BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance, d/b/a Show Me Concerned Landowners, and John G. Hobbs,	)	
Complainants,	)	
	)	Case No. EC-2021-0034
v.	)	
Grain Belt Express Clean Line LLC, and Invenergy Transmission LLC, and Invenergy Investment Company,	)	
Respondents	)	

REPLY BRIEF OF RESPONDENTS

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ATTORNEYS FOR RESPONDENTS

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Invenergy Transmission LLC ("Invenergy Transmission"), on behalf of itself and its parent company Invenergy Investment Company LLC ("Invenergy Investment", collectively, "Invenergy"), together with Grain Belt Express LLC ("Grain Belt") (together with Invenergy, the "Respondents"), in accordance with the Missouri Public Service Commission's September 2, 2020 *Order Suspending Deadlines and Setting a Briefing Schedule*, hereby file their Reply Brief.

As explained in Respondents' Initial Brief, this Complaint rests on a single legal question: whether the Commission's Report and Order on Remand ("CCN Order") in Case No. EA-2016-0358 (the "CCN case") requires Grain Belt to initiate easement negotiations by only offering the exact form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN case. The CCN Order neither expressly nor impliedly requires Grain Belt to initiate easement negotiations by offering Schedule DKL-4 and, accordingly, the Complaint must be dismissed.

I. RESPONSE TO STAFF'S INITIAL BRIEF

Respondents concur with Staff's statement that:

> [T]he 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 DKL-4 exclusively and without any changes.[1]

Respondents similarly agree with Staff's conclusion as stated in its Initial Brief, and has no further comment to Staff's brief. Staff stated:

> 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.[2]

[1] Staff's Initial Brief, p. 6.

[2] *Id*. at 7.

II. RESPONSE TO COMPLAINANTS' INITIAL BRIEF

At the outset, Respondents note that, despite the joint stipulation that the issue in this complaint is limited to the legal issue of whether Respondents are required by the CCN Order to utilize a particular form of easement, Complainants still used their Initial Brief as an inappropriate forum to enumerate, yet again, specific changes Grain Belt has made to the form of easement agreement, with no allegation that such changes are contrary to the Missouri Landowner Protocol, the Agricultural Impact Mitigation Protocol, the Code of Conduct or any other condition—other than the patently frivolous assertion that a particular form of easement agreement is required.

Complainants attempt to argue that two of its three arguments concerning the sole legal issue in the complaint are dependent upon several of the revisions to the form of easement agreement.[3] However, Complainants' arguments do not withstand scrutiny, and cannot be saved by reference to specific revisions with no independent basis for objection.

If Grain Belt is not legally required to initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN case, and both Respondents and Staff concur they are not, any alterations to the form of easement agreement are irrelevant and immaterial.

Complainants again allege[4] that Grain Belt is in violation of the Commission's final order in the CCN case for three reasons:

[3] Complainants' Initial Brief, p. 5 ("… two of Complainants' three arguments on the sole issue here are dependent upon the existence and nature of some of the changes which Respondents made to the original easement. Accordingly, in presenting those two arguments Complainants must address certain of the changes to the original easement.")

[4] Formal Complaint, ¶ 13; Complainants' Initial Brief, pp. 11-17.

(1) that Section VII.7 of Exh. 206 states that "Grain Belt's right-of-way acquisition policies and practices will not change regardless of whether Grain Belt does or does not yet possess a Certificate of Convenience and Necessity from the Commission";

(2) Section 2, page 4 of the Missouri Landowner Protocol requires that "Grain Belt Express' approach to landowner negotiations will not change regardless of when these negotiations take place", and that in making changes to the easement form Respondents are in violation of this requirement; and

(3) that in 2016 Clean Line witness Deann Lanz represented to the Commission that the standard form easement attached to her testimony as Schedule DKL-4 is the document Grain Belt will present to landowners, and that revising the example easement therefore constitutes a violation of the CCN Order.

A. The Three "Reasons" Complainants Rely Upon to Support An Alleged Violation of the CCN Order Are Nonsensical

Respondents have already addressed Complainants' three "reasons" in their Initial Brief[5] and will not burden the record by repeating those arguments in this Reply Brief. Respondents merely reiterate that they have adequately demonstrated that Complainants is attempting to create an "implied" condition where one does not exist and incorporates its prior arguments herein by reference.

