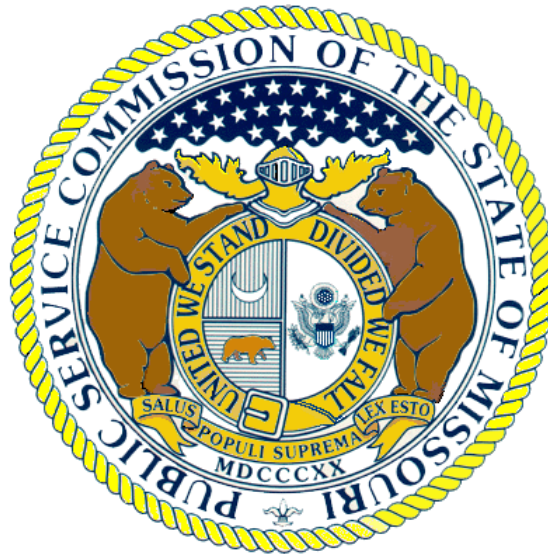


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of the Joint Application of )  
Invenergy Transmission LLC, Invenergy )  
Investment Company LLC, Grain Belt )  
Express Clean Line LLC and Grain Belt )  
Express Holding LLC for an Order )  
Approving the Acquisition by Invenergy )  
Transmission LLC of Grain Belt Express )  
Clean Line LLC )

**File No. EM-2019-0150**

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**REPORT AND ORDER**

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**Issue Date:** June 5, 2019

**Effective Date:** June 30, 2019

**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 )  
Express Holding LLC for an Order )  
Approving the Acquisition by Invenergy )  
Transmission LLC of Grain Belt Express )  
Clean Line LLC )

**File No. EM-2019-0150**

**APPEARANCES**

**INVENERGY TRANSMISSION, LLC, and INVENERGY INVESTMENT COMPANY, LLC:**

**Anne E. Callenbach** and **Andrew Shulte**, Polsinelli PC, 900 W. 48<sup>th</sup> Place, Suite 900, Kansas City, Missouri 64112.

**GRAIN BELT EXPRESS CLEAN LINE, LLC, and GRAIN BELT EXPRESS HOLDING COMPANY:**

**Karl Zobrist** and **Jacqueline M. Whipple**, Dentons US LLP, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111.

**STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Mark Johnson**, Deputy Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

**MISSOURI LANDOWNERS ALLIANCE, JOSEPH and ROSE KRONER:**

**Paul A. Agathen**, 485 Oak Field Ct., Washington, Missouri 63090.

**MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION:**

**Douglas L. Healy**, 3010 E. Battlefield, Suite A, Springfield, Missouri 65804.

**RENEW MISSOURI:**

**Timothy Opitz**, 409 Vandiver Drive, Building 5, Suite 25, Columbia, Missouri 65202.

**OFFICE OF THE PUBLIC COUNSEL:**

**Nathan Williams**, Post Office Box 2230, Jefferson City, Missouri 65102.

**CHIEF REGULATORY LAW JUDGE:** Morris L. Woodruff, presided over hearing.

**REGULATORY LAW JUDGE:** John T. Clark, Report and Order.

# REPORT AND ORDER

## I. Procedural History

On February 1, 2019, Invenergy Transmission LLC, and its parent company Invenergy Investment Company (“Invenergy”), and Grain Belt Express Clean Line LLC (“Grain Belt”) and Grain Belt Express Holding LLC (collectively, “Applicants”) filed a joint application asking the Missouri Public Service Commission (“Commission”) to approve a transaction in which Invenergy would acquire ownership of Grain Belt. The application also requests expedited treatment, asking that any regulatory approval be completed by June 30, 2019.

The Commission granted requests to intervene filed by the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners (“Show Me”); Missouri Landowners Alliance (MLA); Joseph and Rose Kroner; Missouri Joint Municipal Electric Utility Commission (MJMEUC); and Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”).

The Commission held an evidentiary hearing on April 23, 2019.<sup>1</sup> During the evidentiary hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. Does the Commission have jurisdiction and statutory authority under Section 393.190, RSMo to approve the sale of Grain Belt to Invenergy Transmission LLC?
2. Should the Commission find that Invenergy’s acquisition of Grain Belt is not detrimental to the public interest and approve the transaction?
3. Should the Commission condition its approval of Invenergy’s acquisition of Grain Belt and, if so, what should those conditions be?

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<sup>1</sup> Transcript (“Tr.”), Vols. 2, the evidentiary hearing, and 3, the in camera proceeding. The Commission admitted the testimony of 6 witnesses and 16 exhibits into evidence during the evidentiary hearing.

Final post-hearing briefs were filed on May 15, 2019, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.<sup>2</sup>

## **II. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission. Staff participated in this proceeding.

2. The Office of the Public Counsel ("Public Counsel") is a party to this case pursuant to Section 386.710(2), RSMo , and by Commission Rule 4 CSR 240 2.010(10). Public Counsel participated in this proceeding.

