of that.  
9 Thank you. And I'm happy to take any questions.

10 JUDGE CLARK: Any questions from the  
11 Commission? Okay. I heard no questions. I'm going to  
12 ask a similar question, same question. What does Staff  
13 consider to be a material change in design and  
14 engineering?

15 MR. PRINGLE: A lean toward a significant  
16 alteration, Judge.

17 JUDGE CLARK: And what would be a significant  
18 alteration?

19 MR. PRINGLE: We would say something along the  
20 lines if blueprints came up moving the transmission  
21 line. Let's say if there was construction on an  
22 easement that was not agreed to under a landowner  
23 agreement, something along those lines.

24 JUDGE CLARK: Does Staff consider any of the  
25 proposed changes to be material changes to the design

1 and engineering of the program or project?

2 MR. PRINGLE: For Staff, we would need to see  
3 more detailed plans than a simple press release and a  
4 host of emails, and we have not seen any detailed plans  
5 about those proposals. So at this time we can't  
6 conclude that either way.

7 JUDGE CLARK: Thank you. I don't have any  
8 more questions in regard to that. Before we move to  
9 having witnesses testify, I'd like to address one thing.  
10 Mr. Pringle, you had mentioned the previous briefs that  
11 have been submitted in the case. One of the things that  
12 was submitted in the case early on that stopped the  
13 procedural schedule was a joint motion to suspend the  
14 current deadlines and establish a briefing schedule, and  
15 contained within that were the joint stipulations of the  
16 parties as to certain facts.

17 I'm going to ask starting with the  
18 Complainants, are those still, are those factual  
19 stipulations, do they still hold? Mr. Agathen?

20 MR. AGATHEN: Judge, I've not reviewed those  
21 recently. I'd have a hard time answering your question.  
22 I assume if we stipulated to a fact that that was in our  
23 mind a fact at that time. Now, conditions may have  
24 changed since that time which would make what we  
25 stipulated to no longer factually correct.

1 JUDGE CLARK: Okay. Well, I'm going to go  
2 through the factual stipulations then and you tell me if  
3 there are any that you disagree with. Joint movants  
4 have agreed to the following stipulations. Grain Belt  
5 issued a press release on August 25, 2020, which is  
6 attached to the complaint as Exhibit 1.

7 MR. AGATHEN: Yes.

8 JUDGE CLARK: Do you agree with that?

9 MR. AGATHEN: Correct.

10 JUDGE CLARK: On September 24 and 25, Grain  
11 Belt mailed a letter to the Missouri landowners who were  
12 mailed form easement agreements but had not yet signed  
13 them. A copy of this letter is attached to joint motion  
14 as Exhibit A. Do you agree with at least the statements  
15 contained in that?

16 MR. AGATHEN: Correct.

17 JUDGE CLARK: Grain Belt has not yet sought  
18 Commission permission to make the changes to the Grain  
19 Belt project as it was approved in the CCN case. The  
20 press release states Grain Belt Express will seek  
21 approval to the extent necessary for expanded delivery  
22 to Kansas and Missouri, as well for beginning the first  
23 phase of the project construction prior to Illinois  
24 regulatory approval. Do you agree that that factual  
25 statement is still correct?

1 MR. AGATHEN: I believe the factual statements  
2 are correct.

3 JUDGE CLARK: Grain Belt has not begun  
4 acquiring easement rights along the certified route but  
5 has not -- Grain Belt has begun acquiring easement  
6 rights along the certified route but has not begun  
7 construction of the project; would you agree with that?

8 MR. AGATHEN: I would agree with that, Judge.

9 JUDGE CLARK: The sample landowner letter  
10 posted on Grain Belt's website states that Grain Belt is  
11 working to add broadband infrastructure along the route  
12 to support rural high speed internet access and a copy  
13 of Grain Belt's sample landowner letter is attached as  
14 Exhibit B to the joint motion. Do you agree that the  
15 landowner letter says that?

16 MR. AGATHEN: Yes, I do, Judge.

17 JUDGE CLARK: Okay. The other one is in their  
18 respective legal briefs joint movants may cite to any  
19 portion of the record in the CCN case. I've already  
20 taken notice of the Report and Order in that case. I  
21 don't really intend to unless necessary take notice of  
22 the entire CCN case. I think if you want me to take  
23 notice of certain portions of that case that we can  
24 address that, and joint movants agree that the issue in  
25 this complaint is limited to whether Respondents

1 contemplated changes to the project invalidate the CCN  
2 granted to the Grain Belt in this case. As it's been  
3 kind of hashed out earlier, that's not the issues that  
4 we're dealing with today. I believe you went through  
5 those issues in your opening. So I don't believe those  
6 would still apply; is that correct?

7 MR. AGATHEN: I agree with you.

8 JUDGE CLARK: Okay. Respondent, what I've  
9 just said, are there any of those conditions that the  
10 Respondents do not believe are still valid stipulations  
11 of fact for the parties?

12 MR. SCHULTE: Is the question whether they  
13 were true at the time or whether they are true as we sit  
14 here today?

15 JUDGE CLARK: I think the question for most of  
16 them is are they true as we sit here today?

17 MR. SCHULTE: They are all true with the  
18 exception you noted to subsection G, because the issues  
19 have been replaced by the joint statement of issues  
20 filed at the Commission. Subsection D states that Grain  
21 Belt has begun acquiring easements, easement rights  
22 along the certificated route but has not begun  
23 construction of the project. Grain Belt is continuing  
24 to acquire easements along the certificated route and  
25 they have -- there has been the beginnings of

1 construction limited site activity on parcels along the  
2 certificated route.

3 JUDGE CLARK: So that would be true with the  
4 addition of some construction?

5 MR. SCHULTE: Yes, Judge.

6 JUDGE CLARK: Thank you. And Staff counsel  
7 was also a party to this. Are there any of the  
8 conditions from the joint stipulation that Staff  
9 believes are no longer true?

10 MR. PRINGLE: No, Judge, besides the  
11 stipulated fact D that Mr. Schulte just addressed.  
12 Other than that, everything else still sounds true.

13 JUDGE CLARK: Thank you. I just wanted to get  
14 that out of the way first. At this point if there's no  
15 reason not to, I would go ahead and let the parties  
16 start calling their witnesses in the order that the  
17 parties proposed to the Commission. What I am going to  
18 say is right now I've got three witnesses down to  
19 testify today. Depending on how long these witnesses  
20 testify, it's my intent to take a break after each  
21 witness, as well as a lunch break. It's about 10:00 now  
22 so I expect I'll go to about 10:30 before we take a  
23 break. Is there anybody who doesn't agree with that?

24 Okay. All right. With that in mind,  
25 Mr. Agathen, you can call the Complainants' first



1 witness.

2 MR. AGATHEN: Thank you, Judge. Complainants  
3 call Mr. Donald Lowenstein.

4 JUDGE CLARK: Mr. Lowenstein, would you please  
5 state and spell your name for the record?

6 THE WITNESS: My full name is Lewis Donald  
7 Lowenstein, L-o-u-i-s D-o-n-a-l-d  
8 L-o-w-e-n-s-t-e-i-n.

9 JUDGE CLARK: Thank you. And would you raise  
10 your right hand to be sworn?

11 (Witness sworn.)

12 JUDGE CLARK: Thank you. You may proceed,  
13 Mr. Agathen.

14 MR. AGATHEN: Thank you, Judge.

15 MS. CALLENBACH: Excuse me, Judge Clark. I'm  
16 sorry. This is Anne Callenbach. May we have leave to  
17 voir dire this witness prior to his testimony?

18 JUDGE CLARK: Let me ask a question. What  
19 purpose are you voir diring this witness for? Is it  
20 merely to establish that they're not an expert?

21 MS. CALLENBACH: He's not been designated as  
22 an expert. That was not the direction we were going.  
23 He's clearly a fact witness, but we don't believe that  
24 he has first-hand knowledge or any perception of the  
25 relevant facts of this case and we'd like to simply

1 inquire about his first-hand knowledge, perception,  
2 qualifications, skill, et cetera, just to qualify him as  
3 a fact witness.

4 JUDGE CLARK: Okay. Go ahead.

5 MS. CALLENBACH: Thank you, Judge.

6 LEWIS DONALD LOWENSTEIN,  
7 being sworn, testified as follows:

8 VOIR DIRE EXAMINATION BY MS. CALLENBACH:

9 Q. Good morning, Mr. Lowenstein. How are you?

10 A. Fine. Thank you.

11 Q. Is it true that you have a bachelor's degree  
12 in accounting; is that correct?

13 A. That's correct.

14 Q. And you're a licensed CPA in the state of  
15 Missouri?

16 A. Yes.

17 Q. Okay. So you're not a Professional Engineer;  
18 is that correct?

19 A. That's correct.

20 Q. And you have never worked for a public  
21 utility?

22 A. No.

23 Q. Okay. You have no experience regarding the  
24 design and engineering of an HVDC transmission line, do  
25 you?

1 A. No.

2 Q. You have no first hand knowledge of the  
3 specific design and engineering of this particular  
4 project; is that correct?

5 A. That's correct.

6 MS. CALLENBACH: So Judge, at this time we  
7 don't believe that this witness is qualified to testify  
8 as either an SME or a fact witness. He has no special  
9 training or expertise, he has no first-hand knowledge,  
10 and we move that he not be permitted to testify in this  
11 proceeding.

12 JUDGE CLARK: Mr. Agathen, respond, please.

13 MR. AGATHEN: Yes, Judge. I'll just cut  
14 through one question of several that I was going to ask  
15 Mr. Lowenstein, several questions, and they deal with  
16 the publication on the website by Grain Belt of their  
17 claim that they have the right of eminent domain in  
18 Missouri.

19 JUDGE CLARK: Has your witness seen that  
20 publication?

21 MR. AGATHEN: Yes.

22 JUDGE CLARK: Okay. I'm going to overrule  
23 Respondents and I'm going to allow this witness to  
24 testify.

25 MR. AGATHEN: Thank you, Judge.

1 DIRECT EXAMINATION BY MR. AGATHEN:

2 Q. Mr. Lowenstein, I'm just going to cut to the  
3 chase here and get to the factual issue. Are you  
4 familiar with Grain Belt's public website?

5 A. Yes, sir.

6 Q. Have you looked at it several times?

7 A. Yes.

8 Q. Have you seen where it makes the claim that  
9 Grain Belt has the right of eminent domain in Missouri  
10 with respect to the Grain Belt line?

