

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

RESPONSE TO FORMAL COMPLAINT

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”)¹ (together with Invenergy, the “Respondents”), pursuant to 20 CSR 4240-2.070(8), hereby file this Response to Formal Complaint (“Response”). In support of its Response, Respondents state the following:

I. Background and Summary of Complaint and Subsequent Pleadings

1. On June 22, 2020, Complainants filed a formal complaint against Respondents, alleging that on two recent occasions land agent representatives of Respondents informed two landowners that either “Grain Belt is no longer involved with this business” or possibly that “Grain Belt is no longer involved in the business”, which, if actually stated to the landowners,

¹ The Complainants incorrectly named Grain Belt Express Clean Line LLC as a Respondent in the Complaint filed on June 22, 2020, even though the Missouri Public Service Commission approved the name change from Grain Belt Express Clean Line LLC to Grain Belt Express LLC on June 9, 2020 in Case No. EN-2020-0385.

are factually untrue. The Complaint contains unsubstantiated allegations that are allegedly in violation of the Code of Conduct, which was received in evidence in Case No. EA-2016-0358, to which Grain Belt is bound to comply with in accordance with the Commission's March 20, 2019 Report and Order on Remand.

2. On June 25, 2020, Respondents filed its Motion to Dismiss Formal Complaint, in which Respondents: (1) denied the unsubstantiated and uncorroborated allegations raised in the complaint²; (2) reminded the Commission of the project entity name change from Grain Belt Express Clean Line LLC to Grain Belt Express LLC, which was approved in Case No. EN-2020-0385³; (3) detailed the numerous steps taken to update all social media and promotional materials to reflect the name change⁴; (4) provided a copy of an informational packet that was mailed to Missouri landowners in May of this year, notifying them of the name change and directing them to an online source of additional materials⁵; and (5) explained that all CLS land agents have received copies of all materials circulated to landowners and posted online.⁶

3. On July 9, 2020, Complainants filed its Opposition to Respondents' Motion [sic] to Dismiss, asserting that Respondents do not even attempt to demonstrate why the Complaint fails to state a claim upon which relief may be granted⁷ and stating that Respondents are resisting the rather innocuous relief being requested, that is, that Respondents be directed to remind their agents to be accurate in their negotiations with landowners.⁸

² Respondents' Motion to Dismiss at ¶ 10.

³ Respondents' Motion to Dismiss at ¶ 11.

⁴ Id.

⁵ Id. and at ¶ 12.

⁶ Id. at ¶ 13.

⁷ Opposition to Motion to Dismiss at ¶ 2.

⁸ Opposition to Motion to Dismiss at ¶ 7.

II. Response to Allegations in the Complaint

4. In response to the factual allegations in the Complaint, Respondents reply as follows:

- a. Respondents are without sufficient information to admit or deny the allegations in Paragraph 1 of the Complaint, and therefore deny the same.
- b. Respondents admit the allegations in the first two sentences of Paragraph 2 of the Complaint and are without sufficient information to admit or deny the allegation in the third sentence of Paragraph 2 of the Complaint, and therefore deny the same.
- c. Respondents admit the allegations in Paragraphs 3-5 of the Complaint.
- d. Respondents deny the allegations set forth in Paragraph 6 of the Complaint. As set forth in the affidavit of Daniel Walters, attached hereto at **Exhibit A**, the call from Mr. Walters to Gary Mareschal occurred on June 17, 2020 at approximately 1:28 pm CDT.⁹ Mr. Walters introduced himself by name, and indicated that he was with Contract Land Staff, representing the Grain Belt Express transmission line project.¹⁰
- e. Respondents deny the allegations set forth in Paragraph 7 of the Complaint. As set forth in his affidavit, Mr. Walters never stated that “Grain Belt is no longer involved with this business,” “Grain Belt is no longer involved with the business,” or any other similar statement.¹¹

⁹ Exhibit A at ¶ 6.

¹⁰ Id.

¹¹ Id. at ¶ 8.

- f. Respondents deny the allegations in Paragraph 8 of the Complaint. As set forth in the affidavit of Alex Brown, attached hereto as **Exhibit B**, the call from Mr. Brown to Marvin J. (“Jim”) Daniel occurred on April 1, 2020, at approximately 3:14 pm CDT.¹² Mr. Brown introduced himself by name and indicated that he was a land representative with Contract Land Staff representing Invenergy and the Grain Belt Express transmission line project.¹³ As set forth in his affidavit, Mr. Brown never stated “Grain Belt is no longer involved with this business,” “Grain Belt is no longer involved with the business,” or any other similar statement.¹⁴ Further, as set forth in the affidavit of Mr. Walters, the call from Mr. Walters to Mr. Daniel occurred on June 9, 2020, at approximately 5:29 pm CDT.¹⁵ On the June 9, 2020 call, Mr. Walters never stated “Grain Belt is no longer involved with this business,” “Grain Belt is no longer involved with the business,” or any other similar statement.¹⁶
- g. Respondents deny the premise of Paragraph 9 of the Complaint that the land agents misled the landowners. Respondents admit that Grain Belt holds the CCN for the Project.
- h. Respondents deny the premise of Paragraph 10 of the Complaint that the land agents misled the landowners. Respondents admit that neither Invenergy nor Grain Belt have attempted to hide the fact that Grain Belt is still the owner of the Project.

¹² Exhibit B, ¶ 3.

¹³ Id.

¹⁴ Id. at ¶ 5.

¹⁵ Exhibit A, ¶ 3.

¹⁶ Id at ¶ 5.

