

1. Grain Belt wants to be considered part of the Invenenergy family of companies when it benefits from that relationship, like when it wants to demonstrate to the Kansas Corporation Commission ("Commission") it's financially capable of funding and operating the proposed transmission lines. However, when Grain Belt does not benefit from that relationship with Invenenergy, like when its Invenenergy affiliate makes promises with the Boyd Intervenors as to the location of the proposed transmission line on their property that are then completely ignored by Grain Belt in determining the reasonableness of the route of the transmission line proposed to the Commission, Grain Belt is quick to say it has nothing to do with that agreement or the promise made by the Invenenergy affiliate to the Boyd Intervenors. Fortunately, Kansas courts recognize there is an implied covenant of good faith and fair dealing between parties in performing contracts so a public utility affiliate can't agree with the landowner regarding the location of any transmission line on that landowner's property and then tell that landowner it is not violating that promise because it is the affiliated public utility and not the Invenenergy affiliate that is locating the transmission line. *Bonanza,*

*Inc. v. McLean*, 242 Kan. 209, 222, 747 P.2d 792 (1987), (Kansas courts imply a duty of good faith and fair dealing in every contract. Parties shall not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, **or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.** (Emphasis added)).

2. As indicated by the Boyd Intervenors in their Petition, they are not asking this Commission to resolve this dispute between the Boyd Intervenors and Invenergy. That will be left up to the state district court. However, as set forth in their Petition, if a public utility like Grain Belt seeks a siting permit from this Commission and evidence shows that during the siting process the public utility's affiliate made an agreement with an affected landowner as to the location of the transmission line and the public utility then completely ignored that agreement in submitting its siting permit application, then such impacts the reasonableness of the actions of the public utility, and therefore, the reasonableness of the proposed route. Under its statutory obligation to determine the reasonableness of a proposed route for a transmission line, the Commission can't determine that a proposed route is reasonable if the utility's affiliate has made promises to landowners regarding the location of the transmission line and then the utility ignored those promises in proposing the route of the transmission line. The integrity of the siting process is critically and irreversibly damaged if the Commission ends up blessing a route for a transmission line that ignores promises made to landowners by the public utility's affiliate with respect to that route.

3. The Commission only has to look as far as Grain Belt's application to see how Grain Belt relies upon its relationship with Invenergy when it benefits Grain Belt. Grain Belt devotes an entire section of its application as to its reliance upon Invenergy. Consider the following from Grain Belt's application in this case:

### III. DESCRIPTION OF INVENERGY AND GRAIN BELT EXPRESS

14. Grain Belt Express is a limited liability company organized under the laws of the State of Indiana. Grain Belt Express was formed in 2010 as a Delaware LLC and converted to an Indiana LLC in 2013. Grain Belt Express' principal offices are located at One South Wacker Drive, Suite 1800, Chicago, IL 60606.

15. Grain Belt Express is a wholly owned subsidiary of Invenergy Transmission, a Delaware limited liability company, which is a wholly owned subsidiary of Invenergy Renewables LLC ("Invenergy Renewables"), also a Delaware limited liability company. Invenergy Transmission is an affiliate company of Invenergy LLC, which is an Illinois limited liability company.

16. Invenergy Renewables, directly and through its affiliated companies, has successfully developed over 4,100 miles of transmission and distribution line infrastructure, including 88 substations, 96 generator step-up transformers, and over 5,000 pad mount transformers over the past approximately 20 years. Invenergy Renewables and its affiliated companies have successfully developed more than 200 large-scale clean power projects in the United States and globally, totaling over 31,000 megawatts of projects in operation, construction or contracted, including wind, solar, natural gas power generation and advanced energy storage projects. Construction of these projects avoided 66 million tons of CO<sup>2</sup> emissions, equivalent to 13 million gasoline-powered cars off the road and represent \$59 billion in completed transactions.

4. Also, during the public hearing, in response to questions relating to Grain Belt's ability to financially construct and operate the proposed transmission line, Grain Belt relied heavily on the fact that it was part of Invenergy. Mr. Chandler, who is in fact employed by Invenergy, LLC, and Grain Belt's attorney, Mr. Schulte, explained at the public hearing how Grain Belt's relationship with Invenergy would allow Grain Belt the ability to finance the construction and operation of the proposed transmission lines. Mr. Chandler identified the projects that Invenergy was currently involved in around the world and it was clear that the point being made to the audience was Grain Belt's relationship with Invenergy assured success of the proposed transmission lines. *See* <https://www.youtube.com/watch?v=oLM3jcw7yM> beginning at minute/second 37.05 and ending at minute/second 43.40; beginning at minute/second 5:50 and ending 9:00. Moreover, the slides used

in Grain Belt's presentation at the public hearing bore the name and logo of Invenergy.

5. It is within this context that Grain Belt now also wants to claim it is separate and apart from Invenergy and its affiliates when it comes to any agreement between the Boyd Intervenors and Invenergy's affiliate where the affiliate agreed with the landowners that \*\*

\*\* Grain Belt does not dispute that an Invenergy affiliate made such an agreement with the Boyd Intervenors. Nor does Grain Belt dispute that its proposed route of the transmission line was not approved by the Boyd Intervenors before being proposed by Grain Belt to the Commission in its siting application. Instead, Grain Belt contends that, in essence, its Invenergy affiliate was free to ignore its promise to the Boyd Intervenors that they would have specific contractual rights with respect to the location of any transmission line on their property as long as it was another Invenergy entity, i.e., Grain Belt, that ended up placing the transmission line on their property. Thankfully, under Kansas law, such conduct clearly breaches the implied covenant of good faith and fair dealing in performing a contract and precludes such actions by Invenergy. *Bonanza Inc.*, at 242 Kan. at 222.

