

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

**RESPONSE TO STAFF REPORT**

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 Response to the Staff Report filed on August 31, 2020 (“Response”). In support of its Response, Respondents state the following:

**I. Grain Belt Has Already Demonstrated Its Adherence to the CCN Conditions and Training of Land Agents**

1. The Report filed by the Staff of the Missouri Public Service Commission (“Staff” and “Commission,” respectively) recognized that Grain Belt has already provided the Complainants’ requested relief, including (1) reminding all current and future land agents and representatives in writing that all of their communications with Missouri landowners must be

factually correct, and (2) reminding all current and future land agents and representatives in writing that Grain Belt is still involved in the process of constructing the Grain Belt Express Project and in securing easements for that Project from Missouri landowners.<sup>1</sup> The only additional relief requested by the Complainants is “for whatever further relief the Commission deems appropriate.”<sup>2</sup> As discussed below, any further relief is not appropriate.

2. The Invenenergy family of companies was founded in 2001 and has developed 25,134 megawatts (“MW”) of large-scale wind, solar, natural gas, and energy storage facilities. This includes 15,579 MW of projects in operation, with 9,555 MW contracted or in construction. Invenenergy has also constructed over 400 miles of high-voltage transmission lines, over 2,200 miles of distribution lines, 62 substations and 82 generator step-up transformers. Throughout its extensive development history, Invenenergy has demonstrated its commitment to working collaboratively with host communities and landowners. The Commission recognized Invenenergy’s impressive record in its Report and Order on Remand in Case No. EA-2016-0358 (the “CCN Case”), stating “Invenenergy’s project management team has extensive experience in construction of energy generation projects, contract negotiation, material procurement, right-of-way issues, utility interconnections, and construction of electrical transmission and substations.”<sup>3</sup>

3. Respondents’ commitment to working with local communities and landowners has been evident since Invenenergy began managing the Grain Belt Express Project. As acknowledged by Staff’s Report, Grain Belt trained its agents on their obligations both before

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<sup>1</sup> Report of the Staff, p. 1.

<sup>2</sup> Formal Complaint, ¶ 18.

<sup>3</sup> Report and Order on Remand, p. 20, CCN Docket (Mar. 20, 2019).

and after the Formal Complaint (“Complaint”).<sup>4</sup> The agenda for the June 2-3, 2020 training shows that Invenenergy spent 1 hour and 45 minutes training its land agents on the Code of Conduct, Missouri Landowner Protocols, and the Missouri Agricultural Impact Mitigation Protocols.<sup>5</sup> The email to land agents prior to the June 2-3, 2020 training directed them to review the Code of Conduct and other material on the GrainBeltExpress.com website.<sup>6</sup> The script example used for training begins with the land agent introducing herself/himself as “with Contract Land Staff representing Invenenergy and the Grain Belt Express transmission line project.”<sup>7</sup> The materials for the June 25, 2020 training shows that Grain Belt held detailed discussions with its land agents on the Code of Conduct, Missouri Landowner Protocols, and the Missouri Agricultural Impact Mitigation Protocols.<sup>8</sup>

4. Based on the training materials, as well as written landowner communications that are replete with references to Grain Belt,<sup>9</sup> there is absolutely no basis to conclude that land agents are incentivized to make false statements about Grain Belt’s involvement in the development of the Grain Belt Express Project, as alleged by the Complainants.<sup>10</sup> It makes no sense. The Staff Report does not address this scurrilous allegation, but based on the absence of intent, the Complaint is reduced to—at most—an unintentional misstatement by land agents that have been trained and re-trained to make truthful statements. Further, there is no reliable

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<sup>4</sup> Report of the Staff, p. 4 (“Invenenergy also provided training agendas for trainings that took place on June 2, 2020 as well as training materials and training agendas for training on June 25, 2020”).

<sup>5</sup> Response to Formal Complaint, Exhibit E.

<sup>6</sup> Response to Formal Complaint, Exhibit D.

<sup>7</sup> Response to Formal Complaint, Exhibit C.

<sup>8</sup> Response to Formal Complaint, Exhibit G.

<sup>9</sup> For copies of written correspondence with landowners, see Grain Belt’s Motion to Dismiss Formal Complaint, Exhibits A-D.

