

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Joint Application of)
Invenergy Transmission LLC, Invenergy)
Investment Company LLC, Clean Line Energy)
Partners LLC, Grain Belt Express Clean Line) Docket No. 19-GBEE-253-ACQ
LLC, and Grain Belt Express Holding LLC for)
an Order Approving the Acquisition by)
Invenergy Transmission LLC of Grain Belt)
Express Clean Line LLC.)

MOTION TO AMEND THE UNANIMOUS SETTLEMENT AGREEMENT

Grain Belt Express LLC (“Grain Belt Express”) respectfully seeks authorization to amend the Unanimous Settlement Agreement submitted in the instant matter. The proposed amendment is limited to the “Financing Requirement” (as defined below) of the Unanimous Settlement Agreement and will allow benefits to accrue in Kansas sooner than they otherwise would. In support of this Motion, Grain Belt Express states the following to the State Corporation Commission of the State of Kansas (“Commission”):

I. CONDENSED BACKGROUND

1. On December 28, 2018, Invenergy Transmission LLC (“Invenergy Transmission”), Invenergy Investment Company LLC (“Invenergy Investment” and together with Invenergy Transmission, “Invenergy”), Clean Line Energy Partners LLC, Grain Belt Express Holding LLC, and Grain Belt Express Clean Line LLC (previous name of Grain Belt Express), (collectively, “Joint Applicants”) filed an application, supporting testimony, and associated exhibits pursuant to K.S.A. §§ 66-101, 66-104, 66-131, and 66-136 requesting approval by the Commission of a transaction involving an upstream change in ownership of Grain Belt Express.¹ As discussed in

¹ Joint Application for Transaction Approval and Expedited Treatment, Docket No. 19-GBEE-253-ACQ (Dec. 28, 2018) (19-253 Application).

the application, Joint Applicants agreed pursuant to a Membership Interest Purchase Agreement that, pending a number of conditions precedent including review and approval by the Commission, Invenergy Transmission would acquire Grain Belt Express (the “Transaction”).²

2. On March 12, 2019, ITC Great Plains, LLC (“ITC Great Plains”) filed a petition to intervene in this matter, which was granted by Commission Order on April 4, 2019. ITC Great Plains did not submit testimony or participate in the settlement conference despite having notice.

3. After Staff of the Commission (“Staff”) filed direct testimony and held a settlement conference, Staff and the Joint Applicants filed a *Joint Motion to Approve Unanimous Settlement Agreement*. Testimony in support of the Unanimous Settlement Agreement (“Settlement Agreement”) was filed by Staff witnesses Justin Grady and Leo Haynos, as well as Kris Zadlo on behalf of the Joint Applicants. An Errata to the Settlement Agreement was filed on May 2, 2019, to correct a paragraph reference in both the public and confidential versions of the Settlement Agreement. No substantive changes were made to the Settlement Agreement.

4. The Signatories to the Settlement Agreement agreed it was a full and complete resolution of the issues raised by Joint Applicants’ request for Commission approval of the Transaction. ITC Great Plains indicated that it did not object to the Settlement Agreement.

5. On May 9, 2019, the Commission held a hearing on the proposed Settlement Agreement. All the Signatories appeared through counsel. ITC Great Plains did not appear.

6. On June 18, 2019, the Commission issued confidential and public versions of its Order on Unanimous Settlement Agreement finding the Settlement Agreement satisfied all applicable Merger and Settlement Standards and granting the Settlement Agreement in its entirety.

² 19-253 Application.