3. Grain Belt is a limited liability company organized under the laws of the State of Indiana. Grain Belt is a wholly-owned subsidiary of Grain Belt Express Holding LLC, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC. Grain Belt was formed for development and construction of the Grain Belt Express Project.<sup>3</sup>

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<sup>2</sup> "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

<sup>3</sup> Ex. 1, Detweiler Direct, p. 3-4

4. The Grain Belt Express Project is the multi-terminal  $\pm 600$  kilovolt ("kV") high voltage direct current ("HVDC") transmission line, and an HVDC converter station and associated transmission facilities, running from near the Spearville 345 kV substation in Ford County, Kansas, to a delivery point near the Sullivan 765 kV substation in Sullivan County, Indiana. The line is sited to traverse Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri.<sup>4</sup> The Grain Belt Express Project covers approximately 780 miles, and the project will primarily use a pole design which has a smaller footprint than traditional alternating current transmission lines. The structures will occupy ten acres for the entire state of Missouri.<sup>5</sup>

5. As part of the Grain Belt Express Project a converter station capable of injecting 500 megawatts into the region controlled by the Midcontinent Independent System Operator will be built.<sup>6</sup>

6. The Commission initially denied Grain Belt a Certificate of Convenience and Necessity (CCN), in File No. EA-2016-0358, because Grain Belt lacked necessary county assents under Section 229.100 RSMo.<sup>7</sup>

7. On appeal, the Missouri Supreme Court ruled that the Western District's decision in the ATXI case,<sup>8</sup> which the Commission criticized but relied upon in determining that it could not grant the CCN without the company having obtained the necessary county assents, was wrongly decided and remanded the case to the Commission.<sup>9</sup> As part of the remand proceedings, the Joint Applicants informed the Commission of the pending

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<sup>4</sup> Ex. 1, Detweiler Direct, p. 1, footnote one.

<sup>5</sup> Tr. Vol. 2, p. 19

<sup>6</sup> Tr. Vol. 2, p. 20.

<sup>7</sup> Ex. 1, Detweiler Direct, p.4.

<sup>8</sup> *In re Ameren Transmission Co. of Illinois (ATXI)*, 523 S.W.3d 21 (Mo App. 2017).

<sup>9</sup> *Grain Belt Express Clean Line LLC v. PSC*, 555 S.W.3d 469, 470, 474 (Mo. banc 2018).

Transaction and provided evidence of Invenenergy's technical and financial ability to manage the Project going forward.<sup>10</sup>

8. On March 20, 2019, the Commission granted Grain Belt a CCN effective April 19, 2019.<sup>11</sup>

9. Invenenergy, founded in 2001, is headquartered in Chicago, Illinois. Invenenergy is North America's largest privately held company that develops, owns, and operates large scale renewable and other clean energy generation, energy storage facilities, and electric transmission facilities across North America, Latin America, Japan and Europe. Invenenergy's expertise includes a range of fully integrated in-house capabilities, including: project development, permitting, transmission, interconnection, energy marketing, finance, engineering, project construction, operations, and maintenance.<sup>12</sup>

10. On November 9, 2018, Invenenergy Transmission entered into a Membership Interest Purchase Agreement (the "MIPA") with Grain Belt Express Holding to acquire Grain Belt, which is the owner of all of the assets comprising the Grain Belt Express Project. The MIPA is attached to the application as Exhibit F, and contains a requirement that the change in ownership in Grain Belt Express from Grain Belt Express Holding to Invenenergy Transmission be approved by both the Kansas Corporation Commission and this Commission as conditions precedent to closing the acquisition. The related Development Management Agreement ("DMA") that provides development funding through the projected closing date of the MIPA is attached as Exhibit G to the application.<sup>13</sup>

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<sup>10</sup> Ex. 1, Detweiler Direct, p. 6.

<sup>11</sup> *Report and Order on Remand*, File No. EA-2016-0358, Issued March 20, 2019.

<sup>12</sup> Ex. 3, Zadlo Direct, p. 6.

<sup>13</sup> Ex. 3, Zadlo Direct, p. 4.

11. Invenergy and its affiliates have in excess of \$9 billion in total assets and \$3 billion in total equity on a consolidated basis (as of December 31, 2017).<sup>14</sup>

12. Invenergy is highly experienced in raising corporate and project level financing in support of developing, constructing and operating its energy projects. Over the last 17 years, Invenergy has raised more than \$30 billion of financing in connection with the successful development of more than 20,220 MW in projects in the United States, Canada, Europe, Latin America, and Japan.<sup>15</sup>

13. Since 2001, Invenergy has built all required transmission and distribution lines, generator step-up transformers, and substations for its facilities in numerous regions, including within the regions managed by Southwest Power Pool, Inc. ("SPP"), Midcontinent Independent System Operator, Inc. ("MISO") and PJM Interconnection, LLC ("PJM"). Invenergy developed, permitted and constructed this infrastructure across various terrains, state and local jurisdictions, and in vastly differing environmental and regulatory conditions. This effort has led to the construction of over 392 miles of high-voltage transmission lines, over 1,748 miles of distribution lines, 59 substations and 73 generator step-up transformers of which several have been built for utilities.<sup>16</sup>

14. Invenergy Transmission plans to purchase Grain Belt using cash available from Invenergy Investment. Invenergy plans to use a combination of debt and equity to finance the construction and operation of the Grain Belt Express Project.<sup>17</sup>

15. Under the DMA, Invenergy Transmission manages and funds the business and affairs of the Grain Belt Express Project, in addition to performing all services related

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<sup>14</sup> Ex. 2, Hoffman Direct, p. 4, and Tr. Vol. 2, p. 23.

