

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of	)	
Invenergy Transmission LLC, Invenergy	)	
Investment Company LLC, Grain Belt	)	
Express Clean Line LLC and Grain Belt	)	Case No. EM-2019-0150
Express Holding LLC for an Order	)	
Approving the Acquisition by Invenergy	)	
Transmission LLC of Grain Belt Express	)	
Clean Line LLC	)	

**POSITION STATEMENT OF JOINT APPLICANTS**

Invenergy Transmission LLC (“Invenergy Transmission”), on behalf of itself and its parent company Invenergy Investment Company LLC (“Invenergy Investment”), as well as Grain Belt Express Clean Line LLC (“GBE” or “Grain Belt Express”) on behalf of itself and its parent company Grain Belt Express Holding LLC (“GBE Holding”) (collectively, “Joint Applicants”), submit this position statement pursuant to the Missouri Public Service Commission’s (“Commission” or “PSC”) March 6, 2019 Order Adopting Procedural Schedule.

**A. Statement of the Case**

On November 20, 2018, Joint Applicants filed a Notice of Intended Case Filing, advising the Commission that Joint Applicants intended to file an application pursuant to Section 393.190<sup>1</sup> to seek approval of the acquisition of Grain Belt Express by Invenergy Transmission. On February 1, 2019, Joint Applicants filed their Application pursuant to Section 393.190, 4 CSR 240-2.060, 2.080(14), 2.090(4), 10.105 and 10.135, requesting that the Commission approve a transaction involving a change in ownership of GBE, that the Commission proceed expeditiously, and that a prehearing conference be scheduled. In the Application the Joint

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<sup>1</sup> All statutory references are to the Missouri Revised Statutes (2016), as amended, unless otherwise noted.

Applicants noted that they have agreed pursuant to a Membership Interest Purchase Agreement (“MIPA”) that, pending a number of conditions precedent including review and approval by the PSC, Invenenergy Transmission will acquire GBE (the “Transaction”). GBE is the owner of all of the current assets and rights of the Grain Belt Express Transmission Project (“GBE Project” or “Project”). The GBE Project is a proposed approximately 780-mile, overhead, multi-terminal ±600 kilovolt (“kV”) high voltage direct current (“HVDC”) transmission line and associated facilities that will connect over 4,000 megawatts (“MW”) of low-cost, wind-generated power in western Kansas for delivery to customers and consumers in Missouri, Illinois, Indiana, and states farther east.

GBE proposes to construct in Missouri the approximately 206-mile portion of the HVDC Line on a route that crosses the Missouri River south of St. Joseph and continues across the state in an easterly direction to south of Hannibal in Ralls County, where the HVDC Line will cross the Mississippi River into Illinois. GBE also proposes to construct a converter station and associated AC interconnecting facilities in Ralls County to be able to deliver power from the Project to Missouri customers. The Project will interconnect with the Ameren Missouri system in Ralls County along the Maywood-Montgomery 345 kV AC transmission line, which connects the Maywood 345 kV substation with the Montgomery 345 kV substation in Montgomery County.

GBE applied for a line certificate of convenience and necessity (“CCN”) pursuant to Section 393.170.1 on August 30, 2016 in Case No. EA-2016-0358, authorizing it to construct, own, operate, control, manage, and maintain the Missouri portion of the Project (the “CCN Proceeding”). The Commission initially determined that it could not lawfully issue a CCN to GBE because it had not obtained the necessary county assents under Section 229.100, following

an appellate decision in an unrelated case.<sup>2</sup> The Court of Appeals for the Eastern District found that the PSC erred in following the *ATXI* case and transferred the GBE case to the Supreme Court under Rule 83.02 because of the general interest and importance of the question.<sup>3</sup> The Supreme Court likewise held that the Commission erroneously concluded that it could not grant a line CCN to the Company without it first obtaining consents from the affected counties.<sup>4</sup> The Supreme Court remanded the case to the PSC to determine whether the Grain Belt Express Project is necessary or convenient for the public service.<sup>5</sup>

The Commission conducted an evidentiary hearing on December 18-19, 2018 in order to take evidence regarding “material changes” in the facts previously presented with regard to GBE’s request for a CCN.<sup>6</sup> As part of the remand proceedings, GBE informed the Commission of the pending Transaction and provided evidence of Invenergy’s technical and financial ability to manage the Project going forward.

On March 20, 2019, the Commission issued its Report and Order on Remand, granting GBE’s application for a CCN and establishing certain conditions. Because GBE is now a public utility holding a CCN, the Transaction is subject to Commission approval pursuant to Section 393.190.

**B. Statement of Position on the Issues**

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<sup>2</sup> *In re Ameren Transmission Co. of Illinois*, 523 S.W.3d 21 (Mo. App. W.D. 2017) (“ATXI”).

<sup>3</sup> *Grain Belt Express Clean Line LLC v. PSC*, No. ED 105932, slip op. at 10 (Feb. 27, 2018).

