

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

Missouri Landowners Alliance, and Eastern)
Missouri Landowners Alliance DBA Show Me)
Concerned Landowners, and John G. Hobbs,)
)
Complainants,)
)
v.)
)
Grain Belt Express LLC, and Invenergy)
Transmission LLC, and Invenergy Investment)
Company, LLC,)
)
Respondents.)

File No. EC-2021-0034

INITIAL BRIEF

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

BACKGROUND

Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs (“Complainants”) filed a formal complaint¹ against Grain Belt Express LLC, Invenergy Transmission LLC, and Invenergy Investment Company, LLC (“Respondents”) on August 10, 2020. Complainants allege that “Respondents unilaterally changed the standard form easement agreement which they now use in negotiations with landowners, as opposed to the standard easement form which they insured the Commission in the CCN case they would present to landowners

¹ 20 CSR 4240-2.070(4) states the basis for filing a formal complaint:

A formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission.

as part of the easement negotiations.”² By unilaterally changing the standard form easement agreement, Complainants contend that Respondents are in violation of the Commission’s *Report and Order on Remand* (“Order”), issued March 20, 2019,³ that granted Respondents a Certificate of Convenience and Necessity (“CCN”) to build a transmission line and accompanying converter station.⁴ Complainants respectfully request that the Commission order Respondents to only use the standard easement form that was filed in EA-2016-0358 as Schedule DKL-4 to Exhibit 113⁵ or, in the alternative, order Respondents to remove specific provisions in paragraph 12, subsection (1) through (13) as outlined in Complainants’ formal complaint.⁶

Rather than go down the usual path of a small formal complaint case outlined in Commission Rule 20 CSR 4240-2.070, an agreement was reached with Complainants, Respondents, and Staff (collectively, “Parties”) to forego that process in favor of a briefing schedule.⁷ The Parties agreed that:

“[T]he issue in this Complaint is limited to whether, as a condition of the CCN granted to Respondents in the CCN case, Grain Belt is required to initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN proceeding.”⁸

The Commission agreed, suspended the formal complaint schedule, and ordered the Parties to file simultaneous briefs limited to the above issue no later than September 16, 2020.⁹

² *Formal Complaint* (August 10, 2020), pg. 1, ¶ 1.

³ *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage and Maintain a High Voltage, Direct Current Transmission Line and an Associated Converter Station Providing an Interconnection on the Maywood-Montgomery 345kV Transmission Line*, EA-2016-0358.

⁴ *Formal Complaint*, pg. 2, ¶ 1.

⁵ Direct Testimony of Deann K Lanz, Exhibit 113, EFIS 372, EA-2016-0358.

⁶ *Formal Complaint*, pgs. 20-21.

⁷ *Joint Motion to Suspend Current Deadlines and Establish a Briefing Schedule* (September 1, 2020).

⁸ *Id.*, pg. 3, ¶ 6(c).

⁹ *Order Suspending Deadlines and Setting a Briefing Schedule* (September 2, 2020).

DISCUSSION

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

Complainants base their complaint on Respondents “ignoring an **implicit if not express assumption in the Order** that the negotiations with landowners were to be based on the original easement agreement submitted at Schedule DKL-4 (emphasis added).”¹⁰

While the Commission’s Order does cite testimony of Grain Belt witness Deann L. Kanz and the accompanying standard easement agreement attached to her testimony,¹¹ nowhere is it listed, expressly, as a condition for approval of the requested CCN. Most of the conditions agreed to by Respondent are listed in Exhibits 206 and 205,¹² attached to the Commission’s Order.

Looking first at Exhibit 206, *Conditions Agreed to by Grain Belt Express Clean Line LLC and the Staff of the Missouri Public Service Commission*, there is no mention at all of Schedule DKL-4 or the testimony of Deann K. Lanz. The bulk of Exhibit 206’s discussion of easement agreements can be found below:

Every landowner from whom Grain Belt requires an easement will be contacted personally, and Grain Belt will negotiate with each such landowner in good faith on the terms and conditions of the easement, its location, and compensation therefor. Each landowner will receive an

¹⁰ *Formal Complaint*, pg. 20.

¹¹ *Report and Order on Remand*, EA-2016-0358, pg. 12, ¶ 19 and 20, footnotes 35 and 36.

¹² *Id.*, Attachments 1 and 2, respectively.