<sup>15</sup> Ex. 2, Hoffman Direct, p. 5.

<sup>16</sup> Ex. 3, Zadlo Direct, p. 5.

<sup>17</sup> Ex. 6, Staff Rebuttal Report, p. 2.



to development, ownership and maintenance during the pendency of the acquisition process.<sup>18</sup>

16. Invenergy's financial statements as of December 31, 2017, indicated that Invenergy had sufficient cash on hand. Invenergy's cash balance was approximately six times greater than the cash balance of Clean Line Energy Partners, LLC. The book value of Invenergy's equity was twenty times greater than Clean Line Energy Partner, LLC's equity.<sup>19</sup>

17. Grain Belt currently possesses cash and cash equivalents.<sup>20</sup> Grain Belt has sufficient cash on hand to continue the Grain Belt Express Project, but not to complete it.<sup>21</sup>

18. Grain Belt currently possesses 39 easements, which are interests in real property.<sup>22</sup>

19. The 39 easements will be necessary for the development of the Grain Belt Express Project.<sup>23</sup>

20. Invenergy will also be acquiring Grain Belt's engineering work as part of the Grain Belt development assets.<sup>24</sup>

21. Many of the traditional regulatory concerns pertaining to potential merger detriments, such as rate increases, service quality issues, market power, and involuntary reduction in workforce, are not present in this case. Grain Belt will offer transmission service to load-serving entities and other wholesale transmission customers through an

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<sup>18</sup> Ex. 6, Staff Rebuttal Report, p. 2.

<sup>19</sup> Ex. 6, Staff Rebuttal Report, p.

<sup>20</sup> Tr. Vol. 2, p. 76.

<sup>21</sup> Ex. 8, Schedule JK-8, p. 8-9

<sup>22</sup> Tr. Vol. 2, p. 76-77.

<sup>23</sup> Tr. Vol. 2, p. 100-101.

<sup>24</sup> Tr. Vol. 2, p. 99-100.

open-access transmission tariff that will be filed with and be subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") pursuant to the Federal Power Act. Grain Belt will not have any retail customers in Missouri and will not be rate regulated by the Commission.<sup>25</sup>

22. FERC will oversee Grain Belt's process for allocating transmission capacity in a non-discriminatory manner to wholesale customers.<sup>26</sup>

23. The Grain Belt Express Project will benefit the State of Missouri. Expected benefits of the Grain Belt Express Project to the State of Missouri include:

- An estimated 1,500 jobs during the three to four years of construction;
- A continuing source of property tax revenues to the political subdivisions where the facilities are located;
- A participant-funded model, such that GBE assumes all financial risk of building and operating the transmission line, with no costs anticipated to be recovered through the rates of regional transmission organizations;
- An estimated \$9.5-\$11 million in annual savings for customers of MJMEUC, which will receive up to 250 MW of capacity from the Project through an existing Transmission Services Agreement;
- Additional access to high-capacity-factor Kansas wind resources to fulfill the growing demand for renewable energy in Missouri.<sup>27</sup>

24. The acquisition of Grain Belt by Invenergy benefits the public interest. The acquisition will expedite and promote the continued development of the Grain Belt Express Project, which will deliver low-cost wind energy to Missouri wholesale customers, who will, in turn, provide that lower-cost energy to their retail customers.<sup>28</sup>

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<sup>25</sup> Ex. 2, Hoffman Direct, p. 3.

<sup>26</sup> Ex 8, Kisser Rebuttal, Schedule JK-4, p. 2, and Schedule JK-1, p. 2, and Tr. Vol. 2, p 115-116.

<sup>27</sup> Ex. 3, Zadlo Direct, p 11.

<sup>28</sup> Ex. 2, Hoffman Direct, p. 2.

25. The Commission has previously certificated companies operating transmission and distribution facilities in Missouri, and as with Grain Belt, their facilities also furnish wholesale electricity under rates set by FERC and have no Missouri retail customers.<sup>29</sup>

### **III. Conclusions of Law and Discussion**

#### **Jurisdiction**

The Missouri Landowners Alliance, Show Me Concerned Landowners, and Joseph and Rose Kroner (“Landowners”) have challenged the jurisdiction of the Commission over this acquisition. They have alleged that Grain Belt is not an electrical corporation because it is not devoted to the public use, it does not currently own any electrical plant in Missouri, and it has failed to file annual reports with the Commission that an electrical utility would be required to file. Landowners additionally contend that the Commission lacks authority because Grain Belt currently has no assets to transfer that are necessary or useful in the performance of its duties to the public.

As explained in the Report and Order granting Grain Belt a CCN, a division of regulatory authority between the federal government and the states has existed since the Federal Power Act was enacted in 1935.<sup>30</sup> The federal government regulates wholesale sales and transmission of electricity in interstate commerce and leaves to the states authority not specifically granted to the federal government. The Commission has

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<sup>29</sup> *In the Matter of Entergy Arkansas, Inc.* File No. EO-2013-0431, 23 Mo.P.S.C.3d 226 (2013); *In the Matter of GridLiance High Plains LLC*, File No. EA-2019-0112 (2018); *In re Ameren Trans. Co. of Illinois*, File No. EA-2017-0345 (2018); *In re Transource Missouri LLC*, File No. EA-2013-0098 (2013); *In re Interstate Power & Light Co.*, File No. EO-2007-0485 (2007); *In re IES Utilities, Inc.*, File No. EA-2002-296 (2002).

