

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

In the Matter of the Application of Grain Belt)
Express LLC for an Amendment to its Certificate)
of Convenience and Necessity Authorizing it to)
Construct, Own, Operate, Control, Manage, and) File No. EA-2023-0017
Maintain a High Voltage, Direct Current)
Transmission Line and Associated Converter)
Station)

MOTION FOR PROTECTIVE ORDER

Pursuant to 20 CSR 4240-2.135(3) and -(4), Grain Belt Express LLC (“Grain Belt Express”) hereby files this Motion for Protective Order:

I. Background

1. On August 24, 2022, Grain Belt Express filed its Application to Amend its Existing Certificate of Public Convenience and Necessity (“Application”) to construct, install, own, operate, maintain, and otherwise control and manage an approximately 800-mile, overhead, multi-terminal ±600 kilovolt (“kV”) high-voltage, direct current (“HVDC”) transmission line and associated facilities including converter stations and alternating current (“AC”) connector lines (the “Project”).

2. Grain Belt Express has received data requests from Missouri Public Service Commission Staff (“Staff”) that will require it to produce and disclose confidential and proprietary information such as non-public financial information and commercially and competitively sensitive contracts relating to it and affiliated Invenergy companies (collectively “Invenergy”). *See, for example*, Staff Data Requests 6-9, attached as **Exhibit A**. Grain Belt Express anticipates that intervenors will seek this same information and other such information independently of Staff.

3. Some of the information requested contains highly sensitive, competitive market data, financial information, and other proprietary transactional data that has limited bearing on the proceeding.

4. In the Case Number EA-2016-0358 regarding this original Project and its transfer to Invenergy (“2016 Docket”),¹ this same category of information was sought by the Missouri Landowners Alliance. There, the Commission installed a protective order to govern such information, finding that Grain Belt Express “has made convincing arguments that the risk of harm to the companies is great should the confidential information be publicly disclosed.”²

5. Grain Belt Express requests the Commission adopt a similar Protective Order, detailed below, to the one adopted in the 2016 Docket to protect a similar class of information.

II. Statement of Law

6. Missouri Supreme Court Rule 56.01(c) provides that protective orders may be issued “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including . . . that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.”

7. Commission Rule 20 CSR 4240-2.135(2) provides that parties may designate certain materials, including trade secrets and competitively sensitive information, as “Confidential.” Pursuant to Commission Rule 20 CSR 4240-2.135(6), “Confidential” information shall be disclosed to attorneys of record for a party, to employees of a party who are working as subject-matter experts for the party’s counsel, to employees of a party who intend to file testimony in the case, and to designated outside experts of a party.

¹ Case No. EA-2016-0358.

² “Order Granting Motion to Compel, in Part, and Granting Motion for Protective Order, in Part,” File No. EA-2016-0358 (issued December 13, 2018) at 4.

8. The Commission has previously noted that, “Commission rules provide for the issuance of protective orders when necessary to protect information from discovery more rigorously than would be provided from a confidential designation.”³ The Commission has further explained that, “The Commission may order such greater protection by a party explaining what information must be protected, the harm to the disclosing party that might result from disclosure of the information, and how the information may be disclosed while protecting the interests of the disclosing party.”⁴

III. Argument

9. Grain Belt Express and Invenergy are privately held companies, and their financial information is highly proprietary. Unlike public companies, much of Grain Belt Express’ financial data is not available to the public and would be incredibly valuable to its competitors in the energy industry.

10. Additionally, Grain Belt Express and Invenergy enter into contracts with suppliers, landowners, and other customers that contain sensitive information that would impact their competitive advantage with respect to negotiating contracts related and unrelated to the Project in the future if such information was released. These contracts often contain confidentiality provisions and may implicate the rights of private third parties. While elements of these contracts may be shared using the Confidential designation provided by 20 CSR 4240-2.135(2), others may reveal details that have a *de minimis* bearing on the Project and the scope of the Commission’s

³ “Order Granting Motion to Compel, in Part, and Granting Motion for Protective Order, in Part,” File No. EA-2016-0358 (issued December 13, 2018) at 4 *citing* Commission Rule 4 CSR 240-2.135(3) (now 20 CSR 4240-2.135(3)).

⁴ Order Granting Motion to Compel, in Part, and Granting Motion for Protective Order, in Part,” File No. EA-2016-0358 (issued December 13, 2018) at 4 *citing* Commission Rule 4 CSR 240-2.135(4) (now 20 CSR 4240-2.135(4)).

investigation in this proceeding but would have serious consequence to Grain Belt Express and Invenergy if disclosed.