Easement Agreement pertaining to such landowner's land, which Easement Agreement will contain a drawing that shows the location of the easement.¹³

Concerning the exact wording and structure of the easement agreement itself, the Commission's conditions require any easement agreement submitted to a landowner should pertain to that landowner's land, and contain a drawing that shows the exact location of the easement. Nowhere in Exhibit 206 does the Commission condition Respondent's CCN on using the exact easement agreement form submitted as Schedule DKL-4. Exhibit 205, which outlined conditions agreed to between Grain Belt Express Clean Line LLC and the Rockies Express Pipeline LLC makes no mention of easements whatsoever.¹⁴

With no express condition that Respondents use the easement agreement submitted as Schedule DKL-4, Complainants rely on the use of Schedule DKL-4 to be an implicit condition of the Commission's Order granting Respondent a CCN. This conclusion is difficult to support when reviewing the Order from EA-2016-0358. As to easement agreements, the Commission states in its Order:

- "Grain Belt uses a standard form of agreement when acquiring easement rights from Missouri landowners. The agreement includes the right to construct, operate, repair, maintain, and remove an overhead transmission line and related facilities, along with rights of access to the right-of-way for the transmission line;"¹⁵
- "The easement agreement limits the landowner's legal rights and use of the easement property, including prohibiting any landowner activity that would interfere with Grain Belt's use of the easement;"¹⁶
- "Grain Belt developed the Missouri Landowner Protocol as part of its approach to right-of-way acquisition for the Project. The Landowner Protocol is a comprehensive policy on how Grain Belt

¹³ *Id.*, Attachment 1, pg. 6, ¶ VII (4).

¹⁴ *Id.*, Attachment 2.

¹⁵ *Id.*, pg. 12, ¶ 19.

¹⁶ *Id.*, ¶ 20.

Express interacts, communicates, and negotiates with affected landowners and includes: the establishment of a code of conduct, **its approach to landowner and easement agreement negotiations**, a compensation package, updating of land values with regional market studies, tracking of obligations to landowners, the availability of arbitration to landowners, the Missouri Agricultural Impact Mitigation Protocol, and a proposed decommissioning fund (emphasis added);”¹⁷

- “Grain Belt has agreed to incorporate the Missouri Landowner Protocol into the easement agreements with landowners and follow the protocol as a condition of the CCN.”¹⁸

The Commission made the incorporation of the Missouri Landowner Protocol¹⁹ (“Protocol”), developed by Respondents, as an express condition on how Respondents were to compose the easement agreements shared with landowners. The Protocol does not contain Schedule DKL-4 as an attachment, nor reference it in any way. The Protocol itself, which was attached to Ms. Lanz’s testimony as Schedule DKL-1, does not reference Schedule DKL-4 at all, and does nothing to support the argument that the Commission implied in its Order that the use of Schedule DKL-4 is a condition to the CCN. Rather, it does the exact opposite; if the Commission intended for Respondents to only use Schedule DKL-4 when dealing with landowners, the Commission would have ordered Respondents to do so, just as the Commission did with ordering Respondents to incorporate the Protocol, Schedule DKL-1, into all easement agreements shared with landowners.²⁰ As Ms. Kanz described the Respondents’ approach to easement agreements in her testimony:

“The Easement Agreement is not meant to be “one size fits all” for every situation. Because each parcel of land is unique and because some landowners may have specific concerns that other landowners may not,

¹⁷ *Id.*, pg. 32-33, ¶ 109.

¹⁸ *Id.*, pg. 35, ¶ 121.

¹⁹ Exhibit 113, EA-2016-0358, Schedule DKL-1.

²⁰ *Id.*, pg. 35, ¶ 121.

Grain Belt Express has previously negotiated reasonable modifications to the Easement Agreement with both landowners and attorneys.”²¹

This supports the use of “the easement agreements,”²² as stated in the Order, suggests that the Commission never intended for there to be a “one-size fits all” easement agreement.

Further, despite Ms. Kanz testifying that “Grain Belt has a standard form of agreement, the Transmission Line Easement Agreement (“Easement Agreement”), that it will present to landowners. It is attached as Schedule DKL-4,”²³ her testimony cannot be interpreted as carrying the same weight as a Commission order. Ms. Kanz describes earlier in her testimony the Protocol will be controlling over how Respondents approach easement negotiations with landowners;²⁴ the Commission viewed the Protocol as important enough to order Respondents include it in all easement negotiations, but did not hold Schedule DKL-4, the easement agreement itself, as being essential enough to expressly condition the granting of the CCN on Respondents using Schedule DKL-4 exclusively and without any changes.

This was all made express by the Commission in its Order pertaining to the Protocol:

Grain Belt Express Clean Line LLC shall comply with the Missouri Landowner Protocol, including, but not limited to, a code of conduct and the Missouri Agricultural Mitigation Impact Protocol, and incorporate the terms and obligations of the Missouri Landowner Protocol into any easement agreements with Missouri landowners.²⁵

²¹ Exhibit 113, EA-2016-0358, pg. 15, ln. 17-21.

²² *Id.*, pg. 35, ¶121.

²³ *Id.*, ln. 12-14.

²⁴ *Id.*, pg. 3-4, ln. 20-8.

²⁵ *Report and Order on Remand*, EA-2016-0358, pg. 52, ¶ 8.

Again, the use of “easement agreements” shows that the Commission did not expressly or implicitly contemplate that Schedule DKL-4 would be the exclusive easement agreement used by Respondent, and instead shows the Commission anticipating that the agreements would differ depending on the landowner.

CONCLUSION

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

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

/s/ Travis J. Pringle

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been emailed to all parties and/or counsel of record on this 16th day of September, 2020.

/s/ Travis J. Pringle