<sup>4</sup> *Grain Belt Express Clean Line LLC v. PSC*, 555 S.W.3d 469, 470, 474 (Mo. en banc 2018).

<sup>5</sup> *Id.* at 474.

<sup>6</sup> CCN Proceeding, Order Setting Procedural Conference at 1 (Sept. 28, 2018).

***1. Does the Commission have jurisdiction and statutory authority under Section 393.190, RSMo., to approve the sale of Grain Belt Express Clean Line LLC ("Grain Belt") to Invenergy Transmission LLC ("Invenergy")?***

Yes. Section 393.190 provides that “no gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.”

Section 386.020(15) defines an “electrical corporation” as “...every corporation, [or] company...owning, operating, controlling or managing any electric plant....” Electric plant is defined in Section 386.020(14) as “all real estate...and personal property...used or required to be used for or in connection with or to facilitate the ...transmission...of electricity for ...power.... ” In the Commission’s Report and Order on Remand, the Commission specifically found that Grain Belt’s 39 easements that it has signed with Missouri landowners are interests in real estate, and its cash on hand for project development is personal property.<sup>7</sup> “That real estate and personal property are to be used for or in connection with Grain Belt’s Project, so the Commission concludes that they meet the definition of electric plant.”<sup>8</sup> Additionally, the county road-crossing assents issued to GBE by the Buchanan County Commission and the Carroll County Commission pursuant to 229.100 are considered franchises or licenses<sup>9</sup>, and are therefore a form

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<sup>7</sup> Report and Order on Remand at 37.

<sup>8</sup> *Id.*

<sup>9</sup> See, e.g., *Missouri Public Serv. Co. v. Platte-Clay Elec. Coop.*, 407 S.W.2d 883, 889 (Mo. 1966); *StopAquila.org v. Aquila, Inc.*, 180 S.W.3d 24, 40-41 (Mo. App.W.D. 2005).

of personal property. The PSC specifically determined that Grain Belt is an “electrical corporation” within the meaning of Section 386.020(15), and therefore is subject to the jurisdiction of the Commission.<sup>10</sup> Further, it recognized that “Grain Belt will offer indiscriminate transmission service through an open access transmission tariff that will be filed and subject to the jurisdiction of FERC. While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.”<sup>11</sup> The Commission therefore concluded that the Project will serve the public use, and that Grain Belt qualifies as a public utility.<sup>12</sup> As such, the Commission does have jurisdiction and authority under Section 393.190 to approve the sale of Grain Belt Express Clean Line LLC to Invenergy Transmission LLC. This issue has already been decided by the Commission in the CCN proceeding and need not be re-litigated in the present case.

**2. *If so, should the Commission find that Invenergy’s acquisition of Grain Belt is not detrimental to the public interest, and approve the transaction?***

Yes. The Transaction meets the standard for granting approval under Section 393.190.1 and the “not detrimental to the public interest” standard.<sup>13</sup> The Transaction is not detrimental to the public interest.

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<sup>10</sup> *Id.* at 38.

<sup>11</sup> *Id.*, citing *State ex rel. Buchanan County Transmission Co. v. Baker*, 9 S.W. 2d 589, 592 (Mo. en banc 1928).

<sup>12</sup> *Id.*

<sup>13</sup> *State ex rel. City of St. Louis v. Public Service Comm’n*, 73 S.W.2d 393, 400 (Mo. banc 1934). See *In the Matter of the Application of Great Plains Inc. for Approval of its Merger with Westar Energy, Inc.*, Case No. EM-2018-0012, Report & Order, pp. 27-28 (May 24, 2018); *In the Matter*

In this case the traditional concerns about potential detriments to Missouri retail ratepayers or retail services are not present because GBE will not have any retail customers in Missouri and GBE is not rate-regulated by the PSC. After the Project is constructed, the Federal Energy Regulatory Commission (“FERC”) will retain exclusive jurisdiction over the rates GBE may charge for use of its transmission system by approving and overseeing GBE’s negotiated rate authority and Open Access Transmission Tariff (“OATT”). Moreover, the regional transmission organizations through which the Project will traverse have responsibility for ensuring that the Project is safely and reliably integrated into the electric grids which they operate.

The Transaction further promotes the public interest because it will facilitate the continued development of the GBE Project, which will deliver low-cost wind energy to Missouri wholesale customers, who will, in turn, provide that low-cost energy to their Missouri retail customers. The Commission has found that the GBE Project is in the public interest and the Transaction facilitates the fulfillment of that public interest.