11. The “Confidential” designation under 20 CSR 4240-2.135 will not provide adequate protection for these two categories of information (proprietary financial information and sensitive contractual information, collectively the “Highly Confidential Information”) because it would require Grain Belt Express to produce Highly Confidential Information to non-expert representatives of non-state agency parties who intend to file testimony in the case and may have potentially competitive relationships with Grain Belt and Invenergy now or in the future. In this context, potentially competitive parties include landowners, who may need to negotiate easements with Grain Belt Express in the future, and utilities, with whom Grain Belt Express competes for projects or with whom Grain Belt Express may need to negotiate. The mere disclosure of Highly Confidential Information to these parties and their employees and representatives would irreparably harm Grain Belt Express and Invenergy because it would give these parties knowledge of financial and contract information that would affect their relative bargaining positions.

12. While the Commission could stand to benefit from inhouse and outside expert witness review of Highly Confidential Information, the same cannot be said for representatives who intend to file testimony on other subjects (such as land impacts) but who cannot otherwise offer an expert opinion on highly sensitive financial and contract information. Accordingly, the Commission and the public would not benefit from non-expert party representatives reviewing this information, but Grain Belt and Invenergy would be significantly harmed.

13. A fair tradeoff for all parties is to limit disclosure of Highly Confidential Information to attorneys of record, state agencies and their employees, and to inhouse and outside expert representatives of parties with a demonstrable need to see financial and contract

information, but to prohibit other employees and representatives access to this limited set of information.

14. The requested relief listed below is substantially similar to the relief granted in protective orders issued by this Commission in the past, including the one granted in the 2016 Docket.⁵

15. Grain Belt therefore requests the Commission issue of Protective Order as follows:

a. Confidential information may be designated in one of two categories: (1) a “Confidential” category of information encompassing the usual scope of protected information in Commission proceedings⁶ and (2) a “Highly Confidential”⁷ category of information limited to information that is classified proprietary financial information of Grain Belt Express and Invenenergy and sensitive contractual information relating to Grain Belt Express and Invenenergy.

b. Information designated as “Confidential” would be subject to the standard protocols included in Commission Rule 20 CSR 4240-2.135.

c. For information designated as Highly Confidential, Grain Belt Express shall disclose such information only to attorneys of record for all parties, state agency parties and their employees covered by statutory confidentiality requirements, and to designated outside and inhouse experts for any non-state agency party with a demonstrable need to see financial and contract information.

⁵ See “Protective Order,” File No. EA-2019-0118 (issued December 18, 2018); Order Granting Motion to Compel, in Part, and Granting Motion for Protective Order, in Part,” File No. EA-2016-0358 (issued December 13, 2018).

⁶ Including information covered under Commission Rule 20 CSR 4240-2.135(2).

⁷ In the Kansas proceeding, the “Highly Confidential” category was termed “Confidential-Competitive.”

d. Outside counsel and inhouse and outside experts may receive and review Highly Confidential information after executing the certification attached hereto as **Exhibit B**, or a similar Commission nondisclosure agreement that the requirements of Commission Rule 20 CSR 4240-2.135(7) and specifically references Highly Confidential information. No Highly Confidential information shall be provided directly or indirectly to any non-state agency party or representative thereof, except as expressed above.

e. Persons afforded access to materials or information designated Highly Confidential shall neither use nor disclose such materials or information for purposes of business or competition or any other purpose other than with regard to the case referenced above and shall keep the materials and information secure and confidential and in accordance with the purposes and intent of the Protective Order.

f. All material and information designated as “Highly Confidential,” as well as any notes pertaining to such information, shall be returned to Grain Belt Express or destroyed upon the conclusion of the referenced case, with certification of same to Grain Belt Express.

g. If any party disagrees with the Highly Confidential designation of any information, that party shall follow the informal discovery dispute resolution procedures set forth in Commission Rule 20 CSR 4240-2.090(8). If these dispute resolution procedures are exhausted without resolution, the party may file a motion challenging the designation.

IV. Conclusion

WHEREFORE, Grain Belt Express respectfully requests the Commission grant this Motion for a Protective Order and take such other actions as the Commission deems necessary to protect this information.

