

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

**LEGAL MEMORANDUM IN SUPPORT OF
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 Legal Memorandum in Support of the Motion for Summary Determination. In support of its Motion, Respondents state the following:

I. Legal Standard for Summary Determination

1. The Rules of Practice and Procedure of the Missouri Public Service Commission (“Commission”) provide for Summary Determination when there is no genuine issue as to any material fact, a party is entitled to relief as a matter of law, and it is in the public interest to grant such relief. Specifically, 20 CSR 4240.2.117(1)(E) provides as follows:

The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

2. The Commission's summary determination rule is based on Missouri Supreme Court Rule 74.04 regarding summary judgement. The Missouri Supreme Court has explained that "a 'genuine issue' is a dispute that is real, not merely argumentative, imaginary or frivolous. Where the 'genuine issues' raised by the non-movant are merely argumentative, imaginary or frivolous, summary judgment is proper." *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 382 (Mo.Banc 1993). "A material fact in the context of summary judgment is one from which the right to judgment flows." *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 453 (Mo.Banc 2011). The Missouri Supreme Court further advises:

A defending party ... may establish a right to summary judgment by demonstrating: (1) facts negating any one of the elements of the non-movant's claim; (2) '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; or (3) 'that there is no genuine dispute as to the existence of the facts necessary to support movant's properly pleaded affirmative defense.' Each of these three methods individually 'establishes the right to judgment as a matter of law.'

Id. (citing *ITT Commercial Finance Corp.*, 854 S.W.2d at 378).

II. Application of the Legal Standard to the Undisputed Facts

3. Respondents are entitled to summary determination because it meets all three independent methods for establishing a right to judgment as a matter of law.

4. First, Respondents have established facts negating the Complainants' claim that land agents made *intentional* statements about Grain Belt's lack of involvement in the Grain Belt Express Project. Given Undisputed Fact No. 3 (May 29, 2020 landowner packets were

thoroughly branded with “Grain Belt”), No. 4 (CLS agents were directed to study the Code of Conduct on June 1, 2020), and No. 5 (land agents were trained on the Code of Conduct on June 2-3, 2020), Respondents have negated Complainants’ claim that “[t]he land agents working for Grain Belt and Invenergy obviously benefit in their dealings with landowners if they can persuade them that Grain Belt is no longer in the picture.” Formal Complaint, ¶ 11. The idea of land agents calling on behalf of the Grain Belt Express project to discuss clearly-labeled Grain Belt landowner packets and then intentionally stating that Grain Belt “is no longer in the picture” is nonsensical on its face. Additionally, respondents have produced evidence demonstrating beyond any doubt that land agents do not benefit from violating their training in order to lie about something that is easily contradicted by every other piece of correspondence. Conversely, Complainants have not produced any evidence in support of their bald allegation, and any attempt to maintain the allegation at this point would be “merely argumentative, imaginary or frivolous” and should be given no weight. *See ITT Commercial Finance Corp.*, 854 S.W.2d at 382.

5. Second, the Complainants, after an adequate period for discovery, have not been able and will not be able to produce sufficient evidence to allow the Commission to determine that a misstatement by the land agents actually occurred. The Staff of the Commission (“Staff”) stated in its Report: “without a phone recording of the conversations, it is nearly impossible to ascertain what exactly was said, and in what context of the conversation.” Report of the Staff, p. 7. It is just as likely that the landowners misheard or misinterpreted the land agents’ truthful statements that Clean Line is no longer involved in the Grain Belt Express Project.

6. Third, there is no genuine dispute as to the existence of the facts necessary to support Respondents’ properly pleaded affirmative defense. Respondents’ affirmative defense is

that the relief sought by the Complainants has already been granted. Undisputed Fact Nos. 14-15.

III. Summary Judgement in Favor of the Respondents Is in the Public Interest

7. The only outstanding issue is one of policy: should the Commission direct a public utility to do something that it has already done and has committed to continue, thereby encouraging additional formal complaints regarding issues that are more appropriately resolved through informal means?

8. There can be no doubt that Respondents are committed to training their land agents with a focus on the Code of Conduct, Missouri Landowner Protocols, and Missouri Agricultural Impact Mitigation Protocols, as training on those subjects occurred both before and again after the Formal Complaint was filed. Undisputed Fact Nos. 4-6, 14-15.

9. The Commission should not reward the Complainants' eagerness to file the Formal Complaint without first pursuing informal relief. Undisputed Fact Nos. 11-13. Nor should the Commission reward the Complainants for their continued pursuit of the Formal Complaint, despite the clear willingness of Respondents to grant the relief requested. Undisputed Fact Nos. 14-15.

10. This process has been an unfortunate misuse of the Commission's resources and an unnecessary and costly hindrance to the Grain Belt Express Project, which the Commission has deemed to be in the public interest. If the Commission "directs" Respondents to conduct training that is already occurring (and will continue to occur regardless of the outcome of this proceeding), it will likely be touted as punitive towards Grain Belt, which will encourage additional unproductive formal complaints of this nature. Accordingly, Summary Determination

in favor of Respondents, with no further directives towards the Respondents, is in the public interest.

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

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