11 A. Yes. It's on the frequently asked questions  
12 page, fourth item in the left column.

13 Q. When was the last time you noticed that that  
14 claim was still on the website?

15 A. 5:00 last night.

16 MR. AGATHEN: Thank you, Judge. That's all  
17 I'll have. With this -- Excuse me. I was going to ask  
18 if the witness could be excused, but I know there's  
19 potential for cross-examination.

20 JUDGE CLARK: Yes, there is. Since we're  
21 doing all testimony live and there's no prefiled  
22 testimony, I have down for order of cross for this  
23 witness that Staff gets first cross-examination.

24 MR. PRINGLE: Thank you, Judge. Staff has no  
25 questions.

1 JUDGE CLARK: Any questions from Respondents?

2 MS. CALLENBACH: Yes, Judge. Thank you. We  
3 do have several.

4 CROSS-EXAMINATION BY MS. CALLENBACH:

5 Q. Typically I would ask if you remembered your  
6 direct testimony; but given that it was three minutes  
7 ago, I'll assume that we're all still familiar with it.  
8 Your counsel asked you about statements on the Grain  
9 Belt website regarding eminent domain, correct?

10 A. Yes.

11 Q. You're not an attorney, are you, sir?

12 A. No.

13 Q. So you're simply observing the statement that  
14 we have eminent domain in its existence on the website,  
15 true?

16 A. I don't understand your question.

17 Q. You're not an attorney. So you're not  
18 qualified to testify what that statement on the website  
19 might mean or why that might be relevant to this case.  
20 You're simply testifying, I believe, and correct me if  
21 I'm wrong, that the statement that we have eminent  
22 domain appears on the website. Is that your testimony?

23 A. That's my testimony in terms of the factual  
24 side. I am the President of the Missouri Landowners  
25 Alliance. And on behalf of our members, hundreds and

1 hundreds of them, we feel that by putting on the website  
2 you have the power of eminent domain when, in fact, from  
3 our position the validity of that claim is in question,  
4 we feel that that puts Grain Belt on a superior  
5 negotiation position with our landowners and we don't  
6 think it's fair for them to claim they have the power of  
7 eminent domain and use that as a possible strong arm  
8 tactic for our members to sign over easements, and  
9 that's my deeper assessment of you putting that  
10 statement or Grain Belt putting that statement on their  
11 website.

12 MS. CALLENBACH: Judge, we move to strike the  
13 statement that the witness just made regarding a strong  
14 arm in negotiations. It's argumentative.

15 JUDGE CLARK: I'm going to overrule that.

16 BY MS. CALLENBACH:

17 Q. Mr. Lowenstein, you're aware, are you not,  
18 that when Grain Belt Express received the CCN from the  
19 Commission that they were granted the power of eminent  
20 domain, correct?

21 A. Yes, as long as they follow the provisions of  
22 what was granted to them.

23 Q. And the CCN, it remains in full force and  
24 effect until the Commission issues an order either  
25 revoking it or changing it. Do you agree with that

1 statement?

2 MR. AGATHEN: Judge, I'm going to object that  
3 calls for a legal conclusion. This witness isn't  
4 qualified to answer that question.

5 JUDGE CLARK: What's the question again?

6 MS. CALLENBACH: The question, sir, was  
7 whether he was aware that we have eminent domain based  
8 upon the issuance of the order granting the CCN and that  
9 that power stays with the company until it's revoked by  
10 the Commission or the Commission issues another order.

11 JUDGE CLARK: It's not calling for a legal  
12 conclusion. It's merely asking if he's aware of  
13 something. I'm going to allow him to answer to the  
14 extent he's able to.

15 THE WITNESS: Yes, I'm aware of what you said.

16 MS. CALLENBACH: Thank you. We have no  
17 further questions.

18 JUDGE CLARK: Are there any questions from the  
19 Commission? I hear none. I have a couple of questions  
20 I believe I already asked your attorney, but I'm going  
21 to ask you directly.

22 QUESTIONS BY JUDGE CLARK:

23 Q. You've seen the press release in this?

24 A. Yes, sir.

25 Q. And you've seen the website that the alleged

1 broadband change is in?

2 A. Yes, sir.

3 Q. You've also seen the letter to the landowners?

4 A. Yes, sir.

5 Q. And did you note those as containing changes  
6 from what you knew the project to be?

7 A. The broadband is certainly a difference and in  
8 light of infrastructure plan in Congress right now, I  
9 would even question whether a private broadband venture  
10 along the lines would be superior to providing rural  
11 internet everywhere. I would even question the  
12 viability and feasibility of that statement. Also,  
13 things that I read in there talking about not providing  
14 as much electricity to the higher priced market out east  
15 I am a Certified Public Accountant. I do understand  
16 revenues and expenses and I can certainly see with  
17 clarity that the lower priced sale of electricity around  
18 here compared to the east coast would be significantly  
19 different in terms of expected revenue; hence, is the  
20 economic viability of the line the same with that change  
21 as it would have been without that change, and I would  
22 claim yes, it's significantly different.

23 MS. CALLENBACH: Judge, we'd like to object to  
24 the witness's answer. He's not qualified to discuss  
25 broadband activity regardless of what bills are pending



1 in Congress. We'd request that he stick to the question  
2 that was posed, please.

3 THE WITNESS: May I comment, Judge?

4 JUDGE CLARK: No, wait just a second. I'm  
5 going to allow your attorney to respond.

6 MR. AGATHEN: Judge, I think the witness is  
7 simply trying as best he could to answer your question.

8 JUDGE CLARK: Well, I believe he's answered  
9 the question, and I'll take the rest of it for weight.  
10 Do you have any questions for this witness?

11 MS. CALLENBACH: No, we don't.

12 JUDGE CLARK: Okay. Any questions for this  
13 witness upon my questions? Staff?

14 MR. PRINGLE: No recross, Judge. Thank you.

15 JUDGE CLARK: Mr. Agathen?

16 MR. AGATHEN: I have nothing, Judge.

17 JUDGE CLARK: We've already established that  
18 Respondents do not. It is now 10:08. I had indicated  
19 it was my intention to take a short break after each  
20 witness. I think this probably is a good time to take a  
21 break. I'm going to -- How long do people need? Is 15  
22 minutes long enough? Okay.

23 MR. AGATHEN: Judge, a quick question, if I  
24 may. This is Paul Agathen. Could the witness be  
25 excused?

1 JUDGE CLARK: Yes.

2 MR. AGATHEN: I'm sorry?

3 JUDGE CLARK: Let me ask the other parties. I  
4 generally prefer witnesses to stick around, but this  
5 witness's testimony was extraordinarily limited. Is  
6 there any reason that Respondents believe they would  
7 need to question this witness again?

8 MS. CALLENBACH: Judge, I don't know that we  
9 believe that we will need to question him, but I'm  
10 assuming that because he was asked to be excused that  
11 this is the conclusion of Complainants' case in chief;  
12 is that correct?

13 JUDGE CLARK: I haven't asked that question  
14 yet.

15 MS. CALLENBACH: I believe if the witness is  
16 intending to leave that at this time we'd like to renew  
17 our motion to dismiss due to the fact that Complainants  
18 have failed to meet their burden of proof. They've not  
19 entered any evidence into the record as part of their  
20 case in chief, and the Commission has previously found  
21 that proof means evidence entered into the record. Even  
22 though we did have a motion pending at an earlier time  
23 to dismiss this case, we feel that to preserve that we  
24 would like to renew that motion now because they failed  
25 to meet their burden and at this time we don't believe

1 that we're required to present any evidence to rebut  
2 what they have provided. Mr. Zadlo is available to  
3 testify to material issues in this case, but we're not  
4 certain that he should be required to do so given the  
5 lack of a case in chief that's been presented.

6 JUDGE CLARK: Well, I think you've jumped the  
7 gun here. I had talked about taking merely a break  
8 after this witness and whether or not the witness can be  
9 excused. I didn't ask Mr. Agathen if he's finished  
10 presenting his case in chief. So I think that's a  
11 little bit premature. What I will say is I will  
12 acknowledge the move to dismiss, the motion to dismiss  
13 and I will take it under advisement.

14 MS. CALLENBACH: Thank you, Judge.

15 MR. AGATHEN: Judge.

16 JUDGE CLARK: Mr. Agathen?

17 MR. AGATHEN: The Complainants will be  
18 offering the ten exhibits that they had prefiled that  
19 Mr. Lowenstein would not be required in any manner with  
20 respect to those exhibits. So I'd like to renew my  
21 request that he be excused. He does have a prior  
22 commitment at 1:00.

23 JUDGE CLARK: It's not 1:00 yet. I would like  
24 him to stick around just a little bit longer in case he  
25 becomes necessary for some reason. What I'm going to do

1 at this time is we're going to go ahead and recess until  
2 10:25, and we'll go off the record now.

3 (Off the record.)

4 JUDGE CLARK: Okay. It is now 10:25. So  
5 we'll go back on the record. We just finished at least  
6 for now with the testimony of Mr. Donald Lowenstein. At  
7 this time, Mr. Agathen, you can either present your next  
8 witness or go on with the remainder of your case. I  
9 think you're muted.

10 MR. AGATHEN: Excuse me. We do not have  
11 another witness. Mr. Lowenstein will be our only  
12 witness. If it's a convenient time to do so, I would  
13 like to offer the ten exhibits that we had prefiled  
14 earlier.

15 JUDGE CLARK: I think it is a good time to do  
16 that. If you want to go ahead and offer your first  
17 exhibit?

18 MR. AGATHEN: Thank you, Judge. At this point  
19 the Complainants offer Exhibit No. 1 which had been  
20 prefiled earlier.

21 JUDGE CLARK: And Exhibit No. 1 is?

22 MR. AGATHEN: That's the press release.

23 JUDGE CLARK: Of August 25, 2020. Any  
24 objection to admitting Complainants' Exhibit 1 onto the  
25 hearing record?

1 MR. SCHULTE: No objection to Exhibit 1,  
2 Judge.

3 JUDGE CLARK: Staff?

4 MR. PRINGLE: No objection to Exhibit 1,  
5 Judge.

6 JUDGE CLARK: Okay. Exhibit 1 will be  
7 admitted onto the hearing record.

8 (COMPLAINANTS' EXHIBIT 1 WAS RECEIVED INTO  
9 EVIDENCE AND MADE A PART OF THIS RECORD.)

10 MR. AGATHEN: At this point, the Complainants  
11 offer Exhibit 2, the prefiled Exhibit No. 2, which is a  
12 Response to Complainants' Second Set of Requests for  
13 Admissions.