<sup>10</sup> Formal Complaint, ¶ 11.

evidence that such misstatements actually occurred.<sup>11</sup> 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 Project.<sup>12</sup>

5. Respondents are not opposed to the recommendation by Staff that Grain Belt “periodically continue training to current Land Agents and ensure new Land Agents receive all available training.” Nor are Respondents opposed to the recommendation 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.”

6. However, Respondents assert that the Commission does not need to “direct” Grain Belt or Invenergy to take such action—and further—it would be bad public policy to issue such directive. As explained above and throughout the record of this case, Respondents have demonstrated that they already have and will continue to train their land agents, with a focus on adherence to the Missouri Landowner Protocols, the Code of Conduct, and the Missouri Agricultural Impact Mitigation Protocols. If the Commission directs Respondents to do something they are already committed to doing, it will only serve to encourage additional, non-substantive, baseless complaints and to discourage the good faith, best efforts of Grain Belt to be responsive to landowner concerns, as discussed in Section II below.

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<sup>11</sup> Report of the Staff, p. 7 (“it is nearly impossible to ascertain what exactly was said, and in what context of the conversation”).

<sup>12</sup> See Motion to Dismiss Formal Complaint, Exhibit D – Frequently Asked Questions for Landowners, p. 1 (“Invenergy Transmission became the full and sole owner of Grain Belt after acquiring the project from Clean Line Energy Partners. Invenergy Transmission has no affiliation with Clean Line Energy Partners”).

## **II. Complainants Should Be Encouraged to Use Informal Means of Resolution Before Filing Formal Complaints**

7. Before filing their Complaint, Complainants did not take advantage of the procedures set forth in the Missouri Landowner Protocols for the purpose of reporting alleged violations of the Code of Conduct. Those procedures provide:

Landowners are provided with contact information for both ROW agents, as well as contact information for the corporate office of Invenergy Transmission LLC ("Invenergy Transmission"), the parent company of Grain Belt Express, in order to ensure that a landowner can directly contact the Vice President of Invenergy Transmission or any other corporate employee leading land efforts on behalf of Invenergy Transmission (the "Land Team") to report any possible violations of the Code of Conduct. Reported violations of the Code of Conduct are taken seriously and are investigated by the Vice President and the Invenergy Transmission management team.<sup>13</sup>

None of the Complainants ever attempted to contact the land agents or Invenergy Transmission to discuss the alleged violation of the Code of Conduct.

8. Before filing the Complaint, Complainants did not take advantage of the informal complaint process set forth in 20 CSR 4240-2.070(2)-(3). There is no record of the Complainants ever attempting to contact the Commission's Consumer Services Department.

9. Complainants filed the Complaint without providing a single business day of notice to Respondents. On Saturday, June 20, 2020, counsel for Complainants sent an electronic mail to the undersigned, indicating that a formal complaint would be filed with the Commission. The Complaint was filed the next business day, on Monday, June 22, 2020, before the Respondents had an opportunity to fully investigate the allegations and before the undersigned had an opportunity to discuss the matter informally with counsel for Complainants.

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<sup>13</sup> Missouri Landowner Protocols, p. 2, available on the Grain Belt Express website at [https://grainbeltexpress.com/documents/LandownerProtocol\\_20200715.pdf](https://grainbeltexpress.com/documents/LandownerProtocol_20200715.pdf).

10. Complainants refused to withdraw their Complaint, even after it was clear that the relief sought had been satisfied and that there were no intentional misstatements by the land agents. In their Response to the Complaint, filed July 23, 2020, Respondents stated “The relief requested by Complainants has already occurred” and attached a copy of the additional land agent training that occurred on June 25, 2020, in satisfaction of the relief sought by the Complainants. Nevertheless, this baseless Complaint remains pending.

11. On August 21, 2020, a group called “Block Grain Belt Express” issued a press release that purported to be “warning landowners to be cautious after two separate complaints against Grain Belt Express (“GBE”) and its representatives have been filed with the Missouri Public Service Commission ....”<sup>14</sup> Accordingly, it is evident that groups opposed to the Project are using the Complaint to interfere with and damage the easement acquisition process and increase the cost of the Project, despite the fact that Grain Belt provided the relief sought nearly two months prior to the press release.

