

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

Before Commissioners: Dwight D. Keen, Chair
 Shari Feist Albrecht
 Susan K. Duffy

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 APPROVING UNANIMOUS SETTLEMENT AGREEMENT
(PUBLIC VERSION)

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 March 26, 2019, Staff of the Commission (Staff) filed its direct testimony, and on April 15, 2019, Joint Applicants filed rebuttal testimony.

4. A settlement conference was held on April 22, 2019. ITC Great Plains, LLC (ITC Great Plains)¹ had notice of the settlement conference, but did not participate.² As a result of the settlement discussions, Staff and the Joint Applicants (Signatories) entered into a Unanimous Settlement Agreement, and reached a full and complete resolution of the issues before the Commission. The Unanimous Settlement Agreement is attached as Attachment A. ITC Great Plains does not object to the Settlement Agreement. Accordingly, the Settlement Agreement is unanimous under K.A.R. 82-1-230a.

5. On May 1, 2019,³ 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. Grady⁴ and Zadlo⁵ 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

¹ ITC Great Plains was granted intervention on April 4, 2019.

² Order Setting Procedural Schedule, Feb. 26, 2019, at ¶ 3.

³ 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.

⁴ Justin Grady Testimony in Support of Unanimous Settlement Agreement (Grady Supporting Testimony), May 1, 2019, pp. 9-16.

⁵ Kris Zadlo Testimony in Support of Unanimous Settlement Agreement (Zadlo Supporting Testimony), May 1, 2019, pp. 8-15.

Standards have been remedied by the Agreement, giving Staff confidence that the Agreement and the Transaction will promote the public interest.⁶

6. On May 9, 2019, the Commission held a hearing on the proposed Settlement Agreement. All of the Signatories appeared through counsel. ITC Great Plains did not appear. At the hearing, the prefiled direct and rebuttal testimony of the parties was admitted without objection.⁷ Zadlo, Grady, and Haynos testified at the hearing in support of the Unanimous Settlement Agreement.

MERGER STANDARDS

7. In Docket No. 16-KCPE-593-ACQ, the Commission issued its Order on Merger Standards, reaffirming the Merger Standards as first articulated in consolidated dockets 172,745-U and 174,155-U and modified in Docket No. 97-WSRE-676-MER (97-676 Docket). In explaining that its central concern is whether the merger will promote the public interest, the Commission outlined the following criteria to evaluate whether the merger will promote the public interest:

- (a) The effect of the transaction on consumers, including:
 - (i) The effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand-alone entities if the transaction did not occur;
 - (ii) Reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range;
 - (iii) Whether ratepayer benefits resulting from the transaction can be quantified;

⁶ Grady Supporting Testimony, pp. 16-17.

⁷ Transcript (Tr.), pp. 5-6.

- (iv) Whether there are operational synergies that justify payment of a premium in excess of book value;
 - (v) The effect of the proposed transaction on the existing competition.
- (b) The effect of the transaction on the environment.
- (c) Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state. Whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm.
- (d) Whether the proposed transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility regulations in the state.
- (e) The effect of the transaction on affected public utility shareholders.
- (f) Whether the transaction maximizes the use of Kansas energy resources.
- (g) Whether the transaction will reduce the possibility of economic waste.
- (h) What impact, if any, the transaction has on the public safety.⁸

8. The 97-676 Docket allows for some flexibility in the Merger Standards, including modifying those standards or adding additional standards or considerations:

These factors are the beginning criteria to be used when evaluating a merger application, and are to be supplemented by any other considerations that are relevant given the circumstances existing at the time of the merger proposal. In essence, the question is whether the public interest is served by approving the merger as determined by the specific facts and circumstances of each case.⁹

The Merger Standards serve as factors to evaluate whether a proposed merger is in the public interest, rather than a strict checklist.¹⁰ Therefore, an application need not satisfy each and every standard, but needs to satisfy enough standards to demonstrate that it advances the public interest.¹¹

⁸ Order on Merger Standards, Docket No. 16-KCPE-593-ACQ, Aug. 9, 2016, ¶ 5.

⁹ *Id.*, ¶ 6.

¹⁰ Order, Docket No. 16-KCPE-593-ACQ, April 19, 2017, ¶ 37; *see also* 18-095 Order, ¶ 26.

