

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Linda McElwee,)	
)	
Complainant,)	
)	
V.)	
)	Case No. _____
Grain Belt Express LLC,)	
)	
Respondent)	

FORMAL COMPLAINT AND
MOTION FOR EXPEDITED TREATMENT

Pursuant to Commission Rules 20 CSR 4240-2.070(4) and 20 CSR 4240-2.080(14), Mrs. Linda McElwee hereby files this Formal Complaint against Grain Belt Express LLC in two counts. Count 1 concerns Respondent's refusal to provide definitive answers to Complainant as to whether certain payments would or would not be made to her for an easement on her property if the easement is acquired through the condemnation process. Count 2 concerns Respondent's legal authority, or lack thereof, to refuse payment of the amounts in question if the matter goes to condemnation. In support of this filing, Complainant states as follows:

Count 1

1. In file number EA-2016-0358 (the "CCN case") the Commission granted Respondent a Certificate of Convenience and Necessity, authorizing Respondent (then named Grain Belt Express Clean Line LLC) to build the Missouri portion of an electric transmission line across eight counties in northern Missouri. Caldwell County was one of the counties to be traversed by the line. (Pages 51, 5 of the Report and Order on Remand in CCN case, issued March 20, 2019; the "CCN Order").

2. As the surviving spouse, Complainant is currently a beneficiary and trustee of a revocable trust which owns four parcels of real property in Caldwell County. The land was earlier held in the name of two trusts, one of which rolled into the other upon the death of Complainant's spouse. Complainant's address is 8475 Southeast Red Brick Road, Cowgill, MO 64637.

3. According to information provided to Complainant by Respondent, the four parcels of land in question would be crossed by the proposed transmission line.

4. And according to information provided to Complainant by Respondent, Respondent presently intends to construct a total of seven lattice support structures on the property in question.

5. As of the date of this filing, Complainant and Respondent have not agreed upon terms for a voluntary easement for the transmission line over any of the four parcels of land in question.

6. By letter dated July 20, 2021, counsel for Respondent sent letters addressed to the McElwee trusts which stated, among other things, that if the parties did not come to terms on a voluntary easement within the next 30 days, Respondent intended pursuant to Sec. 523.253 to file a condemnation action in court to secure an easement over the property in question ("30-day notice letter").

7. A copy of one of the letters referenced in the preceding paragraph is attached hereto as Exhibit 1.

8. The 30-day notice letters had been preceded by "60-day notice" letters sent pursuant to Sec. 523.250 from counsel for Respondent.

9. During the course of the CCN case, Respondent's predecessor Grain Belt Express Clean Line LLC submitted to the Commission a document titled Missouri Landowner Protocol ("Landowner Protocol"). That document was received in evidence as Schedule DKL-1 to Exhibit 113 (EFIS 372).

10. During the course of the CCN case, Respondent's predecessor also submitted a document generally referred to as its Code of Conduct. That document was received in evidence as Schedule DKL-2 to Exhibit 113.

11. In its final order in the CCN case, the Commission ordered that "Grain Belt Express Clean Line LLC shall comply with the Missouri Landowner Protocol, including, but not limited to, a code of conduct" (CCN Order, p. 52, par. 8).

12. Section 3 of the Landowner Protocol, which begins at page 4 of that document, is titled "Compensation". It states in part that Grain Belt will determine the amount it will pay for a transmission line easement by multiplying "the average per acre value of recent sales for similar land types in the county by 110%" (hereafter, a "10% adder").

13. Section 3 of the Landowner Protocol also states that for the lattice support structures being proposed for Complainant's property, Respondent will make a one-time payment of \$18,000 for each such structure. Alternatively, a landowner could elect to receive an annual payment of \$1,500 per structure, escalated at 2% per year for as long as the structure remains on the property.

14. Complainant has sought clarification from Respondent as to whether Respondent intends to pay the 10% adder and/or for the support structures if she does not voluntarily sign an easement for the proposed line. Without such clarification, Complainant cannot rationally compare the amount currently being offered by

Respondent for an easement, to the amount she might receive if Respondent files for condemnation. The difference in the treatment of the support structures alone amounts to at least \$126,000 (based on a lump sum of \$18,000 per structure for seven structures).