7. Pursuant to the Commission's *Order Approving Stipulation and Agreement and Granting Certificate* in Docket No. 11-GBEE-624-COC ("Certificate Order") Grain Belt Express has a Certificate of Convenience and Necessity ("CCN") to construct the Kansas portion of a multi-terminal ± 600 kilovolt (kV) high voltage direct current ("HVDC") transmission line, and an HVDC converter station and associated transmission facilities including a collector system made up of alternating current ("AC") gathering lines needed to connect generators in western Kansas to the Project ("AC Collector System"), running from near the Spearville 345kV substation in Ford County, Kansas to a delivery point near the Sullivan 765 kV substation in Sullivan County, Indiana (the "Project"). The Project will go through Ford, Hodgeman, Edwards, Pawnee, Barton, Russell, Osborn, Mitchell, Cloud, Washington, Marshall, Nemaha, Brown, and Doniphan Counties in Kansas.³

8. This Motion seeks approval to amend the Financing Requirement in Paragraph 9.a of the Settlement Agreement in this Docket. That paragraph currently provides:

GBE will not install transmission facilities on easement property in Kansas until it has obtained commitments for funds in an amount equal to or greater than the total cost to build the entirety of this multi-state transmission project ("Financing Requirement"). To allow the Commission to verify compliance with this condition, GBE shall file the following documents with the Commission at such a time as GBE is prepared to begin to construct electric transmission facilities in Kansas:

- i. On a confidential basis, equity and loan and/or other debt financing agreements and commitments entered into or obtained by GBE or its parent company for the purpose of funding GBE's multi-state transmission project that, in the aggregate, provide commitments for the total project cost.
- ii. An attestation by an officer of GBE that GBE has not, prior to the date of the attestation, installed transmission facilities on easement property; or a notification that such installation is scheduled to begin on a specified date.

³ Order Approving Unanimous Settlement Agreement, Docket No. 19-GBEE-253-ACQ, p. 13 (June 18, 2019).

iii. A statement of the total multi-state transmission project cost, broken out by the categories of engineering, manufacturing and installation of converter stations; transmission line engineering; transmission towers; conductor; construction labor necessary to complete the project; right-of-way acquisition costs; and other costs necessary to complete the project, and certified by an officer of GBE.

iv. A reconciliation statement certified by an officer of GBE showing that (I) the agreements and commitments for funds provided in subsection (i), above, are equal to or greater than the total project cost provided in subsection (iii), above; and (2) the contracted transmission service revenue is sufficient to service the debt financing of the project (taking into account any planned refinancing of debt).

9. The requested changes to the Financing Requirement are necessary because—as explained in the Direct Testimony of Shashank Sane in support of this Motion—Grain Belt Express plans to construct the Project in two phases. Grain Belt Express decided to phase the Project because of extremely strong demand for the southwest Kansas energy that will be delivered by the Project and delays in permitting and land acquisition in Illinois. Construction of the Project in phases will allow the benefits of the Project to accrue in Kansas sooner than they otherwise would.

II. LEGAL AUTHORITY

10. The Commission holds full power, authority, and jurisdiction over Grain Belt Express as an electric public utility authorized to transact business in Kansas under the provisions of K.S.A. §§ 66-101, 66-104, 66-131, and pursuant to the Certificate Order.

III. REQUEST FOR AMENDED CONDITION

11. The only changes being requested in this Motion are to the Financing Requirement. Granting the amendments to the Financing Requirement does not change the facts upon which the Commission based its finding when issuing the CCN for the Project, approving the line siting permit in Docket No. 13-GBEE-803-MIS, or approving the acquisition in this Docket.

12. Grain Belt Express respectfully requests that Paragraph 9.a.i-iv. of the Settlement

Agreement be amended as follows:

- a. GBE will not install transmission facilities on easement property in Kansas until it has obtained commitments for funds in an amount equal to or greater than the total cost to build the entirety of ~~this multi-state transmission project~~ Phase I of the Project (“Financing Requirement”). For purposes of this condition, “Phase I” is defined as the portion of the Project consisting of a converter station and associated facilities in Ford County, Kansas, the HVDC transmission line between such Kansas converter station and a converter station in Missouri, and AC facilities connecting such Missouri converter station to one or more points of delivery in Missouri. To allow the Commission to verify compliance with this condition, GBE shall file the following documents with the Commission at such a time as GBE is prepared to begin to construct electric transmission facilities in Kansas:
 - i. On a confidential basis, equity and loan and/or other debt financing agreements and commitments entered into or obtained by GBE or its parent company for the purpose of funding Phase I ~~GBE’s multi-state transmission project~~ that, in the aggregate, provide commitments for the total project Phase I cost.
 - ii. An attestation by an officer of GBE that GBE has not, prior to the date of the attestation, installed transmission facilities on Phase I easement property; or a notification that such installation is scheduled to begin on a specified date.
 - iii. A statement of the total ~~multi-state transmission project~~ Phase I cost, broken out by the categories of engineering, manufacturing and installation of converter stations; transmission line engineering; transmission towers; conductor; construction labor necessary to complete ~~the project~~ Phase I; right-of-way acquisition costs; and other costs necessary to complete ~~the project~~ Phase I, and certified by an officer of GBE.
 - iv. A reconciliation statement certified by an officer of GBE showing that (1) the agreements and commitments for funds provided in subsection (i), above, are equal to or greater than the total ~~project~~ Phase I cost provided in subsection (iii), above; and (2) the contracted transmission service revenue is sufficient to service the debt financing of ~~the project~~ Phase I (taking into account any planned refinancing of debt).

Deletions are in red and struck through. Additions are underlined and in red for visibility. A clean version is set forth below, and will be known as the “Amended Financing Requirement”:

- a. GBE will not install transmission facilities on easement property in Kansas until it has obtained commitments for funds in an amount equal to or greater than the total cost to build the entirety of Phase I of the Project (“Financing Requirement”). For purposes of this condition, “Phase I” is defined as the portion of the Project comprising of a converter station and associated facilities in Ford County, Kansas, the HVDC transmission line between such Kansas converter station and a converter station in Missouri, and AC facilities connecting such Missouri converter station to one or more points of delivery in Missouri. To allow the Commission to verify compliance with this condition, GBE shall file the following documents with the Commission at such a time as GBE is prepared to begin to construct electric transmission facilities in Kansas:
 - i. On a confidential basis, equity and loan and/or other debt financing agreements and commitments entered into or obtained by GBE or its parent company for the purpose of funding Phase I that, in the aggregate, provide commitments for the total Phase I cost.
 - ii. An attestation by an officer of GBE that GBE has not, prior to the date of the attestation, installed transmission facilities on Phase I easement property; or a notification that such installation is scheduled to begin on a specified date.
 - iii. A statement of the total Phase I cost, broken out by the categories of engineering, manufacturing and installation of converter stations; transmission line engineering; transmission towers; conductor; construction labor necessary to complete Phase I; right-of-way acquisition costs; and other costs necessary to complete Phase I, and certified by an officer of GBE.
 - iv. A reconciliation statement certified by an officer of GBE showing that (1) the agreements and commitments for funds provided in subsection (i), above, are equal to or greater than the total Phase I cost provided in subsection (iii), above; and (2) the contracted transmission service revenue is sufficient to service the debt financing of Phase I (taking into account any planned refinancing of debt).

13. No parties will be prejudiced by the relief sought in this Motion. Grain Belt Express has kept Staff apprised of the updates that are the subject of this Motion, including as recently as March 1, 2023.

14. Furthermore, ITC Great Plains will not be prejudiced by this Motion because they were not a party to the Settlement Agreement and did not take a position at the hearing on the Settlement Agreement. Nevertheless, Grain Belt Express has served ITC Great Plains with this Motion.

15. As described in more detail in the Direct Testimony of Shashank Sane in Support, these proposed amendments are in the public interest because they effectuate the goals of the original Financing Requirement while allowing for the adjusted financing path of the phases of the Project.

16. The goal of the Financing Requirement—resulting from negotiations between Staff, Grain Belt Express, and Invenenergy Transmission—is to ensure that Grain Belt Express will confirm its financial ability to construct and operate a useful project before installing transmission facilities on easement property.⁴

17. The proposed amendments still provide that Grain Belt Express must confirm its financial ability to construct and operate a useful project before installing transmission facilities