<sup>30</sup> 16 U.S.C. §§791a – 824w; Jeffery S. Dennis, *et al.*, *Federal/State Jurisdictional Split: Implications for Emerging Electricity Technologies*, Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory, p. 3 (December 2016).

certificated companies operating transmission and distribution facilities in Missouri, and as with Grain Belt, their facilities also furnish wholesale electricity under rates set by FERC and have no Missouri retail customers.<sup>31</sup>

Landowners rely on *State ex rel. M. O. Danciger & Company v. Public Service Commission*, 275 Mo. 483, 205 S.W. 36, 39 (1918), for the proposition that an electrical corporation serves the public use only by having direct retail customers. Missouri courts have stated that for a company to qualify as a public utility, the company must be devoted to a public use for the general public.<sup>32</sup> The Grain Belt Express Project will deliver wind energy to Missouri wholesale customers, who will provide that energy to their retail customers. FERC oversees Grain Belt's process for allocating transmission capacity in a non-discriminatory manner to wholesale customers. In *Danciger* the company was selectively selling electricity to particular retail customers thus excluding it from the public use. Grain Belt will not be selectively selling to particular retail customers, but the electricity it transmits will serve the general public, as evidenced by the MJMEUC, which will receive up to 250 MW of capacity an existing Transmission Services Agreement. The Commission concludes that Grain Belt will serve the public use.

Section 386.020(15), RSMo, defines an electrical corporation:

"Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any

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<sup>31</sup> *In the Matter of Entergy Arkansas, Inc.* File No. EO-2013-0431, 23 Mo.P.S.C.3d 226 (2013); *In the Matter of GridLiance High Plains LLC*, File No. EA-2019-0112 (2018); *In re Ameren Trans. Co. of Illinois*, File No. EA-2017-0345 (2018); *In re Transource Missouri LLC*, File No. EA-2013-0098 (2013); *In re Interstate Power & Light Co.*, File No. EO-2007-0485 (2007); *In re IES Utilities, Inc.*, File No. EA-2002-296 (2002).

<sup>32</sup> *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Commission of Missouri*, 275 Mo. 483, 205 S.W. 36, 39 (1918); *State ex rel. Buchanan County Power Transmission Co. v. Baker*, 320 Mo. 1146, 1153, 9 S.W.2d 589, 591 (1928).

electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;

Section 386.020(14), RSMo, defines electric plant:

"Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

Grain Belt possesses 39 easements with Missouri landowners that are interests in real estate.<sup>33</sup> The cash on hand to continue the Grain Belt Express Project is personal property.<sup>34</sup> Under the statute, these qualify as electric plant, and Grain Belt owns them. Section 386.010(14) does not require that the electrical plant be currently used to transmit electricity for power, but defines electric plant as including plant "to be used for the transmission of electricity." Grain Belt qualifies as an electrical corporation under the statutory definition.

Landowners contend that the easements are no longer enforceable because of additional conditions placed upon the company by the Commission regarding the landowners. The Commission ordered Grain Belt to incorporate the Missouri Landowner Protocol in any easements to provide additional protections for landowners. Grain Belt owned those 39 easements before the Commission ordered those conditions. Additionally, Landowners argue that Grain Belt does not control the property on which it

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<sup>33</sup> *Kansas City Power & Light Co. v. Riss*, 312 S.W.2d 846, 847 (Mo. 1958); *Beery v. Shinkle*, 193 S.W.3d 435, 440 (Mo. Ct. App. 2006).

<sup>34</sup> *In re Armistead*, 362 Mo. 960, 964, 245 S.W.2d 145, 147 (1952); *State ex rel. Reid v. Barrett*, 234 Mo. App. 684, 118 S.W.2d 33, 37 (1938)..

has an easement until it begins to construct the proposed transmission line in Missouri. The Commission is not a court of law and its powers are limited to those conferred by statute.<sup>35</sup> The Commission is not authorized under Section 393.190, RSMo, to interpret the rights of the parties to those easements, nor may it for purposes of this case. The Commission simply notes that the easements are possessed by Grain Belt and does not determine the enforceability of the easements.

Landowners allege that Grain Belt is not an electric utility as it has not filed any annual reports pursuant to Section 393.140(6), RSMo, or Commission Rule 4 CSR 240-10.145, and there are no exceptions for utilities that are not yet operational. However, those reports are due on or before April 15 of each calendar year and were not required to be filed until after the Commission determined that Grain Belt was an electrical utility and granted it a CCN, which for Grain Belt was effective April 19, 2019. Consequently, Grain Belt's first annual report is not yet due.

Landowners finally argue that the Commission lacks jurisdiction to approve the acquisition under Section 393.190, RSMo, because the sale does not transfer any assets that are "necessary or useful in the performance of its duties to the public." Section 393.190, RSMo, states that "No...electrical 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...without having first secured from the commission an order authorizing it so to do." Landowners read the statute too narrowly. The easements, the cash, and even the engineering work are all necessary to build the structures that allow Grain Belt to transport

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<sup>35</sup> *State ex rel. Utility Consumers Council of Missouri, Inc.*, 585 S.W. 2d 41, 49, (Mo. banc 1979)

electricity in the future, and thus bring the transaction within the authority of the Commission.