14 JUDGE CLARK: Any objection to Complainants'  
15 Exhibit 2? Respondents?

16 MR. SCHULTE: Yes, we object to Exhibit No. 2  
17 being entered into evidence. There's been no foundation  
18 laid or context provided for Exhibit 2. Exhibit 1 is  
19 the press release which was the issue of the complaint  
20 and we've stipulated to that, but Exhibit -- actually  
21 I'll hold my objections for the other exhibits but it's  
22 going to be similar. None of them have any context or  
23 foundation laid.

24 JUDGE CLARK: Now, Exhibit 2 is a Request for  
25 Admissions, correct?

1 MR. AGATHEN: That's correct.

2 JUDGE CLARK: And Mr. Schulte, you signed that  
3 Requests for Admissions in regard to those answers?

4 MR. SCHULTE: They were verified by Eric  
5 Miller, Vice President of Invenergy Transmission. I  
6 signed the certificate of service. And there's also  
7 some exhibits if I'm looking at the right -- I'm sorry.  
8 I skipped ahead. No, I was on the right one. There are  
9 some exhibits. Exhibit A is a letter from Mr. Miller  
10 and a rendering of a transmission tower.

11 JUDGE CLARK: Any objection from Staff?

12 MR. PRINGLE: Yes, Judge. Staff joins with  
13 Respondents' objection. There's just no foundation or  
14 context behind those exhibits.

15 JUDGE CLARK: Okay. I'm going to overrule  
16 that objection and Complainants' Exhibit, the Responses  
17 to Second Set of Admissions is admitted onto the hearing  
18 record.

19 (COMPLAINANTS' EXHIBIT 2 WAS RECEIVED INTO  
20 EVIDENCE AND MADE A PART OF THIS RECORD.)

21 MR. AGATHEN: Thank you, Judge. At this point  
22 the Complainants offer Exhibit 3, but we would like to  
23 limit that offer if we could to only question and answer  
24 to the Data Request No. 8 which is a part of Exhibit 3.

25 JUDGE CLARK: Give me a second to get there.

1 Any objections to Complainants' Exhibit 3?

2 MR. SCHULTE: Yes, Judge. Respondents object  
3 to the acceptance of Exhibit No. 3. Not only is there  
4 no foundation or context provided but there was a  
5 supplemental response provided to Request No. 8.

6 JUDGE CLARK: When was that supplemental  
7 response provided?

8 MR. SCHULTE: April 1, 2021.

9 JUDGE CLARK: Staff?

10 MR. PRINGLE: Yes, Judge. Object to the  
11 extent that the supplemental response should be included  
12 in the exhibit to get the full context.

13 JUDGE CLARK: I do agree with you there. I'm  
14 going to admit it onto the hearing record and overrule  
15 the objections. However, if you wish to provide the  
16 supplemental response as an exhibit, you can submit that  
17 for admission. Okay.

18 (COMPLAINANTS' EXHIBIT 3 WAS RECEIVED INTO  
19 EVIDENCE AND MADE A PART OF THIS RECORD.)

20 MR. SCHULTE: Thank you, Judge. Do we do that  
21 after today?

22 JUDGE CLARK: I'm not going to make you do it  
23 now. What I would like for you to do is unless you want  
24 to do it at some point during the hearing, you can do it  
25 after the hearing and I will allow time for other

1 parties to respond to the exhibit and make their own  
2 objections?

3 MR. SCHULTE: Okay. Do we file that in EFIS  
4 or do we send it via email to the parties? We have -- I  
5 mean, I have a copy of it here. It's just a matter of  
6 -- I would move to enter it now, but just how do I get a  
7 copy to everyone else?

8 JUDGE CLARK: That's the difficulty at this  
9 point. Does Staff have a copy of the supplemental  
10 responses?

11 MR. PRINGLE: Yes, I have the email when the  
12 supplemental response was sent.

13 JUDGE CLARK: Mr. Agathen, do you have those  
14 supplemental responses?

15 MR. AGATHEN: We do, Judge.

16 JUDGE CLARK: Mr. Agathen, do you have any  
17 objections to admitting those supplemental responses?

18 MR. AGATHEN: As long as it's confined to what  
19 they sent to us in the way of the supplemental response,  
20 I have no objection.

21 JUDGE CLARK: Staff, do you have any objection  
22 to admitting the supplemental responses to those  
23 answers?

24 MR. PRINGLE: No, Judge. That would be our  
25 preference.



1 JUDGE CLARK: Okay. I don't hear any  
2 objections. So why don't we call that -- Why don't we  
3 call that Exhibit -- how are we going to get this to the  
4 court reporter? Give me just a second. If there's no  
5 confidential information on that exhibit, I'm going to  
6 ask that you file it in EFIS and I'm going to call it  
7 Respondents' Exhibit 200, and that will be admitted onto  
8 the hearing record.

9 (RESPONDENTS' EXHIBIT 200 WAS RECEIVED INTO  
10 EVIDENCE AND MADE A PART OF THIS RECORD.).

11 JUDGE CLARK: Go ahead, Mr. Agathen.

12 MR. AGATHEN: Thank you. The Complainants  
13 offer Exhibit 4, which is a document provided by Grain  
14 Belt Express and generally states that the power will be  
15 generated for the line in western Kansas and the  
16 surrounding area, which the surrounding area is  
17 ambiguous there. It could certainly be left to include  
18 neighboring states like Oklahoma which would obviously  
19 represent a significant change to the project originally  
20 approved by the Commission.

21 JUDGE CLARK: Any objections?

22 MR. SCHULTE: We object. Mr. Agathen cannot  
23 provide testimony regarding the foundation or context  
24 for this exhibit, and so no foundation or context has  
25 been provided.

1 JUDGE CLARK: Was this exhibit provided in  
2 response to a discovery request?

3 MR. AGATHEN: It was not, Your Honor.

4 MR. PRINGLE: Staff would also object, Judge  
5 Clark. The ambiguous nature of this exhibit we just  
6 have no background behind it.

7 JUDGE CLARK: Mr. Agathen, would you respond?

8 MR. AGATHEN: It's a statement made by Grain  
9 Belt. They're not denying that and makes it ambiguous I  
10 think as to whether or not there has been a change in  
11 plan for the project as originally approved by the  
12 Commission. If they are importing power now from places  
13 other than western Kansas, I think that adds to our  
14 argument that there's been a major significant change in  
15 the project from what was originally approved.

16 JUDGE CLARK: Okay. I am going to admit it  
17 onto the record and give it its due weight. 536.070(10)  
18 addresses records or memorandum of an act or transaction  
19 or occurrence as admissible. So that will be admitted  
20 onto the hearing record.

21 (COMPLAINANTS' EXHIBIT 4 WAS RECEIVED INTO  
22 EVIDENCE AND MADE A PART OF THIS RECORD.)

23 MR. SCHULTE: Judge, this is not -- I don't  
24 believe this falls into that category. In fact, I  
25 cannot testify this came from Grain Belt because I'm not

1 a witness. Mr. Agathen can't testify that this came  
2 from Grain Belt because he's not a witness. I don't  
3 know if it's connected to any commercial discussions or  
4 not.

5 JUDGE CLARK: I'll note that and that will go  
6 to weight. So Complainants' Exhibit 4 is admitted onto  
7 the hearing record.

8 MR. AGATHEN: Thank you, Judge. We'll offer  
9 Exhibit 5 at this point which is Respondents'  
10 Supplemental Responses to Data Requests No. 1 through 4  
11 and 23. They simply validate the authenticity of the  
12 material in Exhibits 6 and 7.

13 JUDGE CLARK: Any objections from Respondents?

14 MR. SCHULTE: Yes. We object for lack of  
15 foundation.

16 JUDGE CLARK: Now, these were answers and  
17 documentation provided in response to a data request?

18 MR. SCHULTE: Actually this is only the  
19 answers. There are -- There's no documentation  
20 attached. It references the attachments and explains  
21 why they're confidential, but the attachments are not  
22 included as part of this exhibit, as I understand it.

23 JUDGE CLARK: Okay. But the answers are  
24 answers provided by Grain Belt in response to data  
25 requests?

1 MR. SCHULTE: That is correct. And we've  
2 actually -- I'd like to expand upon my objection if I  
3 can. We did object to all of this, all of these  
4 responses as not relevant to the subject matter of this  
5 case. That was overruled in a motion -- in an order  
6 granting in part a motion to compel. So I don't want to  
7 wave that, but I do recognize that it was previously  
8 overruled in a motion to compel regarding relevance.

9 JUDGE CLARK: Okay. Staff?

10 MR. PRINGLE: Yeah. Judge, we would object to  
11 relevance. The Commission doesn't have jurisdiction  
12 over the state of Kansas and these are communications  
13 with the state of Kansas.

14 JUDGE CLARK: Mr. Agathen, response?

15 MR. AGATHEN: I don't think it matters to whom  
16 the communication was made. It supports our position  
17 that Respondents have already committed to changing the  
18 project to the extent that they're now going to be  
19 providing power to customers in Kansas. And again, this  
20 was part of a motion to compel --

21 JUDGE CLARK: I understand that, Mr. Agathen.  
22 So that's your argument as to why it's relevant?

23 MR. AGATHEN: Yes.

24 JUDGE CLARK: Okay. Complainants' Exhibit 5  
25 is admitted onto the hearing record and the objections

1 will be overruled.

2 (COMPLAINANTS' EXHIBIT 5 WAS RECEIVED INTO  
3 EVIDENCE AND MADE A PART OF THIS RECORD.)

4 MR. AGATHEN: At this point we'll offer  
5 Exhibit 6, which is an email thread beginning at the top  
6 with an email from Dana Satler, S-a-t --

7 JUDGE CLARK: Is this confidential in any way?

8 MR. AGATHEN: No, Judge.

9 JUDGE CLARK: Respondents, is this  
10 confidential in any way?

11 MR. SCHULTE: This one is not, Judge.

12 JUDGE CLARK: Go ahead, Mr. Agathen.

13 MR. AGATHEN: It's an email dated August 6,  
14 2020. It states that the line will originate in  
15 Spearville, Kansas as opposed to the original project  
16 which was supposed to originate in Dodge City. I think  
17 we're offering this as simply one more example of the  
18 changes which are being proposed from the original  
19 project as approved by the Commission.

20 JUDGE CLARK: And both of these changes as to  
21 the route I assume are in Kansas?

22 MR. AGATHEN: That is correct.

23 JUDGE CLARK: And you're offering -- You  
24 believe this is relevant because it shows other  
25 commitments to make changes?

1 MR. AGATHEN: Yes, it does. The gist of the  
2 Commission's order in the CCN case was that the wind  
3 farms would originate in western Kansas and that they  
4 would be centered around Dodge City. Now they're saying  
5 Spearville, Kansas. So there is at least potentially a  
6 change there from the original project.