6. The Commission should not allow Invenergy and Grain Belt to infect the integrity of its transmission siting process by allowing Grain Belt to pick and choose when it is and is not a part of Invenergy.

II. IT WAS REASONABLE FOR BOYD INTERVENORS TO ASSUME GRAIN BELT'S AFFILIATE WOULD HAVE COMPLIED WITH ITS AGREEMENT WITH THE BOYD INTERVENORS PRIOR TO GRAIN BELT SELECTING THE ROUTE OF ITS PROPOSED TRANSMISSION LINE

7. Grain Belt argues that the Boyd Intervenors should have participated in public meetings held by Grain Belt to discuss its proposed transmission line. However, such argument completely sidesteps the uncontroverted fact the Boyd Intervenors had a written agreement with Grain Belt's

affiliate that \*\*

\*\* Because of

the promise that Grain Belt's affiliate made to the Boyd Intervenors regarding the siting of any transmission line on their property, it was reasonable for the Boyd Intervenors to assume that Grain Belt and its affiliate would honor that promise and not violate it when proposing the route of the transmission line. It is disingenuous for Grain Belt to place any blame on the Boyd Intervenors for not participating in public meetings, when it was Grain Belt and its affiliate that broke the promises made to the Boyd Intervenors.

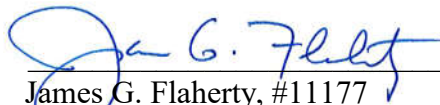
III. GRAIN BELT'S CONTENTION THAT IT AND PRESUMABLY THE COMMISSION CANNOT CONSIDER THE ALTERNATE ROUTE PROPOSED BY THE BOYD INTERVENORS BECAUSE IT WOULD REQUIRE FURTHER REVIEW AND NOTICE IS NOT VALID

8. Grain Belt argues that neither it, or presumably the Commission, can consider the alternate route proposed by the Boyd Intervenors in this siting case because such might require further review by Grain Belt of the alternate route and the possibility of additional notice given to other landowners. This is not a valid argument. Nor is it a valid limitation on the Commission's authority and responsibility in determining the reasonableness of the proposed route. Certainly, if the Commission finds that the proposed route is unreasonable and that an alternate route is needed to make the route reasonable, then it has the ability and the obligation to make such findings, even if such requires Grain Belt to conduct further review or provide notice to additional landowners if required. For Grain Belt to suggest that the parties and the Commission are prevented from considering alternative routes that extend beyond 1000 feet from the proposed route is untenable. It is not an excuse to ignore alternate routes that are more reasonable, and in this particular case, would not violate the promises made by the utility's affiliate to the Boyd Intervenors. The alternate route is within the study area reviewed by Grain Belt's experts in this case in determining the reasonableness of the route.

The alternate route presumably would have been studied as part of the overall review of the possible routes. If the alternate route is found to be more reasonable because it does not violate promises made by Grain Belt's affiliate to the Boyd Intervenors, then Grain Belt certainly has the ability to amend its siting application and provide notice to other landowners if such is required. The Commission certainly has the authority to order that such actions be taken since it has the power to place reasonable conditions on its approval of the route of the transmission line. Invenergy and Grain Belt and their predecessors have been working on the Grain Belt Express for over ten years. Requiring Grain Belt to amend its siting application so that the proposed transmission line is reasonable per the statute, even if such takes a few additional months, would be appropriate. As suggested in the Boyd Intervenors' Petition, such would certainly take less time than if Grain Belt would be required to re-file its siting application because the district court ultimately determines that Grain Belt and its affiliate are precluded from constructing the transmission line on the Boyd Intervenors' properties because of promises made by Grain Belt's affiliate regarding the location of the transmission line.

9. The Commission should reject Grain Belt's claim that the parties and the Commission are limited in considering alternate routes because such might require an amendment to the siting application or notice provided to additional landowners.

WHEREFORE, the Boyd Intervenors request that its reply be considered by the Commission.



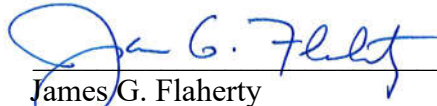
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## VERIFICATION

STATE OF KANSAS  
COUNTY OF FRANKLIN, ss:

The undersigned, upon oath first duly sworn, states that he is the attorney for the Boyd Intervenor above named; that he has read the foregoing Reply to Grain Belt's Response to Their Petition to Intervene; that he is familiar with the contents thereof, and that the statements contained therein are true and correct.

  
James G. Flaherty

SUBSCRIBED AND SWORN TO before me this 18<sup>th</sup> day of July, 2024.





Notary Public

Appointment/Commission Expires:

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was sent via electronic mail, this 18<sup>th</sup> day of July, 2024, addressed to:

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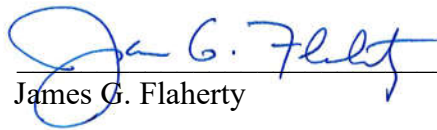
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