

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Landowners Alliance, and)	
Gary Mareschal,)	
)	
Complainants,)	
)	
V.)	
)	Case No. EC-2020-0408
Grain Belt Express Clean Line LLC, and)	
Invenergy Transmission LLC, and)	
Invenergy Investment Company,)	
)	
Respondents)	

OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

In response to Respondents' June 25, 2020 Motion to Dismiss Formal Complaint, Complainants respectfully state as follows:

1. Commission Rule 20 CSR 4240-2.070(7) specifies only two grounds upon which a Complaint may be dismissed: (1) failure to state a claim on which relief may be granted; or (2) failure of the complaint to comply with the Commission's rules, or with any order of the Commission. Respondents' Motion to Dismiss is based only on the first of those two grounds.¹ Accordingly, their Motion to Dismiss turns on one issue: whether or not the Complaint does state a claim upon which relief may be granted.

2. Respondents' approach to this one issue is to basically ignore it altogether; i.e., they do not even attempt to demonstrate why the Complaint supposedly does not state a claim upon which relief may be granted. Because they do not address that issue at any point in their Motion to Dismiss, every statement in that Motion is by definition irrelevant to the issue they purport to raise.

¹ See opening paragraph of the Motion to Dismiss.

3. The Complaint clearly does allege grounds upon which relief may be granted. Section 386.390 RSMo sets forth the grounds upon which a complaint may be filed with the Commission.² As it pertains to this case, that statute in essence states that a complaint may be based upon any act done or omitted to be done by a public utility in violation of any rule or order of the Commission.³

4. Here, Complainants alleged that Grain Belt and Invenergy failed to abide by the terms of the Code of Conduct which the Commission ordered Grain Belt to follow in the CCN case, No. EA-2016-0358. In particular, Complainants alleged that not all communications with landowners from the agents of Grain Belt and Invenergy were factually correct, as is required by the Commission order incorporating the Code of Conduct.⁴ However, the Motion to Dismiss does not even attempt to establish that the Complaint did not state a ground upon which relief may be granted under Section 386.390 RSMo. If anything, the Motion is more suitable as an Answer to the Complaint, rather than a Motion to Dismiss.

5. In deciding the merits of a Motion to Dismiss for failure to state grounds upon which relief may be granted, the Commission uses the same standards of review which are utilized in judicial proceedings.⁵ This means that the court (or here, the Commission) does not address the merits of complainants' claim, but simply determines whether the complainant states any ground upon which relief may be granted.⁶ If the petition (or here, the complaint) asserts any set of facts which would entitle the complainant to relief,

² To the same effect see Commission Rule 20 CSR 4240-2.070(4).

³ See *Huhammad v. Laclede Gas*, File No. GC-2016-0010, 26 MO. P.S.C. 279 (2016) where the Commission dismissed a complaint because the Complainant failed to prove a violation of "any statute or any Commission regulation, tariff or order."

⁴ See Complaint, par. 12.

⁵ *R & S Home Builders et al. v. KCP&L*, File EC-2014-0343, 25 MO. P.S.C 3d 52, 55 (2014); *Sauer v. Missouri PSC and Union Electric Co.*, File No. EC-2015-0164, 25 MO P.S.C. 3d 21, 22 (2015).

⁶ *Sandy v. Schriro*, 39 S.W.3d 853 (Mo. App. 2001).

if successfully proven, then the complaint states a legitimate claim and cannot be dismissed.⁷ Or as the Commission stated when addressing this same issue:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff's petition. It assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action⁸ (Emphasis added).

These pronouncements mean, among other things, that the Respondents have no legitimate basis for alleging that anything in the Complaint is “unsubstantiated”. At this point in the process, all factual allegations in the Complaint are assumed to be true. In particular, this principle applies to the statements attributed in the Complaint to Messrs. Mareschal and Daniels regarding what they were told by the land agents of Grain Belt and Invenergy. (Although seemingly unnecessary at this point, attached to this pleading are affidavits from Messrs. Mareschal and Daniels concerning the accuracy of the statements attributed to them in the Complaint.)

6. In paragraphs 10, 11 and 12 of their Motion to Dismiss, Respondents in effect seek to excuse the alleged misinformation provided by the land agents on the ground that that landowners were already provided with written material showing that Grain Belt was still involved in the project. However, any such material is irrelevant here. As discussed above, the allegation that the land agents misrepresented the facts in their negotiations with landowners in and of itself states a claim upon which relief may be granted.

Moreover, the Code of Conduct specifically requires that when a land agent contacts a landowner either in person or by telephone, the agent must “promptly identify yourself as

⁷ *Charron v. Holden*, 111 S.W.3d 553, 555 (Mo. App. 2003).

⁸ *Sauer v. MO. P.S.C. and Union Electric Company*, *supra*, 25 MO. P.S.C.3d at 22, quoting from *Bosch v. St. Louis Healthcare Network*, 41 S.W.3d 462 (Mo. banc 2001).

representing Grain Belt Express.”⁹ There is no exception to this requirement on the ground that Grain Belt’s continued participation in the project could have been discerned from earlier written documents provided to the landowners.

7. Finally, even if it did have merit, the Motion to Dismiss is basically of no consequence. Respondents claim that their agents have been “proactive and forthcoming with all landowners”;¹⁰ that they are mindful of the conditions imposed by the Commission through the Code of Conduct;¹¹ and that they maintain the highest commitment to be accurate in every communication with Missouri landowners.¹² Respondents also contend that the relief sought by Complainants is already embedded in the instructions to the CLS agents and in the documents given by those agents to the landowners. Yet on the other hand, Respondents are resisting the rather innocuous relief being sought here by Complaints, who are essentially asking only that Respondents be directed to remind their own agents to be accurate in their negotiations with landowners. Unfortunately, the steps taken thus far by Grain Belt and Invenenergy have not prevented the land agents from providing inaccurate information to the landowners. Thus further involvement by the Commission is clearly warranted if it still intends that the land agents will actually adhere to the Code of Conduct.

⁹ Code of Conduct, Sections II a and b, at Schedule DKL of Exhibit 113, EFIS 372, Case No. EA-2016-0358.

¹⁰ Complaint, par. 10.

¹¹ Id.

¹² Motion to Dismiss, par. 16.

For the above reasons, Complainants respectfully ask that the Motion to Dismiss be denied.

Respectfully submitted

/s/ Paul A. Agathen

Paul A. Agathen

Attorney for Complainants

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 9th day of July, 2020 by email to counsel for respondents, Andrew O. Schulte and Anne E. Callenbach, at the following email addresses: Aschulte@Polsinelli.com and ACallenbach@Polsinelli.com.

/s/ Paul A. Agathen

Paul A. Agathen