15. In an effort to clarify Respondent's position regarding the payment for support structures and the 10% adder, on August 20, 2021, counsel for Complainant sent counsel for Respondent the letter attached hereto as Exhibit 2. That letter asked for an answer to three questions:

(1) If the matter does go to condemnation, will Grain Belt pay Mrs. McElwee for support structures which are built on the right-of-way?

(2) If the answer to the first question is "yes", will the payment still be in the amount of \$18,000 per lattice structure?

(3) If the matter goes to condemnation, will Grain Belt still pay Mrs. McElwee 110% of the fee value of the property on the easement?

The letter also included the following request: "We ask that you provide a 'yes' or 'no' answer to these questions (or possibly a 'not applicable' answer to question number 2)".

16. Attached as Exhibit 3 is the letter of August 24, 2014 from Respondent's attorney in response to the letter described in the preceding paragraph.

17. The letter at Exhibit 3 did not provide the "yes" or "no" answers requested by Complainant. Instead, Respondent implicitly left open the possibility that it would pay Complainant for the structures and 10% adder in condemnation proceedings, even if Respondent felt it was not legally obligated to do so.

This matter could have easily been resolved if Respondent had simply answered “yes” or “no” to the questions asked of it. Instead, they deliberately chose to leave Mrs. McElwee in doubt.

18. Complainant contends that Respondent is obligated under the mandatory provisions of the Landowner Protocol and the Code of Conduct to provide definitive answers to the three questions posed in the letter of August 20, referenced in paragraph 15 above. That being the case, Respondent’s refusal to do so constitutes a violation of the Commission’s Order in the CCN case.

19. Specifically, Grain Belt’s Landowner Protocol and Code of conduct together set forth the following requirements:

- that all communications with property owners must be made in good faith;
- that Grain Belt’s agents not make any misleading statements;
- that if their representatives do not know the answer to a question, they are to provide one later;
- that all communications with landowners must reflect “fair dealing”;
- and that Grain Belt’s representatives must not engage in behavior which causes undue pressure for the landowner.

(Landowner Protocol sections 1 and 2; Code of Conduct sections I and II).

Complainant contends that the ambiguous answers provided thus far to her three simple and straight-forward questions do not comply with the spirit or the letter of these requirements.

20. Furthermore, in her direct testimony in the CCN case, Clean Line’s Vice President for Land assured the Commission that Grain Belt “will respond promptly and courteously to any landowner’s or tenant’s (or their designated representative or counsel)

inquiry, comments or questions.” (CCN case, Exh. 113, p. 14, l. 21-22; EFIS 372).

This commitment surely implies that those answers will definitively and unambiguously answer the landowner’s questions.

21. Section 1 of the Landowner Protocol provides that all Grain Belt employees, agents and representatives must adhere to the Code of Conduct. Attorneys for Grain Belt are certainly acting in this matter as “representatives” of Respondent.

22. There is no language in the Landowner Protocol, the Code of Conduct, or in the Commission Order in the CCN case, which states or implies that the obligations set forth in those documents terminate when Respondent begins the condemnation process by mailing the 60-day or 30-day statutory notices of possible condemnation. Those documents are simply open-ended in their applicability. Thus to argue that those obligations do so terminate would necessarily assume there is an implied condition which does not appear in those documents.

23. In fact, the Landowner Protocol, at page 4, specifically states that “Grain Belt Express’s approach to landowner negotiations will not change regardless of when these negotiations take place.”

24. If Respondent’s obligations under the Landowner Protocol and Code of Conduct are deemed to terminate for any particular landowner upon the filing of the 60-day or 30-day notices for condemnation, then Respondent could completely escape all obligations under those documents by simply sending the statutory notices to all landowners who have not signed a voluntary easement. And doing so would have no downside for Respondents, as the applicable statutes do not require that condemnation be filed within any particular time period, or even filed at all, after the 30 and 60-day notices are mailed. Allowing Respondent to in effect void its obligations to some

unknown number of landowners could not be what the Commission envisioned when it concluded that the Landowner Protocol will help to mitigate any negative impacts of the project on landowners. (CCN Order, p. 46)

25. Complainant was seeking definitive “yes” or “no” answers to the questions posed in the letter of August 20 in part because of the difficulty her attorney had in obtaining definitive answers to similar questions raised with Respondent on behalf of a different client, Mr. Loren Sprouse. In that regard, attached as exhibit 4 is a copy of a July 29, 2021 letter from Complainant’s attorney to counsel for Respondent. In it, Respondent was asked to answer three questions similar to those posed in Exhibit 2 on behalf of Complainant. Exhibit 5 is a copy of the August 5, 2021 response from Respondent’s attorney. Exhibit 6 consists of copies of an exchange of two follow-up emails, the one at the bottom being from Complainant’s attorney, and the one at the top being the response from Respondent’s attorney.