- i. Paragraph 11 of the Complaint is argumentative. Respondents deny the premise that Invenergy and Grain Belt have attempted to hide Grain Belt's continuing involvement in the Project. Such premise is illogical and implausible, as all communications with landowners are replete with references to Grain Belt. Accordingly, Respondents deny the allegations in Paragraph 11 of the Complaint.
- j. Respondents admit to the allegations in Paragraph 12 of the Complaint.
- k. Respondents deny the allegations in Paragraph 13 of the Complaint.
- l. Paragraph 14 of the Complaint is argumentative and based upon the same illogical and implausible premise denied by Respondents in response to Paragraph 11. Accordingly, Respondents deny the allegations in Paragraph 14 of the Complaint.
- m. Paragraph 15 of the Complaint is argumentative and based upon the same illogical and implausible premise denied by Respondents in response to Paragraph 11. Accordingly, Respondents deny the allegations in Paragraph 15 of the Complaint.
- n. Paragraph 16 of the Complaint is argumentative and based upon the same illogical and implausible premise denied by Respondents in response to Paragraph 11. Accordingly, Respondents deny the allegations in Paragraph 16 of the Complaint.
- o. Respondents admit to the allegations in Paragraph 17, but note that the Complaint was filed the following business day, before Respondents had an opportunity to investigate and respond to counsel for Complainants.
- p. Paragraph 18 of the Complaint is argumentative and based upon the same illogical and implausible premise denied by Respondents in response to Paragraph 11. Further, the relief sought by Paragraph 18 of the Complaint has already been

satisfied as further explained below. Accordingly, Respondents deny the allegations in Paragraph 18 of the Complaint.

5. Respondents incorporate by reference all facts and arguments stated in its Motion to Dismiss as if the same were restated herein.

6. In addition to the facts and arguments set forth in Respondents' Motion to Dismiss, Respondents further state as follows.

7. On July 10, 2020, Respondents and the Commission Staff convened a conference call to discuss the land agent training and landowner outreach process utilized by the CLS agents when contacting Missouri landowners. Specific training materials for the CLS agents were discussed during that conference call and were provided in follow-up correspondence to Staff. These materials consist of the following: (1) a "Grain Belt Express Script Example" dated June 5, 2020¹⁷; (2) A June 1, 2020 email, entitled "CLS LA Training Email Record GBX Information," which was sent to land agents in preparation for the June 2-4, 2020 training, and which included a copy of the Code of Conduct, a Mailout Example Package (containing the same information attached to Respondents' Motion to Dismiss), and instructions to review materials on the website, grainbeltexpress.com, which includes the Landowner Protocols and the Agricultural Impact Mitigation Protocols ("AIMP")¹⁸; (3) an agenda for the June 2-4, 2020 CLS land agent training, which includes sessions on the Code of Conduct, Landowner Protocols, and AIMP¹⁹; (4) a slide deck used at the June 2-4, 2020 training, titled "Missouri meetings GBX Feb 2020"²⁰; and (5) a slide deck used at the June 25, 2020 training, titled "Land Agent Training MO

¹⁷ Attached hereto as **Exhibit C**.

¹⁸ Attached hereto as **Exhibit D**.

¹⁹ Attached hereto as **Exhibit E**.

²⁰ Attached hereto as **Exhibit F**.

Protocols 20200625 FINAL,” which provides further training on the Code of Conduct, Landowner Protocols and AIMP.²¹

8. Despite Complainants’ contention that the complaint should survive a motion to dismiss, the complaint may still be dismissed pursuant to 20 CSR 4240-2.070(7) for failure to comply with the Commission’s rules of pleading. 20 CSR 4240-2.080(6) provides that “by presenting or maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, brief or other document filed with or submitted to the commission, an attorney or party is certifying to the best of the signer’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.”

9. Respondents have demonstrated that there is no basis for anticipating that further investigation or discovery will produce evidentiary support for the claim that the agents are intentionally or regularly misleading landowners regarding ownership of the Project. Rather, the information provided by Respondents demonstrates just the opposite.

10. In addition to the statements and exhibits comprising Respondents’ Motion to Dismiss, the pre-complaint land agent training materials discussed above demonstrate that Complainants’ assertions that Respondents or its agents deliberately misled landowners is not a plausible argument.²²

²¹ Attached hereto as **Exhibit G**.

²² “To survive a motion to dismiss, a claim must be facially plausible, meaning that the ‘factual content. . . allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Cole v. Homier Dist. Co., Inc.*, 599 F.3d 856, 861 (8th Cir. 2010) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

11. Moreover, Respondents are not “resisting the rather innocuous relief being sought here by Complainants, who are essentially asking only that Respondents be directed to remind their own agents to be accurate in their negotiations with landowners.”²³ The relief requested by Complainants has already occurred. On June 20, 2020, the evening the undersigned received email correspondence from Complainants’ counsel regarding the alleged land agent misrepresentations, Respondents requested that CLS remind all land agents in writing of their communication obligations concerning Missouri landowners. Further, the June 25, 2020 land agent training reemphasized Grain Belt’s ownership structure and the agents’ obligation to abide by the Code of Conduct, Landowner Protocols and AIMP.

WHEREFORE, Respondents respectfully request that the Commission accept this Response and issue an Order granting the Motion to Dismiss Formal Complaint and for such further relief as the Commission may deem just and appropriate.

Respectfully submitted,

/s/ Anne E. Callenbach

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ATTORNEYS FOR RESPONDENTS

²³ Opposition to Respondents’ Motion to Dismiss at ¶ 7.

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 23rd day of July, 2020.

/s/ Anne E. Callenbach

Attorney for Respondents