

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 9th day of December, 2020.

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| Missouri Landowners Alliance, et al., |) |
| |) |
| Complainants, |) |
| |) |
| v. |) |
| |) |
| Grain Belt Express Clean Line LLC, et al., |) |
| |) |
| Respondents. |) |

File No. EC-2020-0408

**ORDER DENYING MOTION FOR SUMMARY DETERMINATION
AND DIRECTING FILING**

Issue Date: December 9, 2020

Effective Date: December 9, 2020

On June 22, 2020,¹ Missouri Landowners Alliance and Gary Mareschal (“Complainants”) filed a Complaint against Grain Belt Express, LLC; Invenergy Transmission LLC; and Invenergy Investment Company (“Respondents”). It alleged violations of orders entered in File No. EA-2016-0358 requiring that all factual statements made to landowners in easement negotiations be factually correct. It alleged that Respondents’ agents violated this requirement by telling landowners Grain Belt was “no longer involved with this business,” a statement which Complainants contend was legally and factually untrue.²

On September 10, Respondents filed a Motion for Summary Determination. Complainants filed their Response in Opposition to Respondents’ Motion for Summary

¹ Unless otherwise indicated, all date references will be to 2020.

² Complaint, paragraph 9.

Determination and Response to Legal Memorandum in Support of Said Motion (Response) on October 7. On October 9, Respondents filed a Reply to Complainants' Response to Motion for Summary Determination. Complainants' Motion to Strike and Respondents' Response to Motion to Strike³ followed on October 9 and 12. Complainants filed a Response to Reply to Complainants' Response to Motion for Summary Determination on October 16.

The motion for summary determination presents the material issue of whether Respondents' agents told landowners that Grain Belt was "no longer involved with this business." The pleadings that accompany the motion for summary determination cite to the affidavits of the landowners, on the one hand, and to the affidavits of the agents on the other hand.⁴

The affidavit of landowner Gary Mareschal affirms the allegations of paragraphs 6 and 7 of the Complaint, which state that in the course of a conversation with Daniel Walter,⁵ Mr. Walter told Mr. Mareschal he was working for Invenergy and claimed that "Grain Belt is no longer involved with this business." The affidavit of landowner Marvin J. Daniels affirms paragraph 8 of the Complaint, which states Mr. Daniels received calls from Alex Brown and Daniel Walter and was "led to believe that Grain Belt was no longer associated with the proposed transmission line project."

³ The motion to strike asked the Commission to strike Respondent's reply to complaint's response to the motion for summary determination as being incompatible with the Commission's rule on summary determination. Since summary determination is being denied in this order, the motion to strike will be denied as moot.

⁴ Filed July 9, 2020 with Complainants' Opposition to Respondents' Motion to Dismiss and on July 23, 2020 with Respondents' Response to Complaint. All affidavits are cited in Complainants' Response in Opposition to Respondents' Motion for Summary Determination and Response to Legal Memorandum in Support of Said Motion. p. 7.

⁵ Referred to as "Walter" in the Complaint; as "Walters" in Mr. Walters' affidavit.

The motion for summary determination includes the affidavit of agent Daniel Walters. It acknowledges speaking with Marvin Daniels and Gary Mareschal. It denies at any point telling Mr. Daniels that “Grain Belt is no longer involved with this business” or making “any other statement that could be construed as such.” The motion for summary determination also includes the affidavit of agent Alexander Brown. It acknowledges communications with Mr. Daniels, stating that “[a]t no point during this telephone call did I state that ‘Grain Belt is no longer involved with this business,’ ‘Grain Belt is no longer involved with the business’ or any other similar statement.”

According to Missouri court rules and cases, summary determination is appropriate, “in cases in which the movant can establish that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law.”⁶ A central material issue here is whether the agents said Grain Belt was no longer involved with the business. The parties’ affidavits are in conflict on that issue. The Commission will deny the Motion for Summary Determination and order the parties to consult and file a proposed procedural schedule.

THE COMMISSION ORDERS THAT:

1. Complainants’ Motion to Strike Respondents’ Reply to Complainants’ Response to Motion for Summary Determination is denied as moot.
2. Respondents’ Motion for Summary Determination is denied.
3. The parties shall consult and file a proposed procedural schedule no later than December 19, 2020.

⁶ *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 377 (Mo. 1993).

4. This order shall be effective when issued.



BY THE COMMISSION

Morris L Woodruff

Morris Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Graham, Regulatory Law Judge