

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Susan K. Duffy, Chair
Dwight D. Keen
Andrew J. French

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

**ORDER GRANTING MOTION TO AMEND THE
UNANIMOUS SETTLEMENT AGREEMENT**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

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

2. GBE is the owner of all of the current assets and rights of the Grain Belt Express Clean Line Project (GBE Project or Project). The GBE Project is a proposed approximately 780-mile, overhead, multi-terminal ±600 kilovolt high voltage direct current transmission line and associated

facilities that will connect over 4,000 megawatts of low-cost, high-capacity wind power in western Kansas to customers in Missouri, Illinois, Indiana, and states farther east.

3. On May 1, 2019,¹ the Signatories filed a Joint Motion to Approve Unanimous Settlement Agreement. Kris Zadlo, Senior Vice President, Commercial Analytics, Regulatory Affairs and Transmission for Invenergy, and Justin Grady and Leo Haynos of Staff filed testimony in support of the Unanimous Settlement Agreement. Grady² and Zadlo³ testified that the settlement is consistent with the Commission's Merger Standards, the Commission's standards for evaluating settlement agreements, and the public interest standard. Grady further testified that any financial resource or cost recovery concerns Staff identified during its review of the Merger Standards have been remedied by the Agreement, giving Staff confidence that the Agreement and the Transaction will promote the public interest.⁴

4. On May 9, 2019, the Commission held a hearing on the proposed Settlement Agreement. On June 18, 2019, the Commission issued an Order Approving Unanimous Settlement Agreement, finding it in the public interest.⁵

5. On January 28, 2020, Invenergy acquired 100% ownership of Grain Belt and Grain Belt became a wholly-owned subsidiary of Invenergy Transmission.⁶

6. On March 10, 2023, Grain Belt Express LLC (GBE) filed a Motion to Amend the Unanimous Settlement Agreement to amend the Financing Requirement to allow benefits to accrue in

¹ An Errata to the Settlement Agreement was filed on May 2, 2019, to correct a paragraph reference in both the public and confidential versions of the Settlement Agreement. No substantive changes were made to the Settlement Agreement.

² Justin Grady Testimony in Support of Unanimous Settlement Agreement (Grady Supporting Testimony), May 1, 2019, pp. 9-16.

³ Kris Zadlo Testimony in Support of Unanimous Settlement Agreement (Zadlo Supporting Testimony), May 1, 2019, pp. 8-15.

⁴ Grady Supporting Testimony, pp. 16-17.

⁵ Order Approving Unanimous Settlement Agreement, June 18, 2019, ¶ 28.

⁶ Notice of Closing of Acquisition Transaction, March 6, 2020.

Kansas sooner.⁷ The Financing Requirement is contained in Paragraph 9.a of the Unanimous Settlement Agreement.⁸ Currently, Paragraph 9.a bars GBE from installing transmission facilities on easement property in Kansas until it has obtained commitments for funds to build the entirety of this multi-state transmission project.⁹ Since GBE now plans to construct the Project in two phases (with Kansas being the first phase), it wants to modify the Financing Requirement to allow it to install transmission facilities on easement property in Kansas when it obtains commitments for funds to build the entirety of Phase I of the Project.¹⁰

7. GBE's Motion is supported by testimony from Shashank Sane, the Executive Vice President of Invenergy. Sane explains dividing the project into 2 phases is necessary because of extremely strong demand for the Project's energy and delays in permitting and land acquisition in Illinois.¹¹ Phase I consists of a converter station and associated facilities in Ford County, Kansas, the HVDC transmission line between such Kansas converter station and a converter station in Missouri, and AC facilities connecting such Missouri converter station to one or more points of delivery in Missouri.¹² Phase II will begin at the Monroe County, Missouri converter station and then traverse an additional approximately 58 miles in Missouri to the Illinois border.¹³ The Project will then cross the Mississippi River and enter Illinois.¹⁴

8. GBE is targeting beginning construction of Phase I near the end of 2024, and starting construction on Phase II 18 months to two years after Phase I.¹⁵ Sane testifies that constructing the Project in two phases is in the public interest of Kansas because it will allow the benefits of Phase I to

⁷ Motion to Amend the Unanimous Settlement Agreement, March 10, 2023, p. 1.

⁸ *Id.*, ¶ 8.