26. Even if Respondent hypothetically is not legally obligated to make the payments in question if the matter goes to condemnation (the issue addressed under Count 2 below) that fact would not preclude Respondent for whatever reason from voluntarily making those payments to landowners. But based on the material provided thus far by counsel for Respondent, whether or not they will do so is still unclear.

27. Thus regardless of Respondent’s position on its legal obligation to make the payments, Complainant has no way of knowing with any degree of certainty whether the two types of payments would be forthcoming if the matter does go to condemnation. Accordingly, she is still in the dark regarding a factor which is absolutely critical in making a rational decision about how to proceed in easement negotiations with Respondent.

28. Counsel for Complainant has advised counsel for Respondent that the latter's letter of August 24 did not resolve the questions raised in the letter referenced at paragraph 15 above, and that a Complaint with the Commission would therefore be forthcoming. Counsel also advised that the Complaint would address the subject matter of Count 2 below.

29. In an email of August 13, 2021, counsel for Complainant asked counsel for Respondent how many easements it will need to acquire for the Missouri portion of the proposed right-of-way, and how many have been acquired voluntarily to-date. No answer has yet been provided. Therefore, Complainant is unable to tell the Commission how many other landowners are faced with the same problem she is raising in this Count 1.

30. If the Commission rules in Complainant's favor on Count 2 of this Complaint, then this Count 1 is seemingly moot. However, if the Commission rules in Respondent's favor on Count 2, then a decision on Count 1 is still crucial to Complainant's efforts at making a rational decision about how to proceed in easement negotiations with Respondent.

WHEREFORE, for the reasons set forth above, Complainant respectfully contends that Respondent is in violation of the provision in the CCN Order making compliance with the Code of Conduct and the Landowner Protocol mandatory on the part of Respondent. Accordingly, Complainant respectfully asks under Count 1 that the Commission order Respondent to provide definitive answers to the three questions set forth in paragraph 15 above, as requested in the letter referenced therein.

Count 2

For Count 2 of this Complaint, Complainant respectfully states as follows:

31. Paragraphs 1-30 and Exhibits 1-6 hereto are incorporated by reference in Count 2 as if fully set forth.

32. Based upon the letters from Respondent's attorney shown at Exhibits 3 and 5, Respondent seems to contend that based upon the condemnation statutes, they will not pay for support structures and the 10% adder if an easement is taken by condemnation. Nevertheless, counsel for Complainant was informed that his assumption to that effect amounted to his own "personal speculation". (Exhibit 6). If it is speculative to assume that Respondent will not pay for the two items in question if the matter goes to condemnation, then by definition Respondent's answers to the three questions are ambiguous.

33. Under other circumstances, Respondent might be correct in arguing that these payments need not be made if the matter goes to condemnation. However, in this instance Respondent has waived any statutory right it may have to not make those payments.

34. Legally, a statutory right may be waived by the party which is the beneficiary of that right. *See Benedict v. Northern Pipeline Construction*, 44 S.W.3d 410, 416-17 (Mo. App. 2001); *Schuster v. State Div. of Employment*, 972 S.W.2d 377, 385 (Mo. App. 1998). Here, for a number of reasons Respondent has waived any right to not make the payments in question if the matter goes to condemnation.

35. First, in the CCN case Respondent voluntarily offered and explicitly agreed to the compensation provisions in the Landowner Protocol. And as argued above, the terms of that Protocol did not by some implicit provision suddenly terminate if a landowner was sent a notice of condemnation. Thus under the express compensation provisions of Respondent's own Protocol, it voluntarily waived any right it may

otherwise have had not to make those payments.

36. Also, in its CCN Order the Commission itself required without limitation or condition that Respondent abide by the terms of the Landowner Protocol, which included the terms applicable to compensation for easements. (See paragraph 11 above).