The Commission concludes that Grain Belt is an “electrical corporation”<sup>36</sup> and “public utility”<sup>37</sup> and is subject to the jurisdiction and supervision of the Commission.<sup>38</sup>

### **Public Interest**

Under Missouri law, the Applicants need the Commission’s approval for Invenergy to acquire Grain Belt.<sup>39</sup> In evaluating the proposed merger, the Commission can only disapprove the transaction if it is detrimental to the public interest.<sup>40</sup> Determining what is in the interest of the public is a balancing process.<sup>41</sup> As put forth in the order granting Grain Belt a CCN, state energy policy in Missouri has increasingly leaned toward energy conservation and renewable energy. Laws such as the Renewable Energy Standard and the Missouri Energy Efficiency Investment Act embody such public policy. The Grain Belt Express Project will deliver low-cost wind energy to Missouri wholesale customers, who will provide that low-cost energy to their retail customers. This benefit alone would be sufficient to find that, far from being a detriment, the Grain Belt Express Project promotes the public interest and Missouri state energy policy.

Additional benefits to the state of Missouri include an estimated 1,500 jobs during the three to four years of construction; a continuing source of property tax revenues to the political subdivisions where the facilities are located; a participant-funded model such

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<sup>36</sup> Section 386.020(15), RSMo.

<sup>37</sup> Section 386.020(43), RSMo.

<sup>38</sup> Sections 393.140(1) and 386.250(1), RSMo.

<sup>39</sup> Section 393.190.1, RSMo.

<sup>40</sup> *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393, 400 (Mo banc 1934).

<sup>41</sup> *In the Matter of Sho-Me Power Electric Cooperative’s Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993 WL 719871 (Mo. P.S.C.).

that Grain Belt Express assumes all financial risk of building and operating the transmission line, with no costs anticipated to be recovered through the rates of regional transmission organizations; an estimated \$9.5-\$11 million in annual savings for customers of MJMEUC, which will receive up to 250 MW of capacity from the Project through an existing Transmission Services Agreement; and additional access to high-capacity-factor Kansas wind resources to fulfill the growing demand for renewable energy in Missouri.

Allowing Invenergy to acquire Grain Belt is not detrimental to the public interest. Invenergy acquiring Grain Belt benefits the Grain Belt Express Project, which benefits the State of Missouri and the public interest. Currently Grain Belt does not have sufficient capital to complete the project. Invenergy has significantly more cash than Grain Belt's current parent company, and Invenergy also has a greater book value. Both of these when combined with Invenergy's significant experience with large scale renewable energy projects will promote the completion of the Grain Belt Project.

The Commission has put in place protections for the landowners through the landowner protocol and other conditions imposed on Grain Belt in EA-2016-0358, the case by which it was granted a CCN. Grain Belt did not object to those protections and conditions in that case, and Invenergy does not object to them in this case. It is appropriate to transfer those protections and conditions to Invenergy, and the Commission will restate those conditions in this order, making this order subject to those same conditions. The Commission finds the acquisition of Grain Belt by Invenergy is not detrimental to the public interest.



#### **IV. Decision**

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission determines that the substantial and competent evidence in the record supports the conclusion that the Applicants have met, by a preponderance of the evidence, their burden of proof to demonstrate that the Invenenergy's acquisition of Grain Belt is not detrimental to the public interest. Therefore, the Commission will grant the Applicants' application, subject to the conditions ordered in EA-2016-0358.

The Applicants have requested expedited treatment so the development of the project can promptly proceed. Specifically, they ask that the Commission approve their application by June 30, 2019. The Commission finds there is good cause to expedite the effective date of this order to meet that request. The Commission will make this Report and Order effective on June 30, 2019.

#### **THE COMMISSION ORDERS THAT:**

1. The Commission approves the acquisition of Grain Belt Express Clean Line LLC by Invenenergy Transmission LLC, subject to the same conditions placed upon Grain Belt Express Clean Line LLC in the Report and Order on Remand in File No. EA-2016-0358 as set out below.

##### **I. Financing Conditions**

1. Invenenergy will not install transmission facilities on easement property in Missouri 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. To allow the Commission to verify compliance with this condition, Invenenergy shall file the following documents with the Commission at such a time as Invenenergy is prepared to begin to construct electric transmission facilities in Missouri:

- a. On a confidential basis, equity and loan or other debt financing agreements and commitments entered into or obtained by Invenergy or its parent company for the purpose of funding Invenergy's multi-state transmission project that, in the aggregate, provide commitments for the total project cost.
- b. An attestation by an officer of Invenergy that Invenergy 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.
- c. 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 Invenergy, along with a reconciliation of the total project cost in the statement to the total project cost as of the Application of \$2.35 billion; and property owned in fee by Invenergy including the converter station sites.
- d. A reconciliation statement certified by an officer of Invenergy showing that (1) the agreements and commitments for funds provided in subsection (a), above, are equal to or greater than the total project cost provided in subsection (c), 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).

## **II. Interconnection Studies and Safety**

1. Invenergy will provide Staff with completed RTO Interconnection Agreements and any associated studies. Should the studies raise new issues, Invenergy will provide its plan to address those issues.
2. Invenergy will provide to the Commission completed documentation of the Grain Belt plan, equipment, and engineering drawings to achieve compliance with NERC standards for a project of this scope and size, the National Electric Safety Code for a project of this scope and size, 4 CSR 240-18.010, the Overhead Power Line Safety Act (Section 319.075-.090), and any other applicable Missouri state law for a project of this scope and size prior to the commercial operational date of the Project.