¹¹ *Id.*; *see also* Order on Merger Standards, Docket No. 16-ITCE-512-ACQ, Aug. 9, 2016 (applying the Merger Standards to a holding company level acquisition of ITC Great Plains which is not rate-regulated by the KCC).

9. While subject to Commission approval under K.S.A. 66-131 and 66-136, this transaction is unique as the Commission does not have jurisdiction over the rates of GBE. Instead, GBE will use the negotiated rate authority granted to it by FERC to contract with individual customers for subscription to available capacity on the GBE Project.¹² The Unanimous Settlement Agreement confirms that Kansas ratepayers will not pay for the revenue requirement associated with the GBE project.¹³ If any future economic or technological change necessitates GBE seeking recovery of costs associated with the GBE Project through the Southwest Power Pool (SPP) (beyond *de minimis* interconnection costs), the Settlement Agreement requires GBE to seek Commission approval of such cost recovery.¹⁴

10. In the Joint Motion for Approval of Unanimous Settlement Agreement, the Signatories agree that the proposed Transaction as modified by the conditions contained in the Unanimous Settlement Agreement comports with the Commission's Merger Standards.¹⁵

MERGER STANDARD (a)

11. Merger Standard (a) evaluates the effect of the Transaction on customers. Staff witness Justin Grady testified that Invenergy's acquisition of GBE increases the likelihood the GBE Project will be built, thereby promoting the public interest.¹⁶ Further, Kansas retail customers are protected because GBE has affirmed its commitment to recovering the Project costs through a merchant model.¹⁷ If GBE seeks any alternative cost recovery, the Unanimous Settlement Agreement requires GBE to seek Commission approval.¹⁸ Accordingly, the Commission finds the Transaction, as conditioned, satisfies Merger Standard (a).

¹² Grady Supporting Testimony, p. 15.

¹³ *Id.*

¹⁴ *Id.*, pp. 15-16.

¹⁵ Joint Motion for Approval of Unanimous Settlement Agreement, May 1, 2019, ¶ 8.

¹⁶ Grady Supporting Testimony, p. 16.

¹⁷ See Settlement Agreement, ¶ 9.c.

¹⁸ *Id.*

MERGER STANDARD (a)(i)

12. Merger Standard (a)(i) evaluates the effect of the Transaction on the financial condition of GBE. Staff witness Chad testified Staff evaluated Invenergy's financial statements and concluded Invenergy has the financial resources necessary to fully fund, finance, construct, and operate the GBE Project, noting that "from Staff's perspective, the financial condition of GBE and the project will significantly improve as a result of the transaction."¹⁹ The Unanimous Settlement Agreement also states that GBE has committed to obtain financing to build the entire project prior to beginning construction,²⁰ and to conduct a decommissioning study and, if necessary, establish a decommissioning fund.²¹ Accordingly, the Commission finds the Transaction, as conditioned, satisfies Merger Standard (a)(i).

MERGER STANDARDS (a)(ii)-(a)(iv)

13. Merger Standards (a)(ii) (the reasonableness of the purchase price), (a)(iii) (whether ratepayer benefits can be quantified), and (a)(iv) (whether there are operational synergies that justify the purchase price) are discussed collectively. GBE will have no Kansas retail ratepayers. The Transaction provides some protection to Kansas retail ratepayers by reaffirming GBE's commitment to merchant model cost recovery, whereby GBE agrees it will not recover the transmission project's costs through the SPP cost allocation process or from Kansas ratepayers.²² Accordingly, Merger Standard (a)(iii) is satisfied. Further, Staff questioned whether Merger Standard (a)(ii) was applicable, because the Commission lacks jurisdiction to regulate GBE's rates and GBE will not be recovering any costs through rates paid by Kansas ratepayers.²³

¹⁹ Direct Testimony of Chad Unrein (Unrein Direct), March 26, 2019, p. 20.

²⁰ See Settlement Agreement, ¶ 9.a.

²¹ See *id.*, ¶ 9.b.

²² See *id.*, ¶ 9.c.

²³ Unrein Direct, p. 30.

