

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

Case No. EC-2020-0408

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 4240-2.117, hereby file this Motion for Summary Determination. In support of its Motion, Respondents state the following:

I. Background

1. On June 22, 2020, Complainants filed a Formal Complaint (“Complaint”) against Respondents at the Missouri Public Service Commission (“Commission”), alleging that on two occasions land agent working for Contract Land Staff (“CLS”) and representing 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, are factually untrue.¹ While Grain Belt is very clearly still involved in the Grain Belt Express Project, Clean Line Energy Partners LLC (“Clean Line”) is not. The Complaint requested the following relief:

(1) that Grain Belt and Invenergy be directed to promptly remind all of their current and future agents and representatives in writing that all of their communications with Missouri landowners must be factually correct; (2) that Grain Belt and Invenergy be directed to promptly remind all of their current and future agents and representatives in writing that Grain Belt is still involved in the process of constructing the proposed transmission line and in securing easements for that line from Missouri landowners; and (3) for whatever further relief the Commission deems appropriate.²

2. On June 25, 2020, Respondents filed its Motion to Dismiss Formal Complaint, in which Respondents: detailed the numerous steps taken to update all social media and promotional materials to reflect the project entity name change from Grain Belt Express Clean Line LLC to Grain Belt Express LLC;³ 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 materials;⁴ and explained that all CLS land agents have received copies of all materials circulated to landowners and posted online.⁵

3. On July 9, 2020, Complainants filed its Opposition to Respondents’ Motion [sic] to Dismiss, asserting 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.⁶

¹ Formal Complaint, ¶¶ 6-9.

² *Id.* at ¶ 18.

³ Motion to Dismiss Formal Complaint, ¶ 11.

⁴ *Id.* at ¶ 12.

⁵ *Id.* at ¶ 13.

⁶ Opposition to Motion to Dismiss, ¶ 7.

4. On July 23, 2020, Respondents filed their Response to the Complaint, in which Respondents detailed a meeting with the Staff of the Commission (“Staff”) to discuss land agent training and provide materials related to such training.⁷ Respondents attached the training materials to its Response and stated:

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 [Agricultural Impact Mitigation Protocols (“AIMP”)].⁸

5. On August 31, 2020, Staff filed its Report, noting that Grain Belt has already provided the Complainants’ requested relief,⁹ but nevertheless recommending that “the Commission direct Invenergy to periodically continue training to current Land Agents and ensure new Land Agents receive all available training.”¹⁰ Staff further recommended that “this training focus on protocols including, but not limited to, the Missouri Landowner Protocol, which includes the Code of Conduct for Missouri, and the Missouri Agricultural Impact Mitigation Protocols.”¹¹

6. On August 31, 2020, the Commission issued its Order Setting Procedural Conference, directing that a procedural conference shall occur on September 14, 2020. Since no

⁷ Response to Formal Complaint, ¶ 7.

⁸ *Id.* at ¶ 11.

⁹ Report of the Staff, p. 1.

¹⁰ *Id.* at p. 10.

¹¹ *Id.*

hearing has been scheduled, this Motion satisfies the requirement that a motion for summary determination shall not be filed less than sixty days prior to a hearing.¹²

II. Lack of Genuine Issues as to Material Facts

7. Pursuant to 20 CSR 4240-2.117(1)(B), Respondents hereby provide a list of material facts as to which there is no genuine issue, in separately numbered paragraphs, with citations to the pleadings, testimony, discovery, or affidavits:

- (1) There is no genuine dispute that Grain Belt is required to adhere to the Code of Conduct, the Missouri Landowner Protocols, and the Missouri Agricultural Impact Mitigation Protocols (“AIMP”).¹³
- (2) There is no genuine dispute that the Code of Conduct requires that “all communications with property owners and occupants must be factually correct.”¹⁴
- (3) There is no genuine dispute that packages sent to landowners during the week of May 29, 2020 included multiple clear references to Grain Belt as the current owner of the Project and noted that Clean Line Energy Partners LLC is no longer involved in the Project.¹⁵

¹² 20 CSR 4240-2.117(1)(A).

¹³ Formal Complaint, ¶ 12; Response to Formal Complaint, ¶ 4.j; Response to Formal Complaint, Exhibit D (June 1, 2020 email to land agents with Code of Conduct attached), Exhibit E (June 2-3, 2020 land agent training agenda with sessions dedicated to the Code of Conduct, Missouri Landowner Protocols, and the AIMP); Exhibit G (June 25, 2020 training material with detailed discussion of the Code of Conduct, Missouri Landowner Protocols, and the AIMP).