7 JUDGE CLARK: So you believe that was part of  
8 the Commission's order?

9 MR. AGATHEN: Yes.

10 JUDGE CLARK: Any objections from Respondents?

11 MR. SCHULTE: Yes. We object to relevance and  
12 to -- relevance because it's discussing the Kansas  
13 portion of the project. We also object because there's  
14 no foundation laid. The people on these emails are not  
15 witnesses in this case. They are discussing -- well,  
16 the difference between Dodge City and Spearville, and  
17 again this is not testimony but because Mr. Agathen is  
18 attempting to provide testimony to give these exhibits  
19 context and foundation, if I may be allowed to respond.

20 Spearville and Dodge City are a few miles  
21 apart. You can refer to the area as Spearville.  
22 There's -- But again, there's no foundation. If we had  
23 a witness that could actually speak to these issues  
24 instead of attorneys making argument, then we might be  
25 able to demonstrate that this is an email.

1 JUDGE CLARK: Staff?

2 MR. PRINGLE: Yes, Judge. We also object to  
3 lack of foundation and further the relevance. This has  
4 to do with the Kansas portion of the line and the  
5 Commission does not have jurisdiction over the state of  
6 Kansas.

7 JUDGE CLARK: Mr. Agathen, how does this  
8 relate to Exhibit 5? You had mentioned when we talked  
9 about Exhibit 5 that it involved the following  
10 documents.

11 MR. AGATHEN: That's correct, Judge. It's my  
12 understanding looking at Exhibit 6 here is that was part  
13 of the material provided to us when the Commission  
14 overruled Grain Belt's motion to compel -- excuse me.  
15 We had filed a motion to compel. They objected, and the  
16 Commission directed them to file these responses which  
17 included Exhibit 6.

18 JUDGE CLARK: Okay. The objections from  
19 Respondents and Staff are overruled and Exhibit 7 is  
20 admitted onto the hearing record.

21 MR. AGATHEN: Was that 6, Your Honor?

22 JUDGE CLARK: That was 6. I apologize.  
23 Exhibit 6 is admitted onto the hearing record. Exhibit  
24 7 has not been admitted onto the hearing record.

25 (COMPLAINANTS' EXHIBIT 6 WAS RECEIVED INTO

1 EVIDENCE AND MADE A PART OF THIS RECORD.)

2 MR. AGATHEN: We are not going to offer  
3 Exhibit 7, Judge.

4 JUDGE CLARK: Okay.

5 MR. AGATHEN: Exhibits 8, 9 and 10 deal with  
6 confidential material. If there are going to be  
7 objections, it's probably going to require that we go  
8 into closed session. I'll make the offer of Exhibits  
9 8C, 9C and 10C. Maybe there will not be any objection  
10 to them.

11 JUDGE CLARK: Any objections from Respondents  
12 or Staff to Complainants' 8C, 9C and 10C all designated  
13 confidential?

14 MR. SCHULTE: Yes. Respondents object for  
15 lack of relevance and lack of foundation.

16 JUDGE CLARK: Okay. What I'm going to do is  
17 we're going to go in camera for this session, and I'm  
18 going to create a breakout session. You all will  
19 receive an invitation to join. You may have to click  
20 join. It may just take you there automatically. It  
21 will take about a minute to get everybody there and then  
22 we will be separate from what is going out on the live  
23 stream. Those people like Mr. Lowenstein who are not  
24 authorized to hear the information will be left in the  
25 main courtroom so to speak. Anybody who does remain in



1 the main courtroom, I'm going to ask that you mute  
2 yourselves because the live feed will continue to  
3 broadcast what's going on in the main room. So anything  
4 you say could potentially be heard. Let's see.

5 MR. AGATHEN: Judge, could I say something?

6 JUDGE CLARK: Who is speaking?

7 MR. AGATHEN: I'd like to correct something  
8 that I stated earlier. We're not going to offer Exhibit  
9 9C.

10 JUDGE CLARK: I'll mark 9C as not being  
11 offered. It will take me just a minute to include  
12 everybody who is authorized to see this information.  
13 Staff, is there any reason that Claire Eubanks is not  
14 authorized?

15 MR. PRINGLE: No, Judge. All of the Staff  
16 witnesses are authorized.

17 JUDGE CLARK: Okay. A specific request was  
18 made that Ms. Luckey be allowed in and it was granted.  
19 So in actuality the only person I have who is not  
20 authorized to see this information is Mr. Lowenstein; is  
21 that correct?

22 MR. AGATHEN: It is from Complainants'  
23 standpoint, Judge.

24 JUDGE CLARK: From Respondents?

25 MR. SCHULTE: Yes. My understanding is that

1 everyone else on the line is with Staff or the  
2 Commission?

3 JUDGE CLARK: Yes, I believe so. Bear with me  
4 just a moment. Okay. Bear with me. I seem to be  
5 having some difficulty getting everybody there. I  
6 apologize for the delay in that. I'll give it just a  
7 minute more to see if anybody else joins.

8 (In-camera session)

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(In-camera session)



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11 (REPORTER'S NOTE: At this point, public  
12 session resumed.)

13

JUDGE CLARK: We are no longer in camera. We  
14 are on the record in the main courtroom so to speak. At  
15 this time, Mr. Agathen, do you have any other evidence  
16 or testimony that you wish to offer in your case in  
17 chief? You're muted.

18

MR. AGATHEN: We do not, Judge.

19

JUDGE CLARK: Okay. All right. At this time,  
20 Respondents, you may call your first witness.

21

MR. AGATHEN: Judge, could I renew my request  
22 at this point that Mr. Lowenstein be excused?

23

JUDGE CLARK: I apologize. I forgot about  
24 that. Is there any objection to excusing Mr. Lowenstein  
25 at this time? Is there anybody who believes that he

1 will need to be called again? Respondents?

2 MR. SCHULTE: No objection.

3 JUDGE CLARK: Staff?

4 MR. PRINGLE: No objection, Judge.

5 JUDGE CLARK: Okay. Mr. Lowenstein is  
6 excused.

7 MR. AGATHEN: Thank you, Judge.

8 (Mr. Lowenstein excused.)

9 JUDGE CLARK: Respondents, you can go ahead  
10 and call your first witness.

11 MR. SCHULTE: Before we do so now that the  
12 case in chief of Complainants is officially closed, we'd  
13 like to renew our motion to dismiss. The evidence  
14 exhibits with no context or explanation or foundation do  
15 not form the basis of an act or omission by the  
16 Complainants that violates a rule or ordinance of the  
17 Commission, and so we would move to dismiss based on  
18 lack of a case established by the Complainant.

19 JUDGE CLARK: Response, Mr. Agathen?

20 MR. AGATHEN: Yes, Judge. I think the  
21 evidence shows that Respondents clearly have abandoned  
22 the project, will not be pursuing the project which was  
23 given approval by the Commission. For example, they're  
24 changing dramatically the converter station in Missouri  
25 moving from 500 MW to 2,500 MW. Since they've abandoned

1 the original project approved by the Commission, it's  
2 our position that they also have forfeited by doing so  
3 the CCN which was granted; that the CCN then becomes a  
4 nullity in effect. But at this point we would argue  
5 that Respondents do not have a CCN to build anything in  
6 Missouri. Therefore, their continued insistence that  
7 they do the have the right of eminent domain and their  
8 insistence in effect that they do have a valid CCN are  
9 both violations of the Commission order.

10 JUDGE CLARK: Thank you. I'm going to take  
11 the motion to dismiss under advisement and it will be  
12 ruled on with the case. Go ahead with your evidence.

13 MR. SCHULTE: Thank you, Judge. In that case,  
14 Respondents call Kris Zadlo.

15 JUDGE CLARK: Mr. Zadlo, would you please  
16 state and spell your name for the record?

17 THE WITNESS: My name is Kris Zadlo spelled  
18 K-r-i-s, last name Zadlo, Z-a-d-l-o.

19 JUDGE CLARK: Mr. Zadlo, would you raise your  
20 right hand and be sworn?

21 (Witness sworn.)

22 JUDGE CLARK: Go ahead.

23 KRIS ZADLO,  
24 being sworn, testified as follows:

25 DIRECT EXAMINATION BY MR. SCHULTE:

1 Q. Good morning, Mr. Zadlo. Please state your  
2 name and business address. We've covered your name. So  
3 your business address and your title will do.

4 A. Sure. I'm Vice President of Invenergy  
5 Transmission LLC. My business address is 1 South  
6 Wacker, Suite 1900, Chicago, Illinois 60606.

7 Q. Could you please discuss your educational  
8 background and work experience?

9 A. I received a master's in science in electrical  
10 engineering from Purdue University in 1990 and a  
11 bachelor's of science from Rose-Hulman Institute of  
12 Technology in 1989. I am a licensed professional  
13 engineer in the state of Illinois. I have been employed  
14 with Invenergy since 2008, and I'm responsible for  
15 managing services provided to all Invenergy projects  
16 with respect to their commercial activities pertaining  
17 to transmission assets. These responsibilities include  
18 managing technical and regulatory issues.

19 Q. Is it fair to say, Mr. Zadlo, that you have  
20 responsibility for the design and engineering of the  
21 Grain Belt Express transmission project?

22 A. Yes, that's a fair statement.

23 JUDGE CLARK: Say that again, please.

24 THE WITNESS: Yes, that's a fair statement.

25 JUDGE CLARK: I'm sorry. The question,

1 please.

2 THE WITNESS: Oh, I'm sorry.

3 MR. SCHULTE: Is it fair to say that Mr. Zadlo  
4 has responsibility for the design and engineering of the  
5 Grain Belt Express transmission project.

6 JUDGE CLARK: Thank you. Go ahead.

7 THE WITNESS: Yes, that's a fair statement.

8 BY MR. SCHULTE:

9 Q. Have you previously testified before the  
10 Missouri Public Service Commission?

11 A. Yes, I have previously testified before this  
12 Commission in Grain Belt's CCN case, as well as the case  
13 addressing Invenergy Transmission acquisition of Grain  
14 Belt Express LLC.

15 Q. Thank you. This complaint is based on the  
16 premise that an August 25, 2020 press release indicates  
17 that the design and engineering of the project is  
18 materially different than the design and engineering  
19 described in the CCN case. So has the design and  
20 engineering of the project changed?

21 A. Absolutely not. The press release was a  
22 marketing exercise to indicate our openness to exploring  
23 the potential to drop off more power in Missouri. The  
24 press release also announced the results of a conceptual  
25 study by PA Consulting regarding the opportunity to

1 achieve additional consumer savings based upon various  
2 assumptions. These assumptions were part of a  
3 theoretical analysis. Design and engineering is not  
4 theoretical. Design and engineering of the Grain Belt  
5 Express project is an extremely complex endeavor and  
6 does not change overnight. We have not stopped and are  
7 continuing to pursue the certificated version of the  
8 project. That design and engineering is still very much  
9 in place.