The benefits of the Project were discussed at length by numerous witnesses during the March 2017 evidentiary hearing in the CCN Proceeding. The Commission’s Report and Order on Remand in the CCN Proceeding stated:

There can be no debate that our energy future will require more diversity in energy resources, particularly renewable resources. We are witnessing a worldwide, long-term and comprehensive movement towards renewable energy in general and wind energy specifically. Wind energy provides great promise as a source for affordable, reliable, safe, and environmentally-friendly energy. The Grain Belt Project will facilitate this

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*of the Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co., and Aquila, Inc. for Approval of the Merger of Aquila, Inc. with a Subsidiary of Great Plains Energy Inc. and for Other Related Relief, Case No. EM-2007-0374, Report & Order, pp. 228-232 (July 1, 2008);*

movement in Missouri, will thereby benefit Missouri citizens, and is, therefore, in the public interest.<sup>14</sup>

In its Report and Order on Remand, the Commission noted that it is within the discretion of the PSC to determine when the evidence indicates the public interest would be served. The Commission further observed that determining what is in the interest of the public is a balancing process wherein the total interests of the public served must be assessed.<sup>15</sup> In finding that the Grain Belt Project is in the public interest, the PSC stated that the Project will lower energy production costs in Missouri and will have a substantial and favorable effect on the reliability of electric service in Missouri, particularly through its effect on wind diversity in the region. The Commission further found that the Project will result in an estimated range of \$12.8 million in annual savings for customers of Missouri Joint Municipal Electric Utility Commission (“MJMEUC”), which will receive up to 250 MW of capacity from the Project through an existing Transmission Services Agreement.<sup>16</sup> In evaluating the specific benefits of the Project, the Commission found that the construction phase of the Project will support 1,527 jobs over three years, and create \$246 million in personal income, \$476 million in gross domestic product, and \$9.6 million in state general revenue for the state of Missouri.<sup>17</sup> The Project will also result in significant property tax benefits to affected counties, a total of approximately \$7.2 million in the first year of operation.<sup>18</sup> In the first year of operation, the Project will result in approximately

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<sup>14</sup> Report and Order on Remand at 47.

<sup>15</sup> Report and Order on Remand at 45.

<sup>16</sup> *Id.* at 15-16.

<sup>17</sup> *Id.* at 46.

<sup>18</sup> *Id.*

\$14.97 million in easement payments to landowners and create 91 jobs, \$17.9 million worth of personal income, and \$9.1 million in gross domestic product.<sup>19</sup>

In balancing the interests of all stakeholders, including the affected landowners, the Commission found that the evidence in the CCN proceeding demonstrates that the Grain Belt Project will create both short-term and long-term benefits to ratepayers and Missouri citizens. As the PSC noted, the “broad, economic, environmental and other benefits of the Project to the entire state of Missouri outweigh the interests of the individual landowners.”<sup>20</sup> The Commission further noted that many of the landowners’ concerns will be addressed through carefully considered conditions placed on the CCN.<sup>21</sup>

In the present case, Staff also referred to these findings in the CCN case and the Commission’s determination that the Project is in the public interest. Staff stated that it has no reason to question that Invenergy is qualified to own, operate, control and manage the facilities and provide the service related to the Project. In addition, Staff reviewed Invenergy’s updated financial statements, which “continue to suggest Invenergy’s proposed acquisition of Grain Belt would not be detrimental to the public interest.”<sup>22</sup> Accordingly, Staff recommended that the Commission find that the Transaction is not detrimental to the public interest, and further recommended that the Commission approve the Application subject to the conditions ordered by the Commission in its March 20, 2019 Report and Order on remand in the CCN case.<sup>23</sup>

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<sup>19</sup> *Id.* at 46.

<sup>20</sup> *Id.* at 47.

<sup>21</sup> *Id.*

<sup>22</sup> Staff Rebuttal Report, 4 (Mar. 27, 2019).

<sup>23</sup> *Id.*



As described by Invenenergy Senior Vice President of Financial Operations Andrea Hoffman, not only does Invenenergy have significant assets and equity (in excess of \$9 billion in assets and \$3 billion in equity)<sup>24</sup>, it has the ability to raise significant capital whenever necessary based on both its reputation and status as a leading developer in the industry, as evidenced by the strength its investment partners and its experience in raising more than \$30 billion since 2001 to finance projects.<sup>25</sup> Further, Invenenergy is a larger and more diverse entity than Clean Line, and will be able to provide a much broader financial platform for GBE, thereby bringing the benefits of the Project closer to reality by providing GBE with enhanced financial resources.<sup>26</sup>

***3. Should the Commission condition its approval of Invenenergy's acquisition of Grain Belt and, if so, what should such conditions be?***

Staff has recommended that the Commission approve the Application subject to the conditions ordered by the Commission in its Report and Order on Remand in the CCN case. Invenenergy Senior Vice President Kris Zadlo filed surrebuttal testimony on April 4, 2019, in which he testified that Invenenergy agrees to the conditions outlined by the Commission in the Report and Order on Remand that was issued in the CCN case. No other party has submitted proposed conditions for the Commission's consideration.

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<sup>24</sup> Hoffman Direct Testimony at 4.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> Report and Order on Remand at 43.

Respectfully submitted,

/s/ Anne E. Callenbach

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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 12th day of April 2019.

/s/ Anne E. Callenbach  
Attorney for Invenergy Transmission LLC