

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Landowners Alliance, and)
Gary Mareschal,)
)
Complainants,)
)
v.)
)
)
)
Grain Belt Express LLC, and)
Invenergy Transmission LLC, and)
Invenergy Investment Company,)
)
Respondents)

Case No. EC-2020-0408

RESPONDENTS' POSITION STATEMENT

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”) hereby submit their Position Statement pursuant to the Procedural Schedule established by the Missouri Public Service Commission (“Commission”).

I. Statement of the Case

On June 22, 2020, Missouri Landowners Alliance and Gary Mareschal (together, “Complainants”) filed a Formal Complaint (“Complaint”) against Respondents, alleging that land agents working for Contract Land Staff (“CLS”) and on behalf of Respondents, made statements on three total phone calls to two landowners that “Grain Belt is no longer involved with this business” or possibly that “Grain Belt is no longer involved in the business.”¹

¹ Formal Complaint, ¶ 7, EFIS Item No. 1 (June 22, 2020).

The original Complaint included a false assertion that these statements were made in order to benefit the land agents and the Respondents.² Just yesterday (January 7, 2021), Complainants struck that assertion from their Complaint.³ The assertion was illogical in the first place, since the purpose of the calls from CLS land agents was to discuss documents that had been previously mailed to landowners and that were clearly marked with the name “Grain Belt.”

Further, the only evidence that the land agents made the alleged statements is found in affidavits from the two landowners involved.⁴ While the landowners may honestly believe that they heard the alleged statements, the countervailing evidence demonstrates it is far more likely that the land agents truthfully stated that “**Clean Line** is no longer involved with this business” and that the landowners misunderstood, misheard or misinterpreted the statement. The countervailing evidence includes affidavits from the land agents, contemporaneous call logs, and extensive land agent training materials, including scripts in which land agents are instructed to state that they represent “Grain Belt Express.”

Even if, despite the evidence, the Commission finds it more likely than not that the land agents made the alleged statements, it does not follow that the Respondents violated the Code of Conduct such that Complainants are entitled to any relief. The relevant provision of the Code of Conduct states “all communications with property owners and occupants must be factually correct.” It would be a perverse reading of the Code of Conduct to find that three unintentional misstatements (if in fact they were made), out of *thousands* of phone calls between land agents and landowners results in an actionable violation. Furthermore, it would be against public policy

² Formal Complaint, EFIS Item No. 1, ¶ 11 (June 22, 2020).

³ Motion to Strike Paragraph 11 of Complaint, EFIS Item No. 31 (Jan. 7, 2021).

⁴ Opposition to Respondents’ Motion to Dismiss, EFIS Item No. 6 (July 9, 2020).

to find that such a frivolous allegation is actionable, as it would encourage an endless parade of frivolous complaints at the Commission.

Finally, it is evident that Respondents and CLS take compliance with the Code of Conduct extremely seriously. The evidence will show that CLS agents have been extensively trained on the Code of Conduct and that training is ongoing. The evidence will also show that Respondents took immediate action in response to the Complaint, which included confirming land agents are properly trained, reinforcing the land agents' understanding of the difference between Clean Line and Grain Belt, and updating the Grain Belt logo to prominently identify the owner of Grain Belt as Invenergy Transmission. Accordingly, the Complainants and the Commission should have every confidence that no further direction is needed and that future concerns would be more appropriately and more efficiently addressed through established informal means.⁵

II. Statement of Position on the Issues

1. *Did land agents, working on behalf of Respondents, falsely claim that Grain Belt was no longer involved with the transmission line project, approved by the Commission in Case No. EA-2016-0358, during negotiations with landowners?*

No. The evidence demonstrates that it is more likely that the landowners misheard or misinterpreted the land agents' truthful statement that "Clean Line is no longer involved with this business." This position is supported by affidavits from the land agents, contemporaneous call

⁵ See, e.g., Missouri Landowner Protocols, p. 2, available on the Grain Belt Express website at https://grainbeltexpress.com/documents/LandownerProtocol_20200715.pdf. ("Landowners are provided with contact information for both ROW agents, as well as contact information for the corporate office of Invenergy Transmission LLC ("Invenergy Transmission"), the parent company of Grain Belt Express, in order to ensure that a landowner can directly contact the Vice President of Invenergy Transmission or any other corporate employee leading land efforts on behalf of Invenergy Transmission (the "Land Team") to report any possible violations of the Code of Conduct. Reported violations of the Code of Conduct are taken seriously and are investigated by the Vice President and the Invenergy Transmission management team.").

logs, and extensive land agent training materials, including scripts in which land agents are instructed to state that they represent “Grain Belt Express.”

Further, even if the Commission is unable to determine whether or not the land agents stated “Grain Belt is no longer involved with this business,” the Complainants have withdrawn their unsubstantiated and illogical assertion that the statement was by design. Accordingly, at worst, the alleged statements by the land agents were unintentional. An unintentional misstatement does not amount to a “false claim.”

2. *To the extent the answer to the Issue above is yes, did Respondents violate any law or any Commission rule, order or decision?*

The Commission need not reach this issue, because the answer to Issue 1 is “no.” To the extent the Commission addresses this issue, it is clear that the Respondents did not violate any law, Commission rule, order or decision. Three isolated and unintentional misstatements (if in fact they were made), which are easily corrected by every other piece of correspondence, does not amount to a violation of the Code of Conduct or any other law, rule, order or decision.

3. *To the extent the answers to Issues 1 and 2 are yes, what remedy, if any, should be adopted by the Commission?*

The Commission need not reach this issue, because the answers to Issues 1 and 2 are both “no.” To the extent the Commission addresses this issue, no further remedy is needed, because Respondents have demonstrated that they take compliance with the Code of Conduct and all of their other regulatory requirements extremely seriously. Conversely, so that future landowner concerns or misunderstandings can be addressed more efficiently, the Commission should encourage Complainants’ use of established informal means, rather than the filing of formal complaints such as this.

WHEREFORE, Respondents respectfully request that the Commission accept this
Position Statement.

Respectfully submitted,

/s/ Andrew O. Schulte

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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 8th day of January, 2021.

/s/ Andrew O. Schulte

Attorney for Respondents