10 MR. SCHULTE: Thank you, Mr. Zadlo. I have no  
11 further questions for the witness.

12 JUDGE CLARK: Okay. I have Staff as the next  
13 to have cross of Mr. Zadlo; is that correct?

14 MR. PRINGLE: That is correct, Judge. Staff  
15 has no questions for Mr. Zadlo.

16 JUDGE CLARK: Mr. Agathen, on behalf of  
17 Complainants, do you have any questions for Mr. Zadlo?

18 MR. AGATHEN: I do, Judge. Good morning,  
19 Mr. Zadlo.

20 THE WITNESS: Good morning.

21 CROSS-EXAMINATION BY MR. AGATHEN:

22 Q. You mentioned the press release issued by  
23 Invenergy on August 25 of last year, correct?

24 A. I don't believe I mentioned it.

25 Q. Well, you were asked about it by counsel?

1 A. Uh-huh, yes.

2 Q. Okay. The first paragraph after the heading  
3 of that press release says that the phased construction  
4 plan discussed in the press release would double  
5 investment in Missouri to \$1 million. Do you recall  
6 that?

7 A. Roughly, yes, I recall that.

8 MR. SCHULTE: Could I confirm that Mr. Zadlo  
9 has an opportunity to look at the press release itself  
10 if you have it with you, Mr. Zadlo.

11 THE WITNESS: I can get it. Am I allowed to  
12 grab it?

13 JUDGE CLARK: Certainly. Go ahead. It has  
14 been admitted into evidence. So you can certainly  
15 reference it.

16 THE WITNESS: Okay. I have it in front of me.

17 JUDGE CLARK: Okay. Mr. Schulte, did you want  
18 those questions that were previously asked reasked now  
19 that he has it in front of him or do you want Mr.  
20 Agathen to be able to continue?

21 MR. SCHULTE: I think that would be helpful to  
22 reask the questions. Thank you, Judge.

23 THE WITNESS: Sure.

24 JUDGE CLARK: Mr. Agathen, could you back up  
25 and ask Mr. Zadlo the questions that you previously

1 asked in relation to the press release?

2 MR. AGATHEN: Yes.

3 BY MR. AGATHEN:

4 Q. The first paragraph after the heading, the  
5 heading is blacked out in black, but the first paragraph  
6 after the heading says that the phased construction plan  
7 discussed in the press release would double investment  
8 in Missouri to \$1 million; is that correct?

9 JUDGE CLARK: Mr. Zadlo, I believe he's asked  
10 if that is what it says.

11 THE WITNESS: Yes, it says it would.

12 BY MR. AGATHEN:

13 Q. All right.

14 A. That's correct.

15 Q. The investment in Missouri would increase by  
16 approximately \$500 million, correct?

17 A. That's correct.

18 Q. Do you have a copy of the most recent set of  
19 data requests which we sent to you that would have been  
20 on April 2 titled --

21 JUDGE CLARK: Let me ask a question here. Is  
22 this an exhibit that's been admitted?

23 MR. AGATHEN: It has not.

24 MR. SCHULTE: It was also not on the list of  
25 exhibits provided by Mr. Agathen two days ago.



1 MR. AGATHEN: Judge, I don't think I'm  
2 restricted to asking questions on cross about answers at  
3 a given data request even if they were not admitted in  
4 evidence.

5 JUDGE CLARK: I don't think so either. I  
6 think you're entitled to ask the questions that you have  
7 asked in the data request. I don't think you're  
8 entitled to use the data requests as a deposition of  
9 some kind. If you want to ask him questions from the  
10 data request, you're welcome to do that. If you want to  
11 ask him if he remembers what his answer to a particular  
12 question was in the data request, you're welcome to do  
13 that as well.

14 MR. AGATHEN: Okay. Let me start here again  
15 then.

16 BY MR. AGATHEN:

17 Q. Mr. Zadlo, do you recall stating in answer to  
18 a data request to us something to the effect that the  
19 added 500 million of investment in Missouri represents  
20 the added cost of installing a 2,500 megawatt converter  
21 station in Missouri as opposed to the 500 megawatt  
22 converter station included in the plans approved by the  
23 Commission?

24 A. Yes, I recall that.

25 Q. Could you briefly describe the design and

1 engineering changes which are involved in going from a  
2 500 megawatt converter station to one five times that  
3 size?

4 A. Sure. So we have yet to start engineering and  
5 design of the converter stations in Missouri. We have  
6 not started that engineering. We have not selected a  
7 vendor. What we were stating there were general cost  
8 estimates for the difference between a 500 megawatt  
9 converter station versus a 2,500 converter station.

10 Q. Okay. And my question to you is, could you  
11 describe the design and engineering changes that would  
12 be involved in going from a hypothetical 500 megawatt  
13 converter station to one five times that size?

14 MR. SCHULTE: Objection. Calls for  
15 speculation. The witness just testified that that  
16 engineering has not occurred yet.

17 JUDGE CLARK: Mr. Agathen, what's your  
18 question again?

19 MR. AGATHEN: I'm asking him what kind of  
20 design and engineering changes would be involved in  
21 going from a 500 megawatt converter station to a 2,500  
22 megawatt converter station.

23 JUDGE CLARK: I think that's very different  
24 from asking whether or not design and engineering  
25 changes or whether the design that's being made. He's

1 asking what would be the requirements to the best of  
2 Mr. Zadlo's knowledge for such a change to be  
3 implemented. I'm going to allow him to ask the  
4 question. Your objection is overruled.

5 THE WITNESS: One would be larger than the  
6 other.

7 BY MR. AGATHEN:

8 Q. That's it. It would be larger; there would be  
9 no changes in it other than everything would be five  
10 times the size of what it was before?

11 A. Again, I can't comment on what engineering  
12 changes would have to occur in the converter station  
13 itself. One would be larger than the other.

14 Q. But some changes would have to occur, would  
15 they not?

16 A. Obviously, yes.

17 Q. Okay. Thank you. On a different subject, in  
18 order to build this line you're going to need approval  
19 from MISO in order to connect your line to their  
20 transmission system; is that correct?

21 A. That's correct.

22 Q. Does that process require that Grain Belt  
23 submit some sort of proposed interconnection to MISO for  
24 their approval?

25 A. That's correct.

1 MR. SCHULTE: Objection.

2 JUDGE CLARK: Go ahead and state your  
3 objection, Mr. Schulte.

4 MR. SCHULTE: Objection. This is outside the  
5 scope of Mr. Zadlo's direct testimony. Mr. Zadlo did  
6 not testify about interconnections at all.

7 JUDGE CLARK: And I would just -- Mr. Agathen,  
8 was your question do they need MISO approval?

9 MR. AGATHEN: The question is aimed at -- Let  
10 me first back up and address the objection. As I  
11 understand it, cross-examination isn't limited to  
12 subjects covered in direct examination. Second, what  
13 I'm attempting to do is establish that there has been or  
14 could be at least a change in the interconnection  
15 agreement with MISO from the plan originally approved by  
16 the Commission that which is going to be required for a  
17 2,500 megawatt converter station.

18 JUDGE CLARK: So is your question if the  
19 amount of power delivered changes does that have the  
20 potential to change the interconnection agreement with  
21 MISO; is that your question?

22 MR. AGATHEN: That was certainly a good part  
23 of it, yes.

24 JUDGE CLARK: Is there any other part of it?

25 MR. AGATHEN: I'm then going to go on and ask

1 if they currently have any interconnection requests  
2 pending with MISO.

3 JUDGE CLARK: How does that relate to the  
4 proposed changes in the press release?

5 MR. AGATHEN: It relates to the proposed  
6 change in the delivery system to Missouri going from 500  
7 MW to 2,500 MW for their converter station. That has a  
8 ripple effect including design and engineering changes  
9 in the converter station itself as well as changes in  
10 what's going to be required by MISO in order to approve  
11 the interconnection application.

12 JUDGE CLARK: Okay. Your arguments are -- go  
13 ahead.

14 MR. SCHULTE: If I may respond especially to  
15 Mr. Agathen's statement that the examination does not  
16 need to be within the scope of direct. Mr. Agathen and  
17 the Complainants had every opportunity to present an  
18 expert witness on interconnections. What's happening  
19 here is an attempt to shift the burden of proof from the  
20 Complainants to the Respondents and so not only is it  
21 irrelevant but it's an improper shift of burden if it's  
22 allowed to continue.

23 JUDGE CLARK: As to the first, I disagree with  
24 you. I certainly think the Complainant is entitled to  
25 try and form facts in support of their case off your

1 witness. I also believe that regardless of whether or  
2 not he had the opportunity to call an expert that has  
3 nothing to do whether he can be limited on the scope of  
4 his cross as long as he's not going out of the bounds of  
5 what would be relevancy. Mr. Agathen, I would like you  
6 to make your point quickly --

7 MR. AGATHEN: I will do that, Judge.

8 JUDGE CLARK: -- in maybe a couple questions  
9 because I can see where you're going. If you want to  
10 kind of take this path down to a couple of questions,  
11 I'm going to overrule the objections and allow you to  
12 ask your questions.

13 MR. AGATHEN: I'll try and make it quick.

14 BY MR. AGATHEN:

15 Q. Mr. Zadlo, does Grain Belt currently have any  
16 application for interconnecting a proposed line with the  
17 MISO transmission system?

18 A. We have multiple interconnection requests. We  
19 have no executed agreements with the Midcontinent  
20 Independent System Operator.

21 Q. How many requests are multiple?

22 A. We have about five.

23 Q. Do you know what the request or the capacity  
24 of the converter station is in any or all of those?

25 A. I can't recall.

1 MR. SCHULTE: I'd like to interject here if  
2 the questions are going to get into further detail about  
3 interconnection requests, I believe those qualify as  
4 strategies employed or to be employed or commercial  
5 discussions that are ongoing and commercially sensitive  
6 and would ask that any details about those be addressed  
7 in a closed session.

8 JUDGE CLARK: Okay.

9 MR. AGATHEN: I'll withdraw that question,  
10 Judge.

11 JUDGE CLARK: Okay. The question is  
12 withdrawn.

13 BY MR. AGATHEN:

14 Q. Do the applications that you presently have  
15 pending with MISO, do they specify where the proposed  
16 plan is to be approved, in other words, where the  
17 interconnection is supposed to be made?

18 A. Yes, they do.

19 Q. Are any or all of those at the same point as  
20 the interconnection originally proposed in the plan  
21 approved by the Commission?