The Commission did not directly or by implication state in the CCN Order that the Landowner Protocol ceased to apply once a notice of condemnation was sent to a landowner. If Grain Belt had any objection to this open-ended adoption of the Landowner Protocol, it was obligated to say so in a Motion for Rehearing of the CCN Order. By electing not to do so, Respondent waived any argument about the binding nature of the Commission Order regarding the Landowner Protocol and the Code of Conduct. Any challenge to that provision of the Order at this point would constitute an impermissible collateral attack on the CCN Order. (*See State ex rel. Licata v. Public Serv. Comm'n*, 829 S.W.2d 515, 518- 19 (Mo. App. 1992).

37. Furthermore, Grain Belt committed to Staff in the CCN case that its “right-of-way acquisition policies and practices will not change regardless of whether Grain Belt does or does not yet possess a Certificate of Convenience or Necessity from the Commission.” (Item VII.7 of the conditions agreed to by Grain Belt and Staff, Exhibit 206, attached to CCN Order; emphasis added). Compliance with the agreements in Exhibit 206 was thereafter made mandatory by the Commission. (CCN Order, p. 51, par. 2). Respondent therefore waived any right to make such changes.

38. This quoted commitment was affirmed and clarified at the CCN hearings by Clean Line’s Vice President of Land, Ms. Deanne Lanz, who was responsible for coordinating, managing and providing strategic direction for the right-of-way acquisition for the project. (Exh. 113, p. 2, EFIS 372). The testimony in question concerned her response to data request DL-26. The question in the data request was as follows: “If

Grain Belt makes a specific dollar offer to a landowner for an easement for this project, has Grain Belt made any commitment not to reduce the amount of that offer if the matter later goes to arbitration or to court? (CCN case, Tr. Vol. XII, 416:23 – 417:8)

Her answer to the data request was “Grain Belt Express has not yet made this commitment.” (CCN case, Tr. Vol. XII, 416:23 – 417:12).

However, at the hearings the earlier answer to the data request was updated, and revised significantly. When asked at the hearings if Grain Belt would retract the offer of the 10% adder if the matter went to court or to arbitration, Ms. Lanz stated “No, I do not agree with that.” (Tr. Vol. XII, 417:13-17)

The basis for that position was then explained by her as follows:

We have agreed, I believe, with the Commission [Staff] to a list of conditions now that was recently agreed to, where we have agreed not to change the methodology based on whether or not we have a CCN.

Q. So you would not reduce the offer below what had been given to that landowner if they go to arbitration or to court?

A. We would not – what we’ve previously stated is that we would not change the methodology for determining it. I don’t know if the methodology would cause a reduction or not.

Q. Well, my question still is based on your answer to your data request, you have made no commitment not to reduce the dollar value of the offer?

A. I believe the spirit of our condition with the Staff was that we would not change our methodology for determining compensation. If the methodology would result in the same amount, then we would not reduce it.

Q. And yet your response to DL-26 says: Grain Belt Express has not made this commitment, right?

A. We had not made that commitment at that time. We have since made a commitment to do so with Staff. (Tr. Vol. XII, 417:20-418:21).

So whatever else Ms. Lanz had to say earlier on this issue (see e.g. Tr. 412), this testimony expressly committed Grain Belt not to reduce the dollar amounts paid for the easement, even if the matter went to arbitration or to the courts. The same rationale given by Ms. Lanz with respect to the 10% adder would logically apply as well to

payments for structures. The commitment was made voluntarily by Grain Belt in its agreement with Staff, and adopted by the Commission.

Finally, Ms. Lanz concluded her testimony by unequivocally agreeing that if the landowner took the matter to arbitration, then the compensation package already on the table would still be available to the landowner. (Tr. Vol. XII p. 446:11-16).

Any case going to arbitration or condemnation reaches that point only when the parties fail to reach agreement on the appropriate compensation. Therefore, if the compensation provision in the Landowner Protocol remains in effect for cases going to arbitration, the same must logically hold true for cases going to condemnation. This conclusion is totally consistent with the above-quoted testimony from Ms. Lanz regarding cases going either to arbitration or the courts.