⁴ See attached Direct Testimony of Shashank Sane at 13 *citing* Direct Testimony of Justin T. Grady In Support of the Unanimous Settlement Agreement on behalf of Commission Staff, 19-GBEE-253-ACQ, at 12 (May 1, 2019) (Paragraph 9.a.i–iv “addresses Staff’s concerns because it will require GBE to prove that it has the financial ability to complete the project (including evidence of contracted transmission service revenues sufficient to cover any debt financing of the project) before it begins any construction activities. Staff views this condition positively because it addresses a largely theoretical concern about the ability of a special purpose entity to finance future activities without the financial resources of its parent and addresses that concern with a concrete requirement to prove that GBE can finance the project before it begins construction.”).

on easement property in Kansas, but also recognizes that Phase I alone constitutes a useful project.⁵ As such, all of the safeguards—and the purposes for those safeguards—contained within Paragraph 9.a.i–iv of the Settlement Agreement continue to exist, except, again, they apply specifically to Phase I.⁶

18. The proposed amendments will also allow Kansas to realize economic benefits more quickly, as phasing will hasten the financing, construction investments, and eventual operation of the Kansas portion of the Project.⁷ Notably, Grain Belt Express is exceeding the land acquisition milestones set forth in Paragraph 9.e of the Settlement Agreement and as detailed by the Quarterly Reports filed in Docket No. 14-GBEE-527-CPL.⁸

19. Given that Kansans will continue to receive the benefit of the original Financing Requirement and that the proposed amendments do not disrupt those benefits, while allowing Kansans to benefit from the certificated Project more quickly, approval of these amendments is in the public interest.

[Remainder of page intentionally left blank]

⁵ *Id.* at 13–14.

⁶ *Id.*

⁷ *Id.*

⁸ *See, e.g.*, Quarterly Status Report of Grain Belt Express, Docket No. 14-GBEE-427-CPL (Jan. 17, 2023).

WHEREFORE, Grain Belt Express requests that the Commission issue an Order approving the Amended Financing Requirement.

Respectfully submitted,

/s/ Andrew O. Schulte

Andrew O. Schulte (KS # 24412)

Anne E. Callenbach (KS# 18488)

Frank A. Caro, Jr. (KS# 11678)

Polsinelli PC

900 W. 48th Place, Suite 900

Kansas City, Missouri 64112

(816) 572-4754

aschulte@polsinelli.com

acallenbach@polsinelli.com

fcaro@polsinelli.com

ATTORNEYS FOR GRAIN BELT EXPRESS LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties listed on the official service list by email, this 10th day of March, 2023.

Brian G. Fedotin, General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604
b.fedotin@kcc.ks.gov

Walker Hendrix, Chief Litigation Counsel
Walker Hendrix Kansas Corporation Commission
1500 SW Arrowhead Rd
Topeka, KS 66604
w.hendrix@kcc.ks.gov

Jeff McClanahan, Director, Utilities Division
Kansas Corporation Commission
1500 SW Arrowhead Rd.
Topeka, Kansas 66604
j.mcclanahan@kcc.ks.gov

Orijit Ghoshal, Senior Manager Regulatory Affairs
Invenergy LLC
101 17th Street Suite 1100
Denver, Co 80202
oghoshal@inenergylc.com

James W. Bixby, Attorney - Regulatory & Legislative
ITC Great Plains, LLC
601 Thirteenth Street NW
Ste 710S
Washington, DC 20010
jbixby@itctransco.com

Holly Fisher, Attorney-Cap. Projects & Maintenance
ITC Great Plains, LLC
3500 SW Fairlawn Rd Ste 101
Topeka, KS 66614-3979
hfisher@itctransco.com

Glenda Cafer, Attorney
Morris Laing Evans Brock & Kennedy
800 SW Jackson

Suite 1310
Topeka, KS 66612-1216
GCAFER@MORRISLAING.COM

/s/ Andrew O. Schulte _____
Andrew O. Schulte

VERIFICATION

I, Andrew O. Schulte, do solemnly, sincerely and truly declare and affirm that I am counsel to Grain Belt Express LLC, that I have read the foregoing pleading and know the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge and belief, and this I do under the pains and penalties of perjury.

By: /s/ Andrew O. Schulte

Andrew O. Schulte

March 10, 2023