22 A. Yes.

23 Q. How many of those?

24 A. One is at the location of how the facility was  
25 certificated.

1 Q. And the others are significantly further away?

2 A. They're different places.

3 Q. But significantly farther from the original  
4 plan?

5 A. I would disagree. They're all in Missouri.

6 Q. Can you tell us approximately how far away the  
7 other interconnections proposals are from the one that  
8 was --

9 MR. SCHULTE: Again, I believe that this gets  
10 into it's sufficiently enough detail that it gets into  
11 commercial discussions that are ongoing and potentially  
12 strategies employed or to be employed.

13 JUDGE CLARK: I agree. I'm going to sustain  
14 that objection.

15 BY MR. AGATHEN:

16 Q. Do you currently have any applications for  
17 interconnecting the proposed line with a PJM system?

18 A. Yes, we do.

19 Q. How many?

20 A. There's a couple of requests.

21 Q. And what is the capacity of the converter  
22 station in those two proposals?

23 A. I can't recall.

24 Q. Pardon?

25 A. I can't recall what those requests are.



1 Q. Less than 3,500?

2 A. Possibly.

3 Q. You just don't know whether or not or you  
4 don't know the magnitude of the converter station  
5 involved in the two applications pending with PJM?

6 A. I would have to look those up.

7 Q. Do you have an approximation?

8 A. Probably a couple of thousand. Those  
9 interconnection requests could be submitted at anytime.

10 Q. I understand. But the pending proposals are  
11 approximately for 2,000; is that correct?

12 MR. SCHULTE: Do we need --

13 THE WITNESS: Subject to check.

14 MR. SCHULTE: I'll ask the witness if more  
15 detail would be provided if we need to go into closed  
16 session, feel free to let us know, Mr. Zadlo, since you  
17 know the answers better than I do.

18 JUDGE CLARK: Out of an abundance of caution  
19 for this, why don't we go ahead and go into an in camera  
20 session.

21 MR. AGATHEN: Judge, I'm satisfied with the  
22 answer that I got earlier. From my standpoint there's  
23 no need to go into closed session.

24 JUDGE CLARK: Respondent, do you still want to  
25 go to a closed session?

1 MR. SCHULTE: No, thank you, Judge.

2 JUDGE CLARK: Go ahead, Mr. Agathen.

3 BY MR. AGATHEN:

4 Q. When approximately did you file your latest  
5 interconnection application with PJM?

6 MR. SCHULTE: Okay. I think we do need to go  
7 into closed session.

8 JUDGE CLARK: Okay. We're going to go in  
9 camera again. Hopefully I can do this a little faster  
10 than I did last time. As I said before, those people  
11 who are left -- hold on just a second. Okay. We will  
12 need to do a breakout session. That was much faster.  
13 Sorry. I'm just verifying that we are not broadcasting  
14 out.

15 (In-camera session.)

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(In-camera session)

(REPORTER'S NOTE: At this point, public session resumed.)

JUDGE CLARK: Okay. We are out of the

1 in-camera session and back in the main courtroom so to  
2 speak and back on the record. On the record for that.  
3 Mr. Agathen, you had indicated that you had no further  
4 questions for this witness. You're muted, I believe.

5 MR. AGATHEN: That's correct, Judge.

6 JUDGE CLARK: Do any of the other parties have  
7 any follow up for this witness?

8 MR. PRINGLE: After any bench or Commission  
9 questions, Staff will have a few questions.

10 JUDGE CLARK: Okay. Thank you, Mr. Pringle.  
11 Any Commission questions? I know I asked that in  
12 camera; but since we're back in the main, I'm going to  
13 ask it again.

14 COMMISSIONER HOLSMAN: No questions, Judge.

15 JUDGE CLARK: I don't hear any. Thank you,  
16 Commissioner Holsman. I appreciate that.

17 QUESTIONS BY JUDGE CLARK:

18 Q. I want to ask first some information about the  
19 press release, and answer to the best of your ability.  
20 How was the press release done? How was it circulated?  
21 I believe you're muted, Mr. Zadlo.

22 A. I apologize. When you say circulated, do you  
23 mean internally within the company or externally?

24 Q. I mean, was it distributed via email? Was it  
25 sent out in a mailer? Was it both, I mean?

1           A.    I believe it was both.  I think it was put on  
2   our website and circulated externally.

3           Q.    Now, you had described the press release as a  
4   marketing exercise.  I'm not sure I understand how a  
5   press release indicating you're going to make potential  
6   changes is a marketing exercise.  Can you explain that  
7   to me?

8           A.    Sure.  So what we did was we hired PA  
9   Consulting, which they're an energy consulting firm, to  
10  perform market studies.  We hired them back in December  
11  of 2019 to analyze the market impacts of increasing the  
12  converter station and dropoff in Missouri from the 500  
13  MW.  We wanted to understand whether there would be  
14  consumer benefits of going beyond the 500 MW and they  
15  performed a series of studies.  After multiple studies,  
16  we became convinced that there were potential large  
17  economic benefits to the state of Missouri if that  
18  converter station were to be increased.  The point of  
19  the press release was to announce those consumer  
20  benefits publicly and announce an openness by Grain Belt  
21  to increase the converter station and dropoff in  
22  Missouri.  That's the context, Your Honor.

23          Q.    And you don't believe that that is in any way  
24  a commitment to make those changes?

25          A.    That's correct.  We have not made that

1 commitment to make that change. Are we exploring it?  
2 Absolutely. We have not made that commitment.

3 Q. What would you consider to be a material  
4 change in design and engineering for this project?

5 A. Obviously, Your Honor, if we had -- if we were  
6 going to increase the size, if we were going to change  
7 the route, those would be material and we would come  
8 back to the Commission and seek that approval. As I  
9 stated before, we haven't even started the engineering  
10 and design of the converter stations. Right now we're  
11 about 30 percent done with our engineering and design  
12 and that engineering and design is solely focused on the  
13 transmission route right now.

14 Q. And I believe this was covered, but I'm going  
15 to go ahead and ask it again anyway if it hasn't been.  
16 So none of the proposed changes in the press release  
17 have been implemented in any way?

18 A. That's correct.

19 JUDGE CLARK: I don't have any further  
20 questions at this time. Mr. Pringle, you indicated you  
21 might have some follow up based upon Commission  
22 questions.

23 MR. PRINGLE: Yes, Judge. Good -- I think  
24 it's still morning. Good morning, Mr. Zadlo.

25 THE WITNESS: Morning.



1 CROSS-EXAMINATION BY MR. PRINGLE:

2 Q. And just briefly on interconnection  
3 agreements, are you aware of any requirement the company  
4 has with supplying staff with those studies and  
5 interconnection agreements?

6 A. Unfortunately I'm not aware of any. That  
7 doesn't mean they don't exist. I'm not aware.

8 Q. All right. Thank you, Mr. Zadlo. Would it  
9 surprise you if Staff is to be updated on those studies?

10 A. My understanding is we have to supply annual  
11 reports to Missouri Staff.

12 Q. Thank you, Mr. Zadlo. And as far as your  
13 knowledge, has the company failed to provide any of  
14 those reports?

15 A. Not to my knowledge.

16 Q. And then back to the press release, Mr. Zadlo.  
17 Is it fair to say from your answers earlier that the  
18 company has no intent to abandon the current approved  
19 CCN?

20 A. That is correct. We are not abandoning the  
21 current CCN.

22 Q. And I think you did state this earlier, but  
23 the press release was more contemplated or proposed  
24 changes, not actual changes?

25 A. That's correct.

1 Q. And also what does the press release state  
2 concerning any necessary approvals if the company were  
3 to pursue these changes?

4 A. I believe the press release says that if  
5 additional approvals are necessary we would go back to  
6 the Commission and seek them.

7 Q. Is that still the company's intent?

8 A. Yes, sir, it is.

9 MR. PRINGLE: Thank you, Mr. Zadlo. I have  
10 nothing further, Judge.

11 JUDGE CLARK: Mr. Agathen, do you have any  
12 follow up based upon my questions?

13 MR. AGATHEN: I do not, Judge.

14 JUDGE CLARK: And finally, Respondents, do you  
15 have any follow up based upon my questions?

16 MR. SCHULTE: One or two, Judge.

17 FURTHER REDIRECT EXAMINATION BY MR. SCHULTE:

18 Q. Mr. Zadlo, just to clarify, you said that the  
19 current design and engineering efforts are focused on  
20 the transmission route. Is that the certificated  
21 transmission route?

22 A. Yes. It's only on the certificated  
23 transmission route.

24 MR. SCHULTE: Okay. No further questions.

25 JUDGE CLARK: Okay. Mr. Schulte, this ends

1 your testimony with Mr. Zadlo; is that correct?  
2 Respondent, is that the end of your testimony with Mr.  
3 Zadlo?

4 MR. SCHULTE: Yes. Would you mind if I ask --  
5 I'm sorry. I should have done it before. Could I ask  
6 one more question of Mr. Zadlo?

7 JUDGE CLARK: I think that would be fine.

8 BY MR. SCHULTE:

9 Q. So the requirements that Mr. Pringle referred  
10 to states Grain Belt will provide Staff with completed  
11 RTO interconnection agreements and any associated  
12 studies. Should the studies raise new issues, Grain  
13 Belt will provide its plan to address those issues. Has  
14 Grain Belt rather completed any interconnection  
15 agreements?

16 A. No. We have not completed any interconnection  
17 agreements with the Midwest ISO.

18 MR. SCHULTE: Thank you.

19 JUDGE CLARK: Okay. Can this witness be  
20 excused? Staff?

21 MR. PRINGLE: Staff has no further questions.  
22 Thank you, Judge.

23 JUDGE CLARK: Mr. Agathen?

24 MR. AGATHEN: I have nothing else for the  
25 witness, Judge.

1 JUDGE CLARK: Respondents?

2 MR. SCHULTE: Nothing else, Judge. Thank you.

3 JUDGE CLARK: Okay. I'm going to go ahead and  
4 excuse Mr. Zadlo at this time.

5 THE WITNESS: Thank you, Your Honor.

6 JUDGE CLARK: Thank you.

7 (Witness excused.)

8 JUDGE CLARK: Okay. This seems as good a time  
9 as any to me to take a lunch break. Are there any  
10 objections to taking a lunch break at this time? I hear  
11 none. Okay. Then I'm going to say why don't we come  
12 back at -- it's 11:51 now. Why don't we come back at  
13 ten to 1:00, and we will recess until then and we'll go  
14 off the record.

15 (Off the record.)