39. Neither the Landowner Protocol nor the Code of Conduct includes definitions of their terms, such as “negotiate”, “negotiations”, “voluntary” and “sign easement agreements”. Accordingly, the interpretation of those documents must be based upon the language within the four corners of the document itself. The Landowner Protocol provides for a specific compensation package for landowners, and nowhere does it provide for discontinuing that compensation for any reason – including the initiation of condemnation proceedings. As to the matter of compensation, the Commission’s adoption of the Protocol in effect is a binding link between the Commission’s CCN case and any subsequent condemnation proceedings.

40. At page 33, paragraph 110 of its CCN Order, the Commission supported its grant of the CCN in part on the ground that Grain Belt’s easement compensation package, including the easement and structure payments, “is superior to that of most utility companies.” If Grain Belt prevails on the issue raised in Count 2, then of

course that conclusion would evaporate for some unknown number of Missouri landowners.

41. Nowhere in its CCN Order did the Commission limit its description of the compensation package to easements voluntarily signed by the landowner, as opposed to those obtained through the condemnation process.

42. What the Commission did state was that the Landowner Protocol and Grain Belt's "superior compensation package" would help to mitigate the negative impacts of the project on landowners. (CCN Order, p. 46). But the Commission's attempt to balance the interests of all parties would be greatly undermined if Respondent prevails on this issue.

43. Further supporting Complainant's position here, at page 4 of the Landowner Protocol Grain Belt made the following commitment, adopted by the Commission: that Grain Belt would utilize "the same methodology for determining compensation for all landowners in order to ensure that all landowners receive fair and consistent compensation, regardless of who they are or when they sign an easement agreement." But if Respondent prevails on this issue, Missouri landowners would be treated anything but consistently.

44. If the Commission does rule in Respondent's favor on Count 2, Missouri landowners could be subject to an additional detriment not yet mentioned here. Under the Landowner Protocol, Respondent is obligated to pay 110% of the fee value of the land on the easement. (Exh. 113, p. 6, lines 14-19; EFIS 372). However, as indicated in the letters at Exhibits 3 and 5 from Respondent's attorney, if the matter goes to condemnation Respondent is proposing to only pay for the value of the easement. And according to Grain Belt's witness Ms. Lanz, the value of an easement amounts to only

70-90% of the value of the land in fee. Thus according to Grain Belt's information, landowners who do not voluntarily sign an easement could actually be penalized for up to 40% of the value of the property taken by Respondent. (110% - 70%).

45. This Complaint is based in large part upon the Commission's Order of March 20, 2019 in the CCN case, as well as a number of other documents from that case cited herein. Accordingly, Complainant respectfully asks the Commission to take official notice of the case file in the CCN case, or to at least take notice of the CCN Order and the other documents from that case cited in this Complaint.¹

WHEREFORE, under Count 2 Complainant respectfully asks the Commission to rule that if the matter of her easement goes to condemnation, then Respondent is still obligated under the terms of the Commission Order in the CCN case, and the documents and testimony submitted there by Grain Belt, to make the payments for structures and the 10% adder in accordance with the terms of the Landowner Protocol.

Request for Expedited Treatment Pursuant to 20 CSR 4240-2.080(14): More than 30 days has passed since Respondent sent the 30-day notice letter to Mrs. McElwee. Therefore, Respondent could file for condemnation against her property at any time, despite the filing of this Complaint. According, if Complainant is to be afforded any meaningful relief from the Commission, it is important that the Commission dispose of this matter at its earliest convenience.

Expeditious treatment of this Complaint will have no negative effect on any parties' customers or on the general public.

This Complaint was filed as soon as was practicable, given Complainant's lack of

¹ The Commission is clearly authorized to do so. As stated in *Environmental Utilities v. Public Service Commission*, 219 S.W.3d 256, 265 (Mo. App. 2007), pursuant to Section 536.070 agencies shall take official notice of all matters of which courts take judicial notice. And courts may take judicial notice of other proceedings when the cases are interwoven or interdependent. *Id.* Such is clearly the case here.

familiarity with the condemnation process and the discussions of the general subject matters of the Complaint between counsels for Complainant and Respondent.

Respectfully submitted

/s/ Paul A. Agathen

Paul A. Agathen

Attorney for Complainant

Mo Bar No. 24756

485 Oak Field Ct.

Washington, MO 63090

636-980-6403

Paa0408@aol.com

Certificate of Service

I certify that a copy of the foregoing was served this 27th day of August, 2021 by email on counsel for Respondent, Mr. Seth Wright.