## **III. Nearby Utility Facilities**

1. Invenergy shall use commercially reasonable efforts (as defined below) to obtain detailed location information on each existing underground utility plant, either

crossed by or in close proximity to its proposed route, and to contact and coordinate with the owners of each such facility prior to construction.

- a. Invenergy intends to undertake several related steps to obtain information about underground utilities. Invenergy intends to hire a qualified survey firm with experience in locating underground utilities. Prior to field survey, Invenergy intends to assemble desktop information about underground utility locations along the project route. This desktop information may be assembled by the survey firm, by a different contractor, or by Invenergy itself. The desktop information will draw from both public and proprietary sources. Publicly available sources may include, but are not limited to, databases maintained by State utility regulatory bodies, Railroad Commissions, Departments of Transportation, Oil & Gas Commissions, Departments of Natural Resources, Municipal Utility Districts, Rural Water Districts, County Engineering Offices, and Electric Cooperatives. Proprietary sources may include, but are not limited to, databases and mapping information such as those maintained by Ventyx or Platts, and GIS or CAD files maintained by underground utility owners and provided to Invenergy. In advance of field operations Invenergy will engage in detailed title research to identify all easements of record for each parcel of land traversed by the Grain Belt Project. Field survey will utilize one or more detection methods to "sweep" sections of the right-of-way for underground utilities. These methods may include, but are not limited to: identification of above-ground staking or signage, magnetic, sonic and acoustic technologies, ground penetrating radar, radio frequency detection, and vacuum excavation. The extent of survey coverage will be determined by consulting with the project engineering and construction contractors.
  - b. Commercially reasonable efforts, in the context of obtaining information about underground utility plant, are efforts sufficient to identify nearby infrastructure at specific excavation locations for the Project facilities (e.g., foundations for transmission line structures), as well as nearby infrastructure that can be identified using the aforementioned methods within the right-of-way of the Project, as specified by the project engineering and construction contractors, coordination with the utility owner, and applicable laws and regulations. "Commercially reasonable" in this context does not refer to a specific or maximum dollar amount.
2. Invenergy will show the Commission, before it begins commercial operation of any part of the multi-state Project, that it built the entire multi-state Invenergy proposed HVDC transmission line with dedicated metallic return conductors which are operational and that the entire multi-state Project has operational protection and control safety systems that automatically de-energize the Project within approximately 150 milliseconds of when an abnormal or fault condition occurs.

3. Invenergy will perform engineering studies to determine if the operation of the Invenergy proposed HVDC transmission line, the Invenergy proposed Missouri converter station, and the Invenergy-owned portion of the AC electric transmission line connecting the Invenergy proposed Missouri converter station to the AC grid have adverse impacts on nearby facilities. These engineering studies must include, but not be limited to the following:
  - a. the effects of tower footing groundings, if used;
  - b. analysis of metallic underground facilities;
  - c. other AC power lines and telecommunications facilities that are located within a distance from the Invenergy proposed HVDC transmission line, as determined by an appropriately qualified expert, where there may be adverse effects on the facilities;
  - d. a determination whether there are locations where the Invenergy proposed HVDC transmission line parallels a pipeline and an existing AC power line and, if so, whether there are any combined effects on steel pipelines (and other underground metallic facilities); and
  - e. the effects of Invenergy proposed transmission line(s) connecting the Invenergy proposed Missouri converter station to the AC grid.

If any of these studies show that mitigation measures are identified/needed, those measures must be in place prior to commercial operation of the Invenergy proposed transmission line.

These studies must be made available to Staff and affected facility owners at least 45 days prior to commercial operation of the Invenergy proposed HVDC transmission line.

Invenergy must disclose to Staff and affected facility owners how the parameters for conducting the studies were determined (e.g., continuous 24-hour recordings at a certain time of year).

These studies must be conducted by persons knowledgeable in: (1) HVDC power lines; (2) DC to-AC converter stations; (3) Pipeline cathodic protection systems; (4) Corrosion of underground metallic facilities; (5) Interference with AC utility lines; (6) Interference with telecommunications facilities; (7) Effects of DC and AC interference on the facilities identified in Exhibit 3, as amended by Invenergy's Addendum to the Application, and all additional facilities subsequently identified.

4. Invenergy must file "annual status updates" on discussions with Staff regarding need for additional studies of the impacts of its facilities on other facilities in

Missouri, a summary of the results of any additional studies, and any mitigation measures that have been implemented to address underground metallic structures, telecom facilities and AC lines. Mitigation measures indicated by future studies must be implemented within three (3) months of discovery that additional mitigation measures are needed, or as quickly as reasonably practical thereafter.

#### **IV. Emergency Restoration Plans**

1. Invenergy must provide a copy of the final Invenergy Emergency Restoration Plan to the Commission prior to the commercial operations date for the Grain Belt Project.