16 JUDGE CLARK: Why don't we go back on the  
17 record now. I believe when we left off we had just  
18 excused Kris Zadlo. At this point, Respondents, do you  
19 have any other witnesses you want to call or any other  
20 parts of your case that you would like to present?

21 MR. SCHULTE: We do not, Judge.

22 JUDGE CLARK: In that case, Staff, you may  
23 call your first witness.

24 MR. PRINGLE: Thank you, Judge. Staff calls  
25 Shawn Lange.

1 JUDGE CLARK: Mr. Lange, would you state and  
2 spell your name for the record?

3 THE WITNESS: My name is Shawn, S-h-a-w-n,  
4 Lange, L-a-n-g-e.

5 JUDGE CLARK: Mr. Lange, would you raise your  
6 right hand to be sworn?

7 (Witness sworn.)

8 JUDGE CLARK: Okay. Mr. Pringle, you may  
9 proceed.

10 MR. PRINGLE: Thank you, Judge.

11 SHAWN LANGE,

12 being sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. PRINGLE:

14 Q. Good afternoon, Mr. Lange.

15 A. Good afternoon.

16 Q. Mr. Lange, by whom are you employed and in  
17 what capacity?

18 A. I am a professional engineer with the  
19 engineering analysis department of the industry analysis  
20 division within the Staff of the Missouri Public Service  
21 Commission.

22 Q. And did you cause to be prepared today what  
23 has been premarked as Staff Exhibit No. 100, the  
24 Credentials and Case History of Shawn Lange?

25 A. Yes.

1 Q. Do you have that in front of you?

2 A. No, but I can get it up.

3 Q. Just let me know when you have it.

4 A. Okay. I am there.

5 Q. And at this time do you have any changes or  
6 corrections to make to that exhibit?

7 A. No, I do not.

8 Q. And is it true and correct, to the best of  
9 your knowledge and belief?

10 A. Yes, it is.

11 MR. PRINGLE: Thank you, Mr. Lange. Judge, at  
12 this time Staff moves to enter Staff Exhibit 100 into  
13 the record.

14 JUDGE CLARK: Any objection from Grain Belt?  
15 Sorry. Respondents?

16 MR. SCHULTE: No objection.

17 JUDGE CLARK: Any objection from Complainants?

18 MR. AGATHEN: No objections.

19 JUDGE CLARK: Okay. Staff's Exhibit 100 is  
20 admitted onto the hearing record.

21 (STAFF'S EXHIBIT 100 WAS RECEIVED INTO  
22 EVIDENCE AND MADE A PART OF THIS RECORD.)

23 MR. PRINGLE: Thank you, Judge.

24 BY MR. PRINGLE:

25 Q. Now, Mr. Lange, what is the purpose of your

1 testimony today?

2 A. I will briefly address the filing by MLA on  
3 March 10, 2021 and provide an overview of Staff's  
4 understanding of the current status of the Grain Belt  
5 project.

6 Q. Thank you, Mr. Lange. What did MLA file on  
7 March 10, 2021?

8 A. There were ten files in all. Seven public,  
9 three confidential, and the information on there  
10 appeared to be a press release, information regarding  
11 data requests and emails, internal company emails.

12 Q. Thank you, Mr. Lange. And have you been able  
13 to review all those materials including the Grain Belt  
14 press release as they became available?

15 A. Yes.

16 Q. And from your review of that materials, are  
17 you able to conclude as to whether there were any  
18 material changes in violation of the Commission's  
19 condition from EA-2016-0358?

20 A. At this time I cannot say that the current  
21 project has materially changed.

22 Q. And in that same Grain Belt press release, was  
23 there anything in there about regulatory approval?

24 A. Yes, yes.

25 Q. What did that press release say about

1 regulatory approval?

2 A. If I recall correctly, it said that to the  
3 extent necessary Grain Belt will come into the Missouri  
4 Commission for any additional approvals.

5 Q. And beyond the press release submitted by  
6 Complainants, is Staff aware of any other steps Grain  
7 Belt may be taking to evaluate possible changes to the  
8 project?

9 A. Staff is aware of the interconnection queue  
10 requests at MISO, at SPP and at PJM.

11 Q. With that other information and the press  
12 release, what is Staff's conclusion as to MLA's  
13 complaint?

14 A. Staff cannot conclude that there is material  
15 changes to the project.

16 MR. PRINGLE: Thank you, Mr. Lange. I have no  
17 further direct questions.

18 JUDGE CLARK: Okay. Any questions from  
19 Complainant?

20 MR. SCHULTE: Thank you, Judge. Good  
21 afternoon, Mr. Lange.

22 THE WITNESS: Good afternoon.

23 CROSS-EXAMINATION BY MR. AGATHEN:

24 Q. You've testified on several occasions  
25 regarding the Grain Belt project, have you not?



1 A. I have.

2 Q. So you're generally familiar with it and with  
3 the Commission Order approving the original Grain Belt  
4 plan?

5 A. Yes.

6 Q. As originally proposed and approved by the  
7 Commission, the line was to deliver 500 MW of power to  
8 the converter station in Missouri; is that correct?

9 A. I believe the language says at least 500 MW.

10 Q. Okay. But that was the number that was used  
11 though?

12 A. I'm sorry?

13 Q. That's the number that was used in the  
14 Commission Order?

15 A. Correct.

16 Q. And the remaining 3,500 or so was to be  
17 delivered to the converter station at the Illinois  
18 Indiana border; is that correct?

19 A. The remainder, yes.

20 Q. For delivery to the PJM system?

21 A. That is my understanding.

22 Q. Hypothetically, if Invenergy and Grain Belt  
23 have now decided to deliver approximately 2,500 MW of  
24 power to Kansas and Missouri combined, that would  
25 represent roughly a five-fold increase in the total

1 power delivered to Missouri and Kansas; is that correct?

2 A. I believe that's how the math works out on  
3 that, yes.

4 Q. And if only about 1,500 MW is now to be  
5 delivered to the Illinois converter station, that would  
6 represent approximately a 57 percent decrease in the  
7 power delivered to the PJM system; is that correct?

8 A. Approximately, yes.

9 Q. Were you here for the earlier part of the  
10 proceeding for opening statements?

11 A. Yes.

12 Q. Did you hear Mr. Pringle state earlier during  
13 or near the time of the opening statements that he  
14 defined the term material change as one which makes a  
15 significant alteration to the initial plan?

16 A. I was here for that, yes.

17 Q. Would you agree that a five-fold increase in  
18 the power delivered to the Missouri converter station  
19 would be a significant alteration to the original plan?

20 A. If that occurred, yes, depending on the  
21 interconnection requests and it's all interconnected.

22 Q. If it goes from 500 to 2,500, that would be a  
23 significant alteration to the original plan, would it  
24 not?

25 A. Everything else being the same, is that the

1 question? Okay. If everything else is the same --  
2 Because the language in the order says that at least 500  
3 to be dropped off in Missouri, if there was additional  
4 to be dropped off in Missouri it would comply with that  
5 condition. And it would also depend on the original I  
6 guess documentations, schematics, blueprints, everything  
7 else as to whether or not this additional amount of  
8 dropoff in Missouri would require sufficient change to  
9 the converter station or to the surrounding grid.

10 Q. And that's my question I guess. If we go from  
11 up to 500, which is 500 max, right, we go from that to  
12 2,500, would you not agree that that's a significant  
13 alteration to the original plan?

14 A. I don't know if I could say it's a significant  
15 change to the original plan.

16 Q. How much of an increase would it take in order  
17 to be significant?

18 A. I would need more detail.

19 Q. If that were given, is the change of the  
20 capacity of the converter station all else being equal,  
21 if we go from at least 500 MW to 2,500 MW, is that not a  
22 significant change?

23 A. A significant change in the amount of dropoff?  
24 Yes.

25 Q. Okay. And therefore a significant change to

1 the converter station?

2 A. It would require a change to the converter  
3 station.

4 Q. A significant change?

5 A. Possibly.

6 Q. Why would it not require a significant change?

7 A. Converter stations, you know, while I work on  
8 Staff and are on the transmission team and work on this,  
9 HVDC is still a somewhat new area for myself. I would  
10 think it would require a significant change, but I don't  
11 know in the engineering of a converter station whether  
12 or not it would be a significant change.

13 Q. Can you think of any circumstances under which  
14 it would not be a significant change in engineering and  
15 design?

16 A. Of the converter station?

17 Q. Yes.

18 A. I think it would require a change.  
19 Significant? Quite possibly, yes.

20 Q. Okay. Same now for the Illinois converter  
21 station. If that decreases in capacity from 3,500 MW to  
22 approximately 1,500 MW, that would also be a significant  
23 alteration to the original plan, would it not?

24 MR. PRINGLE: Objection, Judge. Relevance  
25 talking about the Illinois converter station when this

1 is regarding the Missouri project.

2 JUDGE CLARK: Overruled. You may go ahead and  
3 answer.

4 THE WITNESS: I'm sorry. Could I ask for the  
5 question to be repeated?

6 BY MR. AGATHEN:

7 Q. Sure. Changing the Illinois converter station  
8 to a capacity of 3,500 MW down to approximately 1,500 MW  
9 would be a significant change to the original plan,  
10 would it not?

11 A. It would be a significant change to the amount  
12 dropped off in Illinois.

13 Q. And that's part of the original plan?

14 A. That is part of -- The original plan included  
15 the entire project from Kansas to Illinois into the PJM  
16 system.

17 MR. AGATHEN: Thank you. I have no more  
18 questions.

19 JUDGE CLARK: Okay. Respondents?

20 MR. SCHULTE: No questions. Thank you.

21 JUDGE CLARK: Any questions from the  
22 Commission?

23 COMMISSIONER HOLSMAN: No questions. Thank  
24 you.

25 JUDGE CLARK: Thank you. I have a few

1 questions for you, Mr. Lange.

2 QUESTIONS BY JUDGE CLARK:

3 Q. Now, Mr. Agathen said you had testified in  
4 regard to the Grain Belt case before; is that correct?

5 A. That is correct.

6 Q. And that was -- Was that in the CCN case?

7 A. Both CCN cases.

8 Q. I was getting to that. So it was both the one  
9 that was denied and the one on remand that was granted;  
10 you testified in both of those?

11 A. Yes.

12 Q. What was your role in that?

13 A. I'm sorry?

14 Q. I'm sorry. Go ahead. I don't want to put  
15 words in your mouth.

16 A. Generally speaking, I looked at  
17 interconnection studies. I looked at I guess health  
18 related concerns regarding the project. I looked at if  
19 there were landowners that had questions or concerns on  
20 the, I guess the engineering of electricity, I tried to  
21 accommodate that, but those were the main kind of areas  
22 that I focused on.