⁹ *Id.*

¹⁰ *Id.*, ¶ 12.

¹¹ Testimony of Shashank Sane, March 10, 2023, p. 2.

¹² *Id.*, pp. 7-8.

¹³ *Id.*, p. 9.

¹⁴ *Id.*

¹⁵ *Id.*

accrue much earlier than if not broken into two phases.¹⁶ Phase I and Phase II of the Project will now be financed separately.¹⁷

9. Due to increased demand in the MISO and PJM markets¹⁸ for electricity supplied by renewable resources, GBE updated the Project design -- primarily in Missouri, including: (1) increasing the Missouri converter station size (from 500 to 2500 MW) and modifying its location (from Ralls to Monroe County); (2) increasing the overall capacity of the transmission line from 4,000 MW to 5,000 MW; and (3) increasing the length of the HVDC transmission line by about 20 miles to accommodate landowners' requested changes to the path of the line.¹⁹

10. On April 27, 2023, Commission Staff (Staff) filed its Report and Recommendation, recommending approval of GBE's Motion to Amend the Unanimous Settlement Agreement. In noting that all other conditions agreed to by Parties to the Unanimous Settlement Agreement would remain in place, Staff agrees with GBE that the proposed amendment will not reduce: (1) existing protections provided to land owners, investors, or the public by the original agreement, and (2) the Project's benefits to Kansas.²⁰ Staff believes it is likely that constructing the Project in two phases will bring those benefits to Kansas sooner than constructing the entire Project in one phase.²¹

11. Phase I of the Project extends into Missouri. Thus, construction on Phase I will not begin before: (1) it receives approval from both this Commission and the Missouri Public Service

¹⁶ *Id.*, p. 11.

¹⁷ *Id.*, p. 12.

¹⁸ Midcontinent Independent System Operator (MISO) and the Pennsylvania-New Jersey-Maryland Interconnection (PJM) are Regional Transmission organizations that coordinate the movement of wholesale electricity in all or parts of their member states. MISO coordinates the movement of electricity through all or parts of Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Dakota, Texas, and Wisconsin, and the Canadian province of Manitoba. PJM coordinates the movement of electricity through all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.

¹⁹ Testimony of Shashank Sane, pp. 17-18.

²⁰ April 25, 2023 Memorandum (attached to Notice of Filing of Staff's Report and Recommendation, Apr. 27, 2023, p. 1.

²¹ *Id.*

Commission, and (2) each of the requirements of the Amended Financing Requirements in Paragraph 9 of the Amended Settlement Agreement have been completed.²² There are no material changes to the Kansas portion of the Project that would cause the Commission to revisit its earlier approval of GBE's Certificate or Siting Authority. Phase I is economically viable absent Phase II.²³ Even if Phase II never materializes, Phase I will be operational and capable of moving wind from Western Kansas east, on a merchant line paid for by subscribers, not Kansas ratepayers. Approving the proposed revision to the Settlement Agreement does not remove or alter any of the protections for Kansas landowners that were including in the original Settlement Agreement.

12. When approving a settlement, the Commission must make an independent finding that the settlement is supported by substantial competent evidence in the record as a whole,²⁴ establishes just and reasonable rates, and is in the public interest.²⁵

13. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.²⁶ Whether another trier of fact could have reached a different conclusion given the same facts is irrelevant; a court can only find that a Commission decision is not supported by substantial competent evidence when the evidence shows that "the [Commission's] determination is so wide of the mark as to be outside the realm of fair debate."²⁷ The Commission reviewed GBE's Motion to Amend the Unanimous Settlement Agreement, supporting testimony from Mr. Sane, and Staff's Report and Recommendation. Based on its review of the record, the Commission finds substantial competent evidence to amend the Unanimous Settlement Agreement.

²² Motion to Amend the Unanimous Settlement Agreement, March 10, 2023, p. 6.

²³ Staff Report and Recommendation, Apr. 23, 2023, p. 3.

²⁴ *Herrera-Gallegos v. H&H Delivery Service, Inc.*, 42 Kan.App.2d 360 (2009).

²⁵ *Citizens' Util. Ratepayer Bd. v. Kansas Corp. Comm'n*, 28 Kan.App.2d 313, 316 (2000), *rev. denied* March 20, 2001.

²⁶ *Farmland Indus., Inc. v. Kansas Corp. Comm'n*, 25 Kan.App.2d 849, 852 (1999).