#### **V. Construction and Clearing**

1. Prior to construction, Invenergy will notify all landowners in writing of the name and telephone number of Invenergy's Construction Supervisor so that they may contact the Construction Supervisor with questions or concerns before, during, or after construction. Such notice will also advise the landowners of the expected start and end dates of construction on their properties.
2. Prior to construction, Invenergy's Construction Supervisor will personally contact each landowner (or at least one owner of any parcel with multiple owners) to discuss access to the right-of-way on their parcel and any special concerns or requests about which the landowner desires to make Invenergy aware.
3. From the beginning of construction until end of construction and clean-up of the right-of-way is complete, Invenergy's Construction Supervisor will be on-site, meaning at or in the vicinity of the route, or on-call, to respond to landowner questions or concerns.
4. If requested by the landowner, Invenergy will cut logs 12" in diameter or more into 10 to 20 foot lengths and stack them just outside the right-of-way for handling by the landowner.
5. Stumps will be cut as close to the ground as practical, but in any event will be left no more than 4" above grade.
6. Stumps will be treated to prevent regrowth consistent with industry best practices. Vegetation treatments will consider vegetation types, site specific land uses, and any environmental sensitivities. Invenergy will notify all landowners of the Transmission Vegetation Management Policy and of the specific vegetation treatments for each landowner's property.
7. Unless the landowner does not want the area seeded, disturbed areas will be reseeded consistent with reclamation best practices in consultation with landowners, restoration specialists, and government agencies.

8. Best management practices will be followed to minimize erosion, with the particular practice employed at a given location depending upon terrain, soil, and other relevant factors.
9. Gates will be securely closed after use.
10. Should Invenergy damage a gate, Invenergy will repair that damage.
11. If Invenergy installs a new gate, Invenergy will either remove it after construction and repair the fence to its pre-construction condition, or will maintain the gate so that it is secure against the escape of livestock.
12. Invenergy will utilize design techniques intended to minimize corona.
13. Should a landowner experience radio or television interference issues believed by the landowner to be attributed to Invenergy's line, Invenergy will work with the landowner in good faith to attempt to solve the problem.
14. Invenergy will clearly mark guy wires.

## **VI. Maintenance and Repair**

1. With regard to future maintenance or repair and right-of-way maintenance after construction is completed, Invenergy will make reasonable efforts to contact landowners prior to entry onto the right-of-way on their property to advise the landowners of Invenergy's presence, particularly if access is near their residence.
2. All Invenergy contractors will be required to carry and maintain a minimum of one million dollars of liability insurance available to respond to damage claims of landowners. All contractors will be required to respond to any landowner damage claims within 24 hours. All contractors will be required to have all licenses required by state, federal, or local law.
3. If herbicides are used, only herbicides approved by the EPA and any applicable state authorities will be used, and herbicides will be used in strict compliance with all labeling directions.
4. Routine maintenance will not occur during wet conditions so as to prevent rutting.
5. Existing access roads will be used to access the right-of-way wherever available. Prior to commencing construction, Invenergy will notify all landowners in writing of the Transmission Vegetation Management Policy and of the specific vegetation treatments for each landowner's property. Invenergy will personally meet with each landowner who requests such a meeting to determine if the landowner does or

does not want herbicides used on the landowner's property. If the landowner does not want herbicides used, they will not be used.

## **VII. Landowner Interactions and Right-of-Way Acquisition**

1. The certificate is limited to the construction of this line in the location specified in the application, and as represented to the landowners on the aerial photos provided by Invenenergy, unless a written agreement from the landowner is obtained, or the company gets a variance from the Commission for a particular property, provided, however, minor deviations to the location of the line not exceeding 500 feet will be permitted as a result of surveying, final engineering and design, and landowner consultation, so long as the line and required easements stay within the property boundaries of that landowner and do not involve a new landowner.
2. Absent a voluntary agreement for the purchase of the property rights, the transmission line shall not be located so that a residential structure currently occupied by the property owners will be removed or located in the easement requiring the owner to move or relocate from the property.
3. Invenenergy shall survey the transmission line location after construction and record the easement location with the Recorder of Deeds in the appropriate counties. Invenenergy shall also file a copy of its survey in this case.
4. Every landowner from whom Invenenergy requires an easement will be contacted personally, and Invenenergy will negotiate with each such landowner in good faith on the terms and conditions of the easement, its location, and compensation therefor. Each landowner will receive an Easement Agreement pertaining to such landowner's land, which Easement Agreement will contain a drawing that shows the location of the easement.
5. After construction is completed, every landowner will be contacted personally to ensure construction and clean-up was done properly, to discuss any concerns, and to settle any damages that may have occurred.
6. If a landowner so desires, Invenenergy will give the landowner a reasonable period of time in advance of construction to harvest any timber the landowner desires to harvest.
7. Invenenergy's right-of-way acquisition policies and practices will not change regardless of whether Invenenergy does or does not yet possess a Certificate of Convenience or Necessity from the Commission.