Moreover, the very language utilized by Complainants confirms that it is attempting to craft a quilt with insufficient fabric. For example, in discussing the CCN Order, Complainants states that "the Commission was *apparently* under the same impression"[6]; "it is fair to *assume*

[5] *See* Respondents' Initial Brief, pp. 12-15.

[6] Complainants' Initial Brief, p. 17 (emphasis added).

that"[7]; "*if* indeed that was the Commission's *assumption*, it is also fair to *assume* that"[8]; and "*if* the Commission logically *assumed*."[9] Use of these phrases reflects the very uncertainty that express conditions are meant to avoid.

It is not appropriate to assume anything that is unsupportable through a review of the CCN Order itself. Complainants' assumptions, legal interpretations, and conclusions regarding both the CCN Order and the individual changes to the form of easement agreement are no substitute for the plain language of the CCN Order. As discussed extensively in Respondents' Initial Brief, the Commission created numerous *express* conditions upon Grain Belt's CCN and certainly had the jurisdiction and authority to designate the specific form of easement agreement for Grain Belt to use when negotiating with landowners as another express condition. The Commission declined to do so, and Complainants' assertions that an *implied* condition exists must fail.

Complainants correctly note that the Commission is entitled to interpret its own orders and to ascribe to them a proper meaning.[10] Respondents of course agree that the Commission holds the power to interpret its own orders, but there is a difference between "interpretation" and what Complainants actually seek—rewriting the CCN Order to add a new condition. Any interpretation of the CCN Order must be conducted within the confines of established rules of statutory construction and contract interpretation.

If the CCN Order is clear and unambiguous—and both Respondents and Staff agree that it is—it is apparent that the Commission meant what it said, and did not leave open to interpretation items it did not intend. Accordingly, unwritten and unfounded conditions should not be inserted

[7] *Id*. (emphasis added).

[8] Complainants' Initial Brief, p. 18.

[9] *Id*. (emphasis added)

[10] *Id*.

into the CCN Order. As Staff succinctly stated in its Initial Brief in this matter, "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…"[11]

While recognizing that a Commission Order is not a statute enacted by the Missouri General Assembly, Respondents assert that an analysis akin to statutory construction is warranted in reviewing the CCN Order. Because the CCN Order is not ambiguous, the Order should be construed as it was written, not how Complainants wish it may have been written.

> Under bedrock principles of statutory construction, we cannot incorporate unwritten conditions, exceptions, or limitations into [the statute's] unambiguous command. The Missouri Supreme Court has emphasized that " '[t]his Court may not engraft upon the statute provisions which do not appear in explicit words or by implication from othe[r] words in the statute.' " Courts "cannot supply what the legislature has omitted from controlling statutes"; instead, we "enforce[ ] statutes as they are written, not as they might have been written." Under these fundamental principles, "[w]here no exceptions are made in terms, none will be made by mere implication or construction."[12]

The Commission has previously followed similar principles of contract construction when discerning conditions placed upon public utilities, stating, "Under principles of contract construction, the Commission first examines the plain language of the agreement to determine whether it is clear or if an ambiguity exists. When a contract is clear, we discern intent from the document alone."[13]

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[11] Staff's Initial Brief at 5.

[12] *In the Matter of Kansas City Power and Light Company's request for Authority to Implement a* General Rate Increase for Electric Service v. Missouri Public Service Commission, 557 S.W.3d 460, 472 (Mo.App.W.D. 2018),quoting In Interest of J.L.H., 488 S.W.3d 689, 696 (Mo. App. W.D. 2016) (en banc) (citations omitted).

[13] Report and Order, p. 16, File No. EC-2017-0107 (Feb. 22, 2017) (citing *J.E. Hathman, Inc. v. Sigma Alpha Epsilon Club,* 491 S.W.2d 261, 264 (Mo. banc 1973).

CONCLUSION

Neither the clear and specific terms of the CCN Order, nor the explicit conditions placed on Grain Belt's CCN, contain a requirement that Grain Belt must initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN case. Because there is no requirement to utilize a specific form of easement in landowner negotiations, there is no legal basis for the Complaint and it should be dismissed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all parties of record by email or U.S. mail, postage prepaid, this 30th day of September, 2020.

/s/ Anne E. Callenbach
Attorney for Respondents