²⁷ *Id.* at 851.

14. The Commission finds that amending Paragraph 9.a of the Unanimous Settlement is in the public interest. Both GBE and Staff agree that the proposed amendment to the Unanimous Settlement Agreement is in the public interest and should be approved by the Commission. Both GBE and Staff explain that allowing the Project to be built in two phases will allow the benefits to accrue to Kansas much earlier than if not broken into two phases.²⁸

15. The proposed amendment to the Unanimous Settlement Agreement does not establish any rates in the traditional sense; nor does it alter GBE's commitment to recovering the costs of the Project through the merchant model and not through SPP cost allocation.²⁹ Accordingly, the proposed amendment to the Unanimous Settlement Agreement should not impact rates for Kansas retail ratepayers.³⁰

16. The proposed amendment to the Unanimous Settlement Agreement is in the public interest because it expedites the benefits of the Project to Kansas,³¹ while maintaining all of the safeguards contained in the Unanimous Settlement Agreement, including requiring GBE to confirm its financial ability to construct and operate a useful project before installing transmission facilities on easement property.³²

17. After careful consideration, the Commission finds it is in the public interest to amend the Unanimous Settlement Agreement. Therefore, the Commission finds the amended Unanimous Settlement Agreement is fair and reasonable, and is in the public interest.

18. The Commission grants GBE's Motion to Amend the Paragraph 9.a of the Unanimous Settlement Agreement. As Amended, Paragraph 9.a provides:

²⁸ Testimony of Shashank Sane, p. 11; April 25, 2023 Memorandum, p. 1.

²⁹ See Testimony in Support of Unanimous Settlement Agreement Prepared by Justin T. Grady, May 1, 2019, p. 15 ("The Agreement will result in just and reasonable rates in part because the Agreement strengthens and confirms that Kansas ratepayers will not pay for the revenue requirement associated with the GBE Project.").

³⁰ *Id.*, pp. 15-16; Transcript of Hearing on Settlement, May 9, 2019, pp. 52-53 (Grady).

³¹ See Motion to Amend the Unanimous Settlement Agreement, ¶ 9.

³² See *id.*, ¶¶ 16-17.

GBE will not install transmission facilities on easement property in Kansas until it has obtained commitments for funds in an amount equal to or greater than the total cost to build the entirety of Phase I of the Project (“Financing Requirement”). For purposes of this condition, “Phase I” is defined as the portion of the Project comprising of a converter station and associated facilities in Ford County, Kansas, the HVDC transmission line between such Kansas converter station and a converter station in Missouri, and AC facilities connecting such Missouri converter station to one or more points of delivery in Missouri. To allow the Commission to verify compliance with this condition, GBE shall file the following documents with the Commission at such a time as GBE is prepared to begin to construct electric transmission facilities in Kansas:

- i. On a confidential basis, equity and loan and/or other debt financing agreements and commitments entered into or obtained by GBE or its parent company for the purpose of funding Phase I that, in the aggregate, provide commitments for the total Phase I cost.
- ii. An attestation by an officer of GBE that GBE has not, prior to the date of the attestation, installed transmission facilities on Phase I easement property; or a notification that such installation is scheduled to begin on a specified date.
- iii. A statement of the total Phase I cost, broken out by the categories of engineering, manufacturing and installation of converter stations; transmission line engineering; transmission towers; conductor; construction labor necessary to complete Phase I; right-of-way acquisition costs; and other costs necessary to complete Phase I, and certified by an officer of GBE.

iv. A reconciliation statement certified by an officer of GBE showing that (1) the agreements and commitments for funds provided in subsection (i), above, are equal to or greater than the total Phase I cost provided in subsection (iii), above; and (2) the contracted transmission service revenue is sufficient to service the debt financing of Phase I (taking into account any planned refinancing of debt).

THEREFORE, THE COMMISSION ORDERS:

A. The Motion to Amend the Unanimous Settlement Agreement is granted. The operative language in Paragraph 9.a of the Unanimous Settlement Agreement is reflected in Paragraph 18 of this Order.

B. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.³³

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Keen, Commissioner; French, Commissioner.

Dated: 06/13/2023



Lynn M. Retz
Executive Director

BGF

³³ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

19-GBEE-253-ACQ

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 06/13/2023.

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