

**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 to Amend Protective Order

COMES NOW Grain Belt Express LLC (“Grain Belt Express”) and for its Motion to Amend Protective Order states as follows:

1. On October 20, 2022, the Public Service Commission of the State of Missouri issued an Order Establishing Protective Order (“Protective Order”).

2. The Protective Order provides for a two-tiered confidentiality designation—a “Confidential” category for information encompassing the usual scope of protected information in Commission proceedings (including information covered under Commission Rule 20 CSR 4240-2.135(2)); and a “Highly Confidential” category for classified proprietary financial information of Grain Belt Express and Invenergy and sensitive contractual information relating to Grain Belt Express and Invenergy. *See* Protective Order at 2.

3. Confidential information is available to attorneys of record for all parties and to employees of a party who are working as subject-matter experts for those attorneys or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case. 20 CSR 4240-2.135(6). Highly Confidential information is available to attorneys of record for all parties and designated outside and inhouse experts for non-state agency parties with a demonstrable need to see financial and contract information. Protective Order at 2-3. Access to Highly Confidential information requires parties to sign a Non-Disclosure Agreement, whereas

access to Confidential information does not require parties to sign a Non-Disclosure Agreement. *Id.* at 3.

4. Based on the Commission’s March 16, 2023 Order Granting, in Part, and Denying, in Part, Request to Compel Discovery Answers, Grain Belt is making a production of documents¹ containing memoranda of understanding and negotiations between it and customers that intend to be served by the Grain Belt Express transmission line. This information comprises sensitive negotiations from both Grain Belt Express’ perspective and the perspectives of those customers.

5. This causes a particular concern for Grain Belt Express and those customers because, under the current Protective Order, as the memoranda of understanding and negotiations will be made available to inhouse attorneys and inhouse experts of other customers or potential customers (Missouri Joint Municipal Electric Utility Commission d/b/a Missouri Electric Commission (“MEC”), and Union Electric Company d/b/a Ameren Missouri (“Ameren”)) who are or may in the future be in negotiation with Grain Belt Express for transmission capacity.

6. In order to appropriately screen sensitive negotiations from persons at competing businesses, Grain Belt Express proposes adding a third tier to its confidentiality protection: “Highly Confidential – Competitive”. This category would be limited to classified proprietary financial information and sensitive negotiation information relating to Grain Belt Express and Invenenergy that pertains to negotiations and memoranda of understanding between Grain Belt Express and Invenenergy and a potential or current transmission customer.

7. For information designated as “Highly Confidential – Competitive,” Grain Belt Express (or potentially any intervening parties with such information) shall disclose such information only to state agency parties and their employees covered by statutory confidentiality

¹ Due March 23, 2023.

requirements; to non-state agency party representatives for parties that are not potential or current transmission customers (for example, Sierra Club, Missouri Landowners Association, and Missouri Cattlemen’s Association) and who have filed Highly Confidential Non-Disclosure Agreements; and to non-state agency party representatives for parties that are potential or current transmission customers (MEC, Ameren, and potentially other late-intervening parties), provided that the representative is an outside counsel or outside expert with a demonstrable need to see financial and negotiation information and who have signed Highly Confidential – Competitive Non-Disclosure Agreement.²

8. Outside counsel and outside experts for potential or current transmission customers may receive and review Highly Confidential – Competitive documents after executing the proposed Non-Disclosure Agreement for Highly Confidential – Competitive Information attached here to as **Exhibit A** or a similar Commission nondisclosure agreement that meets the requirements of Commission Rule 20 CSR 4240-2.135(7) and specifically references Highly Confidential – Competitive information. No Highly Confidential – Competitive information shall be provided directly or indirectly to any inhouse representative of to any other representative of a potential or current transmission customers.

9. Persons afforded access to materials or information designated “Highly Confidential – Competitive” 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.

² In the case where Highly Confidential – Competitive information is between Grain Belt Express, on one hand, and an intervening potential or current customer, Grain Belt Express shall provide that information to that intervening potential or current customer separately.

10. All material and information designated as “Highly Confidential – Competitive,” 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.

11. If any party disagrees with the “Highly Confidential – Competitive” 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.

12. Each of the potential or current transmission customers who are parties to this matter are represented by outside counsel, and, therefore, this information will still be accessible to each intervening party. Therefore, under the Commission’s interest-balancing test³ this measure appropriately balances the harms to the disclosing party with another effective means of disclosing the information to other parties.

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.

³ “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.” 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)).

Respectfully submitted,

/s/ Andrew O. Schulte

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ATTORNEYS FOR GRAIN BELT EXPRESS LLC

EXHIBIT A

**BEFORE THE PUBLIC SERVICE COMMISSION
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**NON-DISCLOSURE AGREEMENT FOR
HIGHLY CONFIDENTIAL – COMPETITIVE**

I, _____, have reviewed the Commission’s Rule at 20 CRS 4240-2.135, the Commission’s Protective Order, and the Commission’s Amended Protective Order on the ____ day of _____, 20____.

I have requested review of Highly Confidential – Competitive information produced in Case No. EA-2023-0017 on behalf of _____.

I hereby certify that:

(a) Only certain persons may receive Highly Confidential – Competitive information. These persons include state agency parties and their employees covered by statutory confidentiality requirements; non-state agency party representatives for parties that are not potential or current transmission customers and who have filed Highly Confidential Non-Disclosure Agreements; and non-state agency party representatives for parties that are potential or current transmission customers, provided that representative is an outside counsel or outside expert with a demonstrable need to see financial and contract information and who have filed Highly Confidential – Competitive Non-Disclosure Agreements.

(b) I am an employee of _____ acting as an (outside/inhouse) _____ expert/attorney on behalf of _____

_____, and have been directed to provide expert/legal consultation or testimony in this docket.

(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 and Amended 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 23 day of March, 2023.

/s/ Andrew O. Schulte

Andrew O. Schulte