¹⁴ Formal Complaint, ¶ 12; Response to Formal Complaint, ¶ 4.j.; Response to Formal Complaint, Exhibit G, p. 8 (June 25, 2020 training slide explaining that “All communications with property owners and occupants must be factually correct and made in good faith”).

¹⁵ Motion to Dismiss Formal Complaint, ¶ 12 and Exhibits A-D.

- (4) There is no genuine dispute that CLS agents received copies of the Code of Conduct on June 1, 2020.¹⁶
- (5) There is no genuine dispute that Grain Belt trained its land agents on June 2-3, 2020, with a focus on the Code of Conduct, Missouri Landowner Protocols, and AIMP.¹⁷
- (6) There is no genuine dispute that the script example used for training begins with the land agent introducing herself/himself as “with Contract Land Staff representing Invenergy and the Grain Belt Express transmission line project.”¹⁸
- (7) There is no genuine dispute that a phone call occurred between Complainant Marvin J. Daniels and CLS agent Alexander Brown on April 1, 2020.¹⁹
- (8) There is no genuine dispute that a phone call occurred between Complainant Marvin J. Daniels and CLS agent Daniel Walters on June 9, 2020.²⁰
- (9) There is no genuine dispute that a phone call occurred between Complainant Gary Mareschal and CLS agent Daniel Walters on June 17, 2020.²¹
- (10) There is no genuine dispute that there are no recordings of the phone calls and therefore “it is nearly impossible to ascertain what exactly was said, and in what context of the conversation.”²²

¹⁶ Response to Formal Complaint, Exhibit D (June 1, 2020 email to land agents with Code of Conduct attached).

¹⁷ Response to Formal Complaint, Exhibit E (June 2-3, 2020 land agent training agenda with sessions dedicated to the Code of Conduct, Missouri Landowner Protocols, and the AIMP).

¹⁸ Response to Formal Complaint, Exhibit C.

¹⁹ Formal Complaint, ¶ 8; Response to Formal Complaint, ¶ 4.f.

²⁰ Formal Complaint; ¶ 8; Response to Formal Complaint, ¶ 4.f.

²¹ Formal Complaint; ¶ 6; Response to Formal Complaint, ¶ 4.d.

- (11) There is no genuine dispute that, before filing their Complaint, Complainants did not contact CLS agents or Invenergy to report alleged violations of the Code of Conduct, as provided for in the Missouri Landowner Protocols.²³
- (12) There is no genuine dispute that, before filing the Complaint, Complainants did not take advantage of the informal complaint process set forth in 20 CSR 4240-2.070(2)-(3).²⁴
- (13) There is no genuine dispute that on Saturday, June 20, 2020, counsel for Complainants sent an electronic mail message to the undersigned, indicating that a formal complaint would be filed with the Commission and the Complaint was filed the next business day, on Monday, June 22, 2020, without further correspondence between Complainants and Respondents or their respective counsel.²⁵
- (14) There is no genuine dispute that, on June 20, 2020, the evening the undersigned received electronic mail 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.²⁶

²² Report of the Staff, pp. 5-6, 7.

²³ Response to Staff Report, ¶ 7.

²⁴ Response to Staff Report, ¶ 8.

²⁵ Response to Staff Report, ¶ 9.

²⁶ Response to Formal Complaint, ¶ 11.

- (15) There is no genuine dispute that additional training of land agents occurred on June 25, 2020, with a focus on the Code of Conduct, Missouri Landowner Protocols, and the AIMP.²⁷
- (16) There is no genuine dispute that the actions in Undisputed Fact Nos. (14) and (15) satisfied the first two elements of Complainants' requested relief.²⁸
- (17) There is no genuine dispute that the third element of Complainants' request relief is "for whatever further relief the Commission deems appropriate."²⁹

III. Legal Memorandum in Support of Summary Determination

8. In accordance with 20 CSR 4240-2.117, a separate legal memorandum explaining why summary determination should be granted is being filed simultaneously herewith.

WHEREFORE, Respondents respectfully request that the Commission grant this 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

²⁷ Response to Formal Complaint, Exhibit G (June 25, 2020 training material with detailed discussion of the Code of Conduct, Missouri Landowner Protocols, and the AIMP).

²⁸ Formal Complaint, ¶ 18; Response to Formal Complaint, ¶ 11; Report of the Staff, pp. 1, 9.

²⁹ Formal Complaint, ¶ 18.

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 10th day of September, 2020.

/s/ Andrew O. Schulte

Attorney for Respondents