23 Q. Now, the condition regarding coming back to  
24 the Commission for approval of any material changes to  
25 the design and engineering, that was proposed by Staff?

1 A. I believe it was.

2 Q. Now, you just indicated that the current  
3 project, in response to a question you said the current  
4 project hasn't changed materially from the design and  
5 engineering perspective; is that correct?

6 A. Correct.

7 Q. When you said the current project, was that  
8 just the project as it stands or inclusive of the  
9 proposed changes in the press release?

10 A. I was attempting to say that the projects as  
11 defined in EA-2016-0358 has not materially changed or  
12 Staff has not found anything to determine it has  
13 materially changed in construction or going forward.

14 Q. So let me ask it another way. So when you say  
15 that -- When you say based upon the information  
16 available, are you looking at the information in the  
17 press release or are you --

18 A. Yes.

19 Q. Okay. And you don't believe that it would  
20 constitute a material change to the design or  
21 engineering of the project?

22 A. If the proposed plan that is outlined or may  
23 be outlined in that press release, if that is  
24 implemented, then I believe that would have -- would  
25 require material changes, but at this time I cannot

1 conclude that the plan as defined in the press release  
2 has been implemented or is going forward.

3 Q. I'm going to stay away from that a little bit.  
4 When we're talking about plan, certainly there's a  
5 difference between everything that the Commission  
6 approved and this narrow band that we're talking about  
7 regarding material changes to the design and  
8 engineering. I guess my question in regards to that is,  
9 when it says that a converter station needs to be built  
10 that is capable of handling at least 500 MW, is there an  
11 upper limit on that?

12 A. There would be an upper limit in the design.  
13 As far as being defined within EA-2016-0358, I don't  
14 believe it is defined anywhere.

15 Q. How did Staff propose this condition? Did  
16 Staff have something in mind? They must have had  
17 something that they were concerned about that this  
18 condition was proposed. What kind of material changes  
19 was Staff concerned with?

20 A. I think in EA-2016-0358 there were concerns by  
21 Staff as to whether or not the Missouri converter  
22 station would get constructed.

23 Q. So Staff's concern in submitting that was if  
24 there was a -- if that converter station wasn't built,  
25 Staff would consider that a material alteration to the



1 design and engineering?

2 A. Yes.

3 Q. From an engineering perspective in regard to  
4 design and engineering, we've heard the word significant  
5 thrown out. How is Staff defining a material change?

6 A. I can give you my impression of what a  
7 material change would be. I think to give you Staff's  
8 determination of a material change it would require a  
9 larger discussion within Staff. As far as myself, a  
10 material change may be -- I guess if you let me use the  
11 term splitting up of the project. If the original  
12 project went from Kansas to Indiana, if now we are only  
13 looking at a segment from Kansas to Missouri, I think  
14 that that would be a material change of a project.

15 Q. What kind of things would you consider? What  
16 kind of changes would you consider not to be material  
17 changes? Can you provide an example of some of those?

18 A. I think within the Report and Order there is  
19 some leeway given as to how much deviation from the path  
20 the line can have. Microsiding instances and things of  
21 that sort. Non material changes, I'm trying to think of  
22 what I could define as a non material change.

23 Q. Let me ask. I proposed to Mr. Agathen during  
24 opening would painting the towers, transmission towers  
25 blue, do you believe that that would be a material

1 change to the design and engineering of the project?

2 A. As long as they have permissions to do that, I  
3 don't know if there's any FAA, anything regarding the  
4 color blue or any of that on transmission lines or  
5 anything like that, but as long as they have permissions  
6 from other bodies I would not view that as a material  
7 change.

8 Q. What about the addition of high speed  
9 broadband to a transmission line? Is that a material  
10 change in Staff's view?

11 A. So as I understood the project in the EA case,  
12 there was going to be fiber or some way of allowing the  
13 ends, the converter stations to be able to communicate.  
14 And so there would be some broadband that would be used  
15 for that purpose. Now, if it gets into whether or not  
16 having a third party to purchase that capacity, that's  
17 getting to an area I don't think I can really talk on  
18 without further discussions within Staff.

19 Q. Okay. But just again --

20 JUDGE CLARK: That's all the questions I have.  
21 Are there any questions based upon my questions? Staff?

22 MR. PRINGLE: Should I wait for redirect after  
23 the other parties, Judge?

24 JUDGE CLARK: That would be fine. Any  
25 redirect, Mr. Agathen?

1 MR. AGATHEN: Yes, Judge. Thank you.

2 RECROSS-EXAMINATION BY MR. AGATHEN:

3 Q. You were asked a couple of questions from  
4 Judge Clark about the definition of material change. Do  
5 you recall those?

6 A. I do.

7 Q. Material change is not a scientific or  
8 engineering term of art, is it?

9 A. No.

10 Q. So the way you've been using it is just in the  
11 ordinary dictionary sense of the term, correct?

12 A. Yes.

13 MR. AGATHEN: Thank you. That's all I have.

14 JUDGE CLARK: Any follow up questions by  
15 Respondent?

16 MR. SCHULTE: No questions, Your Honor. Thank  
17 you.

18 JUDGE CLARK: Any follow up questions by  
19 Staff? I'm sorry, Mr. Agathen. I said redirect when I  
20 meant ask questions. Staff, would you like to do  
21 redirect?

22 MR. PRINGLE: Yes, Judge.

23 REDIRECT EXAMINATION BY MR. PRINGLE:

24 Q. Mr. Lange, you were talking earlier about  
25 engineering documentation and blueprints. Do you recall

1 that?

2 A. Yes.

3 Q. For their case, did MLA provide any kind of  
4 engineering documents for you to review?

5 A. There were some engineering documents in  
6 EA-2016-0358.

7 Q. Regarding this complaint, with the complaint  
8 case?

9 A. This complaint, no, I'm sorry, no.

10 Q. Did they provide any kind of blueprints for  
11 you to review?

12 A. No.

13 Q. Did they provide any kind of engineering study  
14 for you to review?

15 A. No.

16 Q. Without that kind of documentation, can you  
17 reasonably conclude that there's a material change to  
18 the project?

19 A. I cannot, no.

20 MR. PRINGLE: Thank you, Mr. Lange. Nothing  
21 further, Judge.

22 JUDGE CLARK: Thank you, Mr. Pringle.

23 Mr. Pringle, does Staff have any other witnesses they'd  
24 like to call?

25 MR. PRINGLE: Nothing on behalf of Staff.

1 Again, if the Commission would like to hear from Ms.  
2 Dietrich or Ms. Eubanks, they are available. Staff's  
3 case, we're resting.

4 JUDGE CLARK: Would the Commissioners like to  
5 hear from Ms. Eubanks or from Ms. Dietrich? I hear no  
6 response. I don't need to hear from them at this time.  
7 Do you have any other evidence to present?

8 MR. PRINGLE: That is all, Judge.

9 JUDGE CLARK: Staff rests. All right. Let's  
10 address kind of closing remarks. I'm going to remind  
11 the Respondents to file Exhibit 200, the supplemental  
12 responses in EFIS as Exhibit 200.

13 Are there any objections to a Commission  
14 exhibit -- hold on just a second. Any objections to the  
15 Joint Motion to Suspend the Current Deadlines and  
16 Establish a Briefing Schedule contained in the joint  
17 stipulations? Any objection to that being a Commission  
18 exhibit for the purposes of joint stipulations A through  
19 C and E but not D, F and G? Any objection from Staff?

20 MR. PRINGLE: No objection, Judge.

21 JUDGE CLARK: Any objection from Complainants?

22 MR. AGATHEN: No, Judge.

23 JUDGE CLARK: Any objection from Respondents?

24 MR. SCHULTE: No objection.

25 JUDGE CLARK: Okay. Commission Exhibit 1 will

1 be the stipulations contained in that document as to the  
2 numbers or the letters that I said -- would be limited  
3 to the letters I said previously. All right. Is there  
4 anybody who thinks there are going to be late filed  
5 exhibits? I hear no one.

6 MR. AGATHEN: I don't.

7 JUDGE CLARK: Thank you. Ms. Bentch, when  
8 will transcripts be available?

9 THE COURT REPORTER: The actual due date that  
10 I was given to the Commission was 4/29.

11 JUDGE CLARK: Now, based upon that due date,  
12 are the parties still wanting to do post-hearing briefs?  
13 Mr. Agathen?

14 MR. AGATHEN: I think so, Judge. Just initial  
15 briefs.

16 JUDGE CLARK: And I think the Commission would  
17 probably benefit from briefs as well. Unless anybody  
18 has any stringent objections to it, I am going to order  
19 briefs in this matter. I believe originally wasn't  
20 there just a single round of briefs proposed?

21 MR. AGATHEN: That's what the schedule was  
22 prior to the current schedule.

23 JUDGE CLARK: Let's stick with that. Given  
24 that there's an expected transcript date of April 29,  
25 how long would the parties like to file post-hearing

1     briefs?  Would the 14th of May be sufficient?

2             MR. SCHULTE:  Yes, Judge.  That would be  
3     sufficient from Respondents' perspective.  From our  
4     perspective, we wouldn't need more than a week.  So May  
5     6 would be sufficient for our purposes.

6             JUDGE CLARK:  Is there anybody else that would  
7     like to move that closer?

8             MR. AGATHEN:  May 14 is fine with me, Judge.

9             MR. PRINGLE:  I would actually ask, Judge, if  
10    we can push it back a week.  I already have a brief due  
11    that week.

12            JUDGE CLARK:  Okay.  So you're asking for the  
13    21st?

14            MR. PRINGLE:  We can do that or even the 18th  
15    or the 19th.  My other brief due that week is on the  
16    12th.  I'm fine with just waiting until the Wednesday or  
17    even Monday just to give me a little bit of time.

18            JUDGE CLARK:  Why don't we do the 18th.  Okay.  
19    Are there any other matters that need to be addressed  
20    before we adjourn this hearing?  Complainants?

21            MR. AGATHEN:  I have nothing, Judge.

22            JUDGE CLARK:  Respondents?

23            MR. SCHULTE:  Nothing further, thank you.

24            JUDGE CLARK:  Staff of the Commission?

25            MR. PRINGLE:  Nothing further from Staff,

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Judge. Thank you.

JUDGE CLARK: I'd like to thank everyone for their participation today. I know it's been strenuous at times. With that, I will adjourn this hearing and we will go off the record.

(Off the record.)



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CERTIFICATE OF REPORTER

I, Beverly Jean Bentch, RPR, CCR No. 640, Certified Court Reporter with the firm of Tiger Court Reporting, LLC, within the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

*Beverly Jean Bentch*

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