Respectfully submitted,

/s/ Andrew O. Schulte

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ATTORNEYS FOR GRAIN BELT EXPRESS LLC

EXHIBIT A

Missouri Public Service Commission
Data Request

Data Request No.: 0006
Company Name: Grain Belt Express, LLC-Investor (Electric)
Case/Tracking No.: EA-2023-0017
Date Requested: 9/16/2022
Issue: General Information & Miscellaneous - Financing Issues
Requested From: Andrew Schulte
Requested By: Kevin Thompson
Brief Description:

Description: Please provide the annual financial statement as of June 30, 2022 and pro forma financial statement of Grain Belt Express and Invenergy LLC in an executable Excel format. A comparison of the two financial statement should clearly show the financial impact of the Construction of the proposed line in the Application. Requested by: Seoung Joun Won. (Seoungjoun.Won@psc.mo.gov)

Missouri Public Service Commission
Data Request

Data Request No.: 0007
Company Name: Grain Belt Express, LLC-Investor (Electric)
Case/Tracking No.: EA-2023-0017
Date Requested: 9/16/2022
Issue: General Information & Miscellaneous - Financing Issues
Requested From: Andrew Schulte
Requested By: Kevin Thompson
Brief Description:

Description: Please provide the following financial ratios, as of June 30, 2022 and the pro forma period, for Grain Belt Express's and Invenergy LLC's separately, clearly showing the impact of the proposed transaction in the Application: Total Debt/EBITDA, Adjusted Funds from Operations (FFO) as a Percentage of Average Total Debt, Adjusted Total Debt to Total Capital, FFO/Debt, FFO/Interest expense and FFO to Interest coverage. Please provide this information in executable Excel format. Requested by: Seoung Joun Won. (Seoungjoun.Won@psc.mo.gov)

Missouri Public Service Commission
Data Request

Data Request No.: 0008
Company Name: Grain Belt Express, LLC-Investor (Electric)
Case/Tracking No.: EA-2023-0017
Date Requested: 9/16/2022
Issue: General Information & Miscellaneous - Financing Issues
Requested From: Andrew Schulte
Requested By: Kevin Thompson
Brief Description:

Description: Please provide, separately, Grain Belt Express's and Invenergy LLC's capital structure as of June 30, 2022 and pro forma capital structure showing the impact of the proposed transaction in the Application in an executable Excel format. Requested by: Seoung Joun Won. (Seoungjoun.Won@psc.mo.gov)

Missouri Public Service Commission
Data Request

Data Request No.: 0009
Company Name: Grain Belt Express, LLC-Investor (Electric)
Case/Tracking No.: EA-2023-0017
Date Requested: 9/16/2022
Issue: General Information & Miscellaneous - Financing Issues
Requested From: Andrew Schulte
Requested By: Kevin Thompson
Brief Description:

Description: (1) Please provide information Grain Belt Express and/or Invenergy LLC provided to or received from rating agencies related to the projects in this case. (2) Please provide all ratings agency reports published concerning Grain Belt Express and/or Invenergy LLC since January 1, 2022. Requested by: Seoung Joun Won. (Seoungjoun.Won@psc.mo.gov)

Due Date: 10/6/2022

EXHIBIT B



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

In the Matter of the Application of Grain Belt)
Express LLC for an Amendment to its Certificate)
of Convenience and Necessity Authorizing it to)
Construct, Own, Operate, Control, Manage, and) File No. EA-2023-0017
Maintain a High Voltage, Direct Current)
Transmission Line and Associated Converter)
Station)

**NON-DISCLOSURE AGREEMENT FOR
HIGHLY CONFIDENTIAL INFORMATION**

I, _____, have reviewed the Commission's Rule at 20 CRS 4240-2.135
on the _____ day of _____, 20_____.

I have requested review of highly confidential and confidential information produced in
Case No. EA-2023-0017 on behalf of _____.

I hereby certify that:

(a) Only certain persons may receive highly confidential information. These persons
include attorneys of record for a party in the case, inhouse experts employed by a party in the case,
outside experts retained by a party in this case, and state agencies and their employees.

(b) I am an employee of _____ acting as an
(outside/inhouse) _____ expert on behalf of _____, and have been
directed to provide expert consultation or testimony in this docket.

(Continues on the following page)

(c) I have read and agree to abide by the Commission's Rule at 20 CRS 4240-2.135 and all terms of the Protective Order issued by the Commission in this docket.

Dated: _____

Signature and Title

Employer

Party

Address

Telephone

E-mail Address

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 29th day of September, 2022.

/s/ Andrew O. Schulte

Andrew O. Schulte