/s/ Paul A. Agathen

Paul A. Agathen

EXHIBIT 1



900 W. 48th Place, Suite 900, Kansas City, MO 64112

July 20, 2021

Seth C. Wright
(816) 572-4747
scwright@polsinelli.com

Ronald L. McElwee, Sr. Revocable Trust
dated the 7th day of December, 2000
8475 Southeast Red Brick Road
Cowgill, Missouri 64637-8797

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

**Re: NOTICE OF INTENDED ACQUISITION AND WRITTEN OFFER
UNDER R.S. MO. § 523.253**

Ronald L. McElwee, Sr. Revocable Trust dated the 7th day of December, 2000:

I write on behalf of Grain Belt Express LLC ("Grain Belt"), a subsidiary of Invenenergy Transmission LLC. As explained in my previous letter dated June 8, 2021, Grain Belt is planning to construct, maintain, and operate an electric transmission line that is planned to ultimately span nearly 800 miles between Kansas and Indiana, and Grain Belt is seeking an easement to use a portion of the landowner's property necessary for placing and operating the transmission line.

Specifically, Grain Belt is seeking an easement located on property recorded in Caldwell County, Missouri contained in the following legal description:

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF CALDWELL,
STATE OF MISSOURI:

THE NORTHEAST QUARTER (NE 1/4) OF SECTION TWENTY (20), TOWNSHIP FIFTY-FIVE (55) NORTH, RANGE TWENTY-SEVEN (27), EXCEPT ONE (1) ACRE IN THE FORM OF A SQUARE OUT OF THE NORTHWEST CORNER THEREOF, AND ALSO EXCEPT THAT PART CONVEYED TO THE STATE OF MISSOURI FOR HIGHWAY PURPOSES.

The above legal description refers to the full parcel, however, the specific easement required is anticipated to be only approximately 10 acres. The following is an approximate description of the easement, which may be modified as the result of detailed survey work:

A 150 FOOT WIDE STRIP OF LAND FOR TRANSMISSION LINE EASEMENT PURPOSES ONLY. BEING THAT PART OF SECTION 20, TOWNSHIP 55 NORTH, RANGE 27 WEST, ALL IN CALDWELL COUNTY, MISSOURI, THE CENTERLINE OF SAID STRIP OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

polsinelli.com

Atlanta Boston Chicago Dallas Denver Houston Kansas City Los Angeles Miami Nashville New York
Phoenix St. Louis San Francisco Seattle Silicon Valley Washington, D.C. Wilmington

Polsinelli PC, Polsinelli LLP in California

78901742.1

July 20, 2021

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COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 20; THENCE SOUTH 01°10' WEST, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 1451 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89°43' EAST, A DISTANCE OF 1745 FEET;

THENCE NORTH 77°06' EAST, A DISTANCE OF 950 FEET TO THE POINT OF TERMINUS, SAID POINT BEING ON THE EAST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 187 AT PAGE 62.

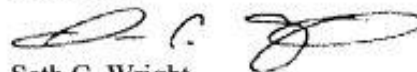
THE SIDELINES OF SAID STRIP OF LAND SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE ON THE WEST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 187 PAGE 62 AND THE EAST LINE OF SAID TRACT.

The landowner will continue to have the right to use the easement area for normal farming and grazing, hunting, recreation and other purposes that do not interfere with the electrical transmission line or Grain Belt's rights.

Grain Belt is prepared to offer you compensation in the amount of \$33,012 for the easement it seeks through the property described above. This amount is based on the attached appraisal. The attached appraisal was made by a state-licensed or state-certified appraiser using generally accepted appraisal practices.

Grain Belt's offer will be held open for 30 days following the date of this letter. After that 30-day period ends, Grain Belt may file a condemnation petition to obtain the easement it seeks through the courts in accordance with R.S. Mo. § 523.253. Please contact me at (816) 572-4747 at your earliest convenience to discuss options for moving forward without the need for a condemnation action. If we are not able to come to terms on an easement agreement within 30 days of this letter, Grain Belt intends to file a condemnation action regarding the referenced property.