12. Based on Respondents’ demonstrated commitment to training its land agents and the lack of evidence regarding an intent to mislead landowners, providing any further relief to Complainants is unnecessary. Moreover, issuing a redundant directive would encourage Project opponents to file numerous additional complaints—regardless of substance and without using the informal processes already in place—in order to facilitate additional press releases, tout the Commission’s directive as a punishment for Grain Belt, impair the easement acquisition process, and increase the cost of the Project. Finally, issuing such a redundant directive would discourage Grain Belt and other public utilities from taking proactive, voluntary actions to respond to landowner or customer concerns. While Grain Belt will always provide sufficient training to its

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<sup>14</sup> See **Exhibit A** to this Response.

land agents, one of the benefits of proactive action is the avoidance of protracted complaint cases and Commission orders that may be viewed by some as punitive.

WHEREFORE, Respondents respectfully request that the Commission accept this Response, grant the Motion for Summary Determination filed simultaneously herewith, and find that further directives towards 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 10<sup>th</sup> day of September, 2020.

/s/ Andrew O. Schulte

Attorney for Respondents



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**Press Release: August 21, 2020**

**Contact:** Russ Pisciotta, 816-803-9001

Marilyn O'Bannon, 573-473-5962

Phillip C. Brown, 660-263-0355

## **Grain Belt Express Land Acquisition Practices Spark Complaints to PSC**

**(Kingston, Missouri):** Grassroots group Block GBE is warning landowners to be cautious after two separate complaints against Grain Belt Express ("GBE") and its representatives have recently been filed with the Missouri Public Service Commission, the agency that permitted the transmission line project and granted it eminent domain authority.

The first complaint, filed on June 22 by the Missouri Landowners Alliance and an individual landowner, states that two different landowners were informed by a project representative that Grain Belt Express was no longer involved with the transmission line. The complaint asserts that these statements

are obviously false and violate GBE's Code of Conduct for Land Agents on file with the PSC. The complainants ask that the PSC direct GBE to take action to remind its agents that statements made to Missouri landowners must be factually correct.

The second complaint, filed on August 10 by Missouri Landowners Alliance, Eastern Missouri Landowners Alliance, and an individual landowner, objects to the differences between the easement agreements used by former project owner Clean Line, and new easement agreements currently being offered by new owner Invenergy. Some of the changes include:

- Right for GBE to force landowners to agree to changes to its Agricultural Mitigation, Code of Conduct, and other agreements on file at the PSC
- Significant changes to crop damage compensation that could reduce compensation amounts below that offered by Clean Line
- Giving GBE a 3-year period after an easement is signed to begin construction and make final payment to landowner
- Elimination of the landowner's right to a jury trial to settle disputes with Grain Belt once the easement is signed
- Allowing an unlimited period of time for GBE to remove structures after the easement terminates
- The addition of a right for GBE to install, operate and maintain fiber optic cable on the easement without additional compensation

"This complaint demonstrates why landowners

should seek legal advice before signing any documents or agreements with GBE or Invenergy,” said Russ Pisciotta, president of Block Grain Belt Express-Missouri. “Landowners should remember that although the line was approved by the Missouri Public Service Commission, GBE still lacks key approvals and financing, has not received assents from counties crossed, and has yet to apply for a permit in Illinois,” he continued.

Wiley Hibbard, presiding Ralls County Commissioner, said, “No one from Grain Belt has contacted us concerning our Utilities Assent application which, if approved, would give access to county roads. It is time the PSC starts protecting the residents of Missouri, instead of special interests from outside Missouri.”

Grain Belt will need county assents from all eight counties the transmission line is proposed to cross. Instead Grain Belt appears to be singularly focused on obtaining landowner easements.

Representative Jim Hansen said he wonders if GBE’s plans have secretly changed. “There seems to be a push to obtain easements from landowners under the threat of eminent domain, yet other steps necessary to make their project successful are not being taken. A perpetual partnership with landowners should be based on trust, not deception.”

Grain Belt Express is proposed as an approximately 800-mile transmission line to deliver wind power from Western Kansas and the surrounding region to

Indiana and surrounding states. It is proposed to cross farms and ranches in eight Missouri counties: Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls.

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