

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

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

Case No. EC-2020-0408

**REPLY TO COMPLAINANTS' RESPONSE TO MOTION FOR SUMMARY  
DETERMINATION**

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”), pursuant to 20 CSR 4240-2.080(13), hereby file this Reply to Complainants’ Response to the Motion for Summary Determination. In support of its Reply, Respondents state the following:

1. Complainants’ Response to the Motion for Summary Determination confirms that there is no genuine dispute regarding the facts necessary for the Missouri Public Service Commission (“Commission”) to find that Complainants are not entitled to the relief that they seek.
2. In the Response, Complainants admit to every fact set forth in the Motion for Summary Determination, except for two: first, Fact No. 7, which addresses the date of the first

phone call to Marvin Daniels; and second, Fact No. 16, which states that the relief sought by Complainants has been granted.

3. Complainants dispute of Fact No. 7 is not material, because the exact date of the call is not relevant to the Complainants' allegations.

4. The Complainants' basis for disputing Fact No. 16 is that the relief sought was provided voluntarily by Grain Belt instead of at the direction of the Commission. This dispute is not genuine, because there is no genuine need for a Commission directive.

5. Complainants have abandoned their claim that the alleged misstatements (if they even occurred) were intentional,<sup>1</sup> which was at the heart of their original justification for the Complaint and the requested relief.<sup>2</sup>

6. Complainants' new justification for relief is that "the Commission's involvement would carry more weight than whatever Grain Belt might say on its own to its land agents."<sup>3</sup> But Complainants provide no support for that statement and it is speculative and illogical to assume clear directives from the land agents' employer and employer's client would carry insufficient weight. The Complainants' statement also ignores the fact that the Commission *is already* involved. The Commission adopted the Code of Conduct as a condition of Grain Belt's certificate

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<sup>1</sup> "... the basis of this Complaint is simply that the inaccurate statements were made by the land agents -- *not that they were made intentionally.*" Complainants' Response, p. 9 (emphasis added). Complainants make a feeble attempt to claim Respondents "cite no evidence which in fact demonstrates that the allegedly false statements were not made intentionally." Complainants' Response, p. 9. This ignores Fact Nos. 3-6, which are undisputed by Complainants and clearly cited in Respondents' Legal Memorandum in Support of Motion for Summary Determination at ¶ 4. Complainants' attempt to hold onto a shred of their original claim is "merely argumentative, imaginary or frivolous." *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 382 (Mo.Banc 1993).

<sup>2</sup> Formal Complaint, ¶ 11.

<sup>3</sup> Complainants' Response, p. 9.

and the land agents have been trained on the fact that they are obligated *by the Commission* to follow the Code of Conduct.<sup>4</sup> Under the circumstances, Complainants' claim reveals itself to be nothing other than a frivolous effort to waste the Commission's time.

7. The only other fact that the Complainants claim to be in dispute is whether or not the land agents made *unintentional* statements about Grain Belt not being involved in the Grain Belt Project.<sup>5</sup> However, Complainants admit that "it is nearly impossible to ascertain what exactly was said, and in what context of the conversation."<sup>6</sup> The Missouri Supreme Court advises that "A defending party ... may establish a right to summary judgment by demonstrating ... 'that the non-movant, after an adequate period for discovery, has not been able and *will not be able to* produce sufficient evidence to allow the trier of fact to find the existence of any one' of the elements of the non-movant's claim."<sup>7</sup> Clearly, proving that a misstatement occurred is the singular, pivotal element of the Complainants' claim. Complainants do not assert that there has been an inadequate period for discovery, and even if they did, they have admitted that no period of discovery will lead to an understanding of exactly what was said in the phone calls.

8. Despite this lack of evidence, if the Commission assumes—only for the purposes of summary determination—that Complainants' version of events is correct, it *still* does not amount to a violation of the Code of Conduct. It would be contrary to the spirit of the Code of Conduct to find a violation for an isolated slip of the tongue that is easily and immediately corrected by every other piece of communication with the landowners. Finally, *even if* an isolated,

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<sup>4</sup> Undisputed Fact Nos. 4, 5, 14, 15.

<sup>5</sup> Complainants' Response, p. 7.

<sup>6</sup> Complainants' Response, p. 4 (Complainants admit to Undisputed Fact No. 10).

<sup>7</sup> *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 453 (Mo.Banc 2011) (citing *ITT Commercial Finance Corp.*, 854 S.W.2d at 378) (emphasis added).

unintentional misstatement results in an exceedingly technical violation of the Code of Conduct, the Commission does not need any additional facts to find that Complainants are not entitled the relief sought because there are no benefits (and, in fact, there are potential detriments<sup>8</sup>) from a Commission directive that Grain Belt conduct training that is already occurring and will continue to occur regardless of the outcome of this proceeding.

WHEREFORE, Respondents respectfully request that the Commission grant the Motion for Summary Determination and find that further directives towards the Respondents are not necessary.

Respectfully submitted,

/s/ Andrew O. Schulte

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ATTORNEYS FOR RESPONDENTS

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<sup>8</sup> A gratuitous Commission directive may encourage additional formal complaints regarding issues that are more appropriately resolved through informal means. Legal Memorandum in Support of Motion for Summary Determination, ¶¶ 7-10.

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 9<sup>th</sup> day of October, 2020.

/s/ Andrew O. Schulte

Attorney for Respondents