Sincerely,



Seth C. Wright

SCW

Attachment

EXHIBIT 2

*Paul A. Agathen
Attorney-at-law
485 Oak Field Ct.
Washington, MO 63090
August 20, 2021*

Mr. Seth C. Wright, Esq.
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
scwright@polsinelli.com

via electronic mail

Dear Mr. Wright:

I am writing to ask for clarification of Grain Belt's position on payments to my client Mrs. Linda McElwee if the matter of her easement for the transmission right-of-way goes to court in a condemnation proceeding.

As the surviving spouse, Mrs. McElwee has an ownership interest in several parcels of land on the proposed Grain Belt right-of-way in Caldwell County. The land is now titled in the name of one or more revocable trusts. As you recall, on July 20, 2021 you sent a "30-day notice" letter to the trusts for condemnation proceedings of this property under Section 523.253 RSMo.

Based on information from Grain Belt, Mrs. McElwee understands that seven lattice support structures will be built upon her property.

Your letter invited the recipient to contact you regarding options for moving forward without the need for condemnation. I am representing Mrs. McElwee in this matter in an effort to clarify Grain Belt's position on payments to her (or to the trusts) if the matter does go to condemnation.

Specifically, I am requesting that you provide an answer to the following three questions:

1. If the matter does go to condemnation, will Grain Belt pay Mrs. McElwee for support structures which are built on the right-of-way?

2. If the answer to the first question is “yes”, will the payment still be in the amount of \$18,000 per lattice structure?

3. If the matter goes to condemnation, will Grain Belt still pay Mrs. McElwee 110% of the fee value of the property on the easement?

We ask that you provide a “yes” or “no” answer to these questions (or possibly a “not applicable” answer to question number 2).

With the possibility for condemnation imminent, I would appreciate hearing from you as soon as possible with an answer to these three questions. It is obviously imperative that Mrs. McElwee have a definitive answer to these questions in order to make an informed decision about how to proceed with respect to the easement across her property.

Yours truly,

/s/Paul A. Agathen
636-980-6403

EXHIBIT 3



900 W. 48th Place, Suite 900, Kansas City, MO 64112 • (816) 753-1000

August 24, 2021

Seth C. Wright
(816) 572-4464 Direct
scwright@polsinelli.com

Paul A. Agathen, Attorney-at-Law
485 Oak Field Ct.
Washington, MO 63090
paa0408@aol.com

via electronic mail

Re: Linda McElwee

Dear Mr. Agathen,

I am writing on behalf of Grain Belt Express LLC (“Grain Belt”) in response to your letter dated August 20, 2021 regarding several parcels of land owned by your client, Linda McElwee. Grain Belt has previously contacted Ms. McElwee in an effort to acquire an easement across her property for the construction of a transmission line (the “Project”). You requested clarification regarding Grain Belt’s position if the matter goes to condemnation.

The compensation being offered by Grain Belt for voluntary easements is set forth in the Missouri Landowner Protocols (Protocols), which were referenced by the Missouri Public Service Commission (“MPSC”) in its Order granting Grain Belt’s certificate of convenience and necessity (“CCN”), and compliance with such Protocols in the context of voluntary easements was made a condition of the CCN.

Conversely, the involuntary condemnation process is under the jurisdiction of the Missouri district courts, not the MPSC. The district courts are directed to determine the “fair market value” of the property to be condemned pursuant to Section 523.001 *et seq.*

We discussed these matters at length in our phone conference on August 19 with representatives of MPSC Staff present. We provided detailed explanations on our position during the call. We also discussed the inappropriate nature of your questions, as the purpose of the questions is not in the spirit of good faith negotiations, but to set up a baseless complaint at the MPSC.

Ms. McElwee received a 30-day offer letter as required by Section 523.253 RSMo. As required by Missouri law, the letter contained a detailed appraisal, from a Missouri certified appraiser, along with a written offer. We have, and will continue to, comply with all applicable Missouri laws.

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Atlanta Boston Chicago Dallas Denver Houston Kansas City Los Angeles Miami Nashville New York
Phoenix St. Louis San Francisco Seattle Silicon Valley Washington, D.C. Wilmington

Polsinelli PC, Polsinelli LLP in California



If you have any questions or would like to discuss this matter further please do not hesitate to contact me.

Best Regards,

A handwritten signature in black ink, appearing to read "S.C. Wright", followed by a large, stylized flourish.