## **VIII. Rockies Express Pipeline Conditions (attached to EA-2016-0358 as a data request)**

1. Grain Belt's application and the testimony and schedules filed in support propose preferred and alternative routes for Invenergy's high voltage, direct current electric transmission line and associated converter station (the "HVDC Project") that may involve multiple crossings of, and run parallel to, Rockies Express Pipeline LLC's existing high pressure natural gas pipeline (the "Pipeline"). None of said filings address the potential impacts of Invenergy's HVDC Project on Rockies Express Pipeline LLC's Pipeline, however. It is Rockies Express Pipeline LLC's position that it is not permissible to design, construct or operate Invenergy's HVDC line in a manner that would pose a risk to the safety or integrity of Rockies Express Pipeline LLC's pipeline.
  - a. Invenergy shall support Rockies Express Pipeline LLC's position on this issue.
2. Rockies Express Pipeline LLC intends to study the potential impacts of the HVDC Project on the Pipeline. However, the testimony of Invenergy's witnesses indicate that the design and engineering of the HVDC project is still in a preliminary state. If comprehensive engineering and design work for the HVDC Project have yet to commence:
  - a. The appropriate time to begin studies would be after the final route alignment and structure spotting exercises are completed. Once a route is approved, significant engineering activities will begin on an engineering commencement date to determine structure locations. At that time enough detail will be available to perform the studies to determine if any mitigation will be necessary.
  - b. Invenergy shall give Rockies Express Pipeline LLC prompt advance notice that the stage or step identified directly above is about to commence?
  - c. Rockies Express Pipeline LLC anticipates that it will need technical information about the HVDC Project, as well as information about how Invenergy intends to operate the HVDC Project, in order for Rockies Express Pipeline LLC to study how the HVDC Project might impact the safety or integrity of the Pipeline. Invenergy shall share such technical and operational information with Rockies Express Pipeline LLC for that purpose, subject to the execution of a confidentiality agreement,
3. After studying the HVDC Project, Rockies Express Pipeline LLC's pipeline safety engineers may determine that monitoring, testing and/or mitigation steps are required in order to safeguard the Pipeline from potential adverse effects of the HVDC Project. Invenergy agrees that in such event, Invenergy should be responsible for the costs of installing and operating such monitoring and testing equipment and mitigation measures warranted by reasonable engineering and commercial practices.



4. Invenergy would be responsible for all direct damages to Rockies Express Pipeline LLC proximately caused by construction and/or ongoing operation of the HVDC Project, including direct damages from fault currents.

#### **IX. Additional Commission Conditions**

1. Grain Belt Express Clean Line LLC's owners, including, but not limited to, Invenergy Transmission LLC, Invenergy Investment Company LLC, and any related subsidiaries, shall cooperate with the Commission's Staff in providing reasonable access to its un-redacted financial records until the completion or official abandonment of the Grain Belt Project.
2. If Invenergy acquires any involuntary easement in Missouri by means of eminent domain proceedings ("easement") and does not obtain the financial commitments referred to in Section I(1) and Section I(1)(a) of the Conditions Agreed to by Grain Belt Express and Staff (Exhibit 206) within five years of the date that such easement rights are recorded with the appropriate county recorder of deeds, Invenergy shall return possession of the easement to the fee simple title holder ("title holder") within 60 days and cause the dissolution of the easement to be recorded with the county recorder of deeds. In the event of such a return of the easement to the title holder, no reimbursement of any payment made by Grain Belt Express Clean Line LLC or Invenergy to the title holder shall be due.
3. If the design and engineering of the project is materially different from how the Project is presented in Grain Belt Express Clean Line LLC's Application, Invenergy must file an updated application with the Commission for further Commission review and determination.
4. If any outstanding studies included as conditions raise any new issue(s), then the Commission must be satisfied with how Invenergy resolves the issue(s).
5. Invenergy shall comply with the Missouri Landowner Protocol, including, but not limited to, a code of conduct and the Missouri Agricultural Mitigation Impact Protocol, and incorporate the terms and obligations of the Missouri Landowner Protocol into any easement agreements with Missouri landowners.
6. Invenergy shall modify the Missouri Landowner Protocol relating to a decommissioning fund as directed herein. At the commencement of construction of the Project, Invenergy shall establish a decommissioning fund in an amount reasonably necessary to perform the wind-up activities described below, at Invenergy's sole cost and expense, for any portion of the Project that has been constructed and installed. The amount of the decommissioning fund shall be increased as construction of the Project progresses sufficient to cover wind-up activities for any Project facilities that have been constructed and installed. The decommissioning fund may be collateralized with a letter of credit or cash, or any combination thereof. In any circumstance in which the Project is retired from

service or abandoned prior to service, Invenergy shall promptly perform the following wind-up activities:

- a. dismantling, demolishing and removing all equipment, facilities and structures;
  - b. terminating all transmission line easements and filing a release of such easements in the real property records of the county in which the property is located;
  - c. securing, maintaining and disposing of debris with respect to the Project facilities; and
  - d. performing any activities necessary to comply with applicable laws, contractual obligations, and that are otherwise prudent to retire the Project facilities and restore any landowner property.
7. Invenergy LLC shall construct the proposed Missouri converter station to be capable of the actual delivery of 500 MW of wind power to the converter station.

2. This order shall become effective on June 30, 2019.

**BY THE COMMISSION**



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and  
Coleman, CC., concur.

Clark, Regulatory Law Judge

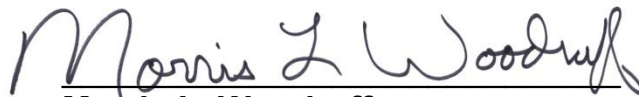
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

**WITNESS my hand and seal of the Public Service Commission,  
at Jefferson City, Missouri, this 5<sup>th</sup> day of June 2019.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**June 5, 2019**

**File/Case No. EM-2019-0150**

**Missouri Public Service Commission**

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*Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).*

*Sincerely,*

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, prominent "M" and "W".

**Morris L. Woodruff**  
**Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.