Seth C. Wright
Shareholder
Polsinelli PC

EXHIBIT 4

*Paul A. Agathen
Attorney-at-law
485 Oak Field Ct.
Washington, MO 63090
July 29, 2021*

Mr. Seth C. Wright, Esq.
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112

Dear Mr. Wright:

Mr. Loren Sprouse has an ownership interest in three parcels of land on the proposed Grain Belt right-of-way. As you recall, on July 15, 2021 you sent Mr. Sprouse a “60-day notice” letter for condemnation proceedings under Section 523.250 RSMo for those three properties.

Your letters invited Mr. Sprouse to contact you regarding options for moving forward without the need for condemnation. I am representing Mr. Sprouse in this matter in an effort to clarify Grain Belt’s position if the matter does go to condemnation.

Specifically, we are requesting that you provide an answer to the following three questions:

1. If the matter does go to condemnation, will Grain Belt still pay for support structures which are built on the right-of-way?
2. If the answer to the first question is “yes”, will the payment still be in the amount of \$18,000 per lattice structure?
3. If the matter goes to condemnation, will Grain Belt still pay 110% of the fee value of the property on the easement?

I would appreciate hearing from you as soon as possible with an answer to these three issues.

Yours truly,

/s/Paul A. Agathen
636-980-6403

EXHIBIT 5



900 W. 48th Place, Suite 900, Kansas City, MO 64112 • (816) 753-1000

August 5, 2021

Seth C. Wright
(816) 572-4464 Direct
scwright@polsinelli.com

Paul A. Agathen, Attorney-at-law
485 Oak Field Ct.
Washington, MO 63090
paa0408@aol.com

via electronic mail

Re: Loren Sprouse Parcels

Dear Mr. Agathen,

I am writing on behalf of Grain Belt Express LLC (“Grain Belt”) in response to your letter dated July 29, 2021 regarding three parcels of land owned by your client, Loren Sprouse. Grain Belt has previously contacted Mr. Sprouse in an effort to acquire an easement across his property for the construction of a transmission line (the “Project”). You requested clarification regarding Grain Belt’s position if the matter goes to condemnation.

The compensation being offered by Grain Belt for voluntary easements is set forth in the Missouri Landowner Protocols (Protocols), which were referenced by the Missouri Public Service Commission (“MPSC”) in its Order granting Grain Belt’s certificate of convenience and necessity (“CCN”), and compliance with such Protocols in the context of voluntary easements was made a condition of the CCN.

Conversely, the involuntary condemnation process is under the jurisdiction of the Missouri district courts, not the MPSC. The district courts are directed to determine the “fair market value” of the property to be condemned pursuant to Section 523.001 *et seq.*

If you have any questions or would like to discuss this matter further please do not hesitate to contact me.

Best Regards,

Seth C. Wright
Shareholder
Polsinelli PC

polsinelli.com

Atlanta Boston Chicago Dallas Denver Houston Kansas City Los Angeles Miami Nashville New York
Phoenix St. Louis San Francisco Seattle Silicon Valley Washington, D.C. Wilmington

Polsinelli PC, Polsinelli LLP in California

EXHIBIT 6

8/11/2021

RE: Questions regarding condemnation

Subject: **RE: Questions regarding condemnation**
Date: 8/9/2021 12:45:51 PM Central Standard Time
From: SCWright@Polsinelli.com
To: paa0408@aol.com

Paul,

②

You are free to assume whatever you wish, and we are not in a position to confirm your personal speculation. We made our position clear in our letter to you.

Seth C. Wright | Shareholder | Polsinelli PC

D 816-572-4464 | C 816-390-4656 | scwright@polsinelli.com

From: paa0408@aol.com <paa0408@aol.com>
Sent: Friday, August 6, 2021 1:33 PM
To: Seth Wright <SCWright@Polsinelli.com>
Subject: Re: Questions regarding condemnation

EXTERNAL EMAIL paa0408@aol.com

Seth, your letter did not directly answer the questions posed in my letter to you of July 29. However, based upon what you stated, I will assume that the answer to my questions number 1 and 3 is "no", unless you tell me differently.

①

Paul

In a message dated 8/5/2021 2:49:51 PM Central Standard Time, SCWright@Polsinelli.com writes:

Paul,

Please see the attached correspondence.