Notwithstanding the applicability of this Merger Standard, Staff noted that data it received through confidential data requests suggested that the negotiated purchase price is reasonable.²⁴ Accordingly, Merger Standard (a)(ii) is satisfied. Both Staff and Joint Applicants agree Merger Standard (a)(iv) (whether there are operational synergies that justify the purchase price) is not applicable to the Transaction.²⁵ As Zadlo testified, “this concern is not applicable to the Transaction due to the nature of the arms-length negotiations between privately owned entities without retail ratepayers.”²⁶ The Commission concurs with his assessment.

MERGER STANDARD (a)(v)

14. Merger Standard (a)(v) evaluates the effect of the Transaction on existing competition. Again, both Staff and Joint Applicants agree that this merger standard is not wholly applicable.²⁷ As Mr. Zadlo explained:

The Transaction will not affect existing competition in Kansas because GBE operates pursuant to a limited transmission-rights only certificate in areas specifically authorized by the Commission. Further, use of the Project will remain under SPP’s functional control, and so the Transaction is not expanding or limiting the powers and scope of GBE such that it would have any effect on existing competition. Indirectly, the improved ability of GBE to complete the Project will benefit consumers, as the Project creates the opportunity for greater delivery of energy by opening up the market for more developers to harvest Kansas wind resources, which should drive down rates in wholesale energy markets.²⁸

Staff agreed, noting that “if Invenergy can further develop and construct [the] GBE transmission system, it would allow for the exportation of Kansas wind generation and alleviate some of the excess wind capacity issues in SPP.”²⁹ The Commission finds this analysis to be reasonable and that the Transaction satisfies Merger Standard (a)(v).

²⁴ *Id.*, pp. 30-31.

²⁵ Direct Testimony of Kris Zadlo (Zadlo Direct), Dec. 28, 2018, p. 12; Unrein Direct at p. 32.

²⁶ Zadlo Direct, p. 12.

²⁷ Zadlo Direct, pp. 12-13; Unrein Direct, p. 33.

²⁸ Zadlo Direct, pp. 12-13.

²⁹ Unrein Direct, p. 33.

MERGER STANDARDS (b) and (c)

15. Merger Standard (b) evaluates the effect of the transaction on the environment. Staff and Joint Applicants agree the Transaction will not have any direct effect on the environment, but may indirectly benefit the environment by allowing Kansas wind resources to be transported to eastern load centers.³⁰ Therefore, merger standard (b) is satisfied.

16. With respect to Merger Standard (c) (the effect of the Transaction on state and local economies), the Commission reaffirms its earlier findings that the GBE Project will be beneficial to state and local economies.³¹ The Commission previously found “associated economic activity will have the long-term lasting impact of added Kansas jobs and will achieve the transmission and wind development goals of SPP, KETA,³² and current and past Kansas Governors.”³³ By allowing Kansas wind generation to be exported, the GBE Project should alleviate some of the excess wind capacity issues in SPP.³⁴ The Commission further noted on prior occasion that “it is physically necessary to build a transmission facility that runs between southwest Kansas to eastern Kansas if one wishes to sell wind energy from southwestern Kansas to markets east of Kansas,”³⁵ finding that, without this project, “hundreds of millions of economic development dollars would not be spent in Kansas, and the potential for large scale wind farm development would be lost.”³⁶ The Commission finds that Merger Standard (c) has been met.

³⁰ Zadlo Direct at p. 13; Unrein Direct at p. 34.

³¹ See Order Granting Siting Permit (Siting Permit Order), Docket No. 13-GBEE-803-MIS, Nov. 7, 2013, ¶¶ 36-37, 57.

³² The Kansas Electric Transmission Authority.

³³ Siting Permit Order, ¶ 28.

³⁴ Unrein Direct, p. 33.

³⁵ *Siting Permit Order*, ¶ 32.

³⁶ *Id.*, ¶ 36.

MERGER STANDARD (d)

17. The Transaction includes several conditions designed to preserve the Commission's jurisdiction over the GBE Project.³⁷ Paragraph 9.a. of the Unanimous Settlement Agreement requires GBE to demonstrate that it has obtained funds equal to or greater than the total cost to build the Project before installing transmission facilities on easement property in Kansas. Additionally, Paragraph 9.b. requires GBE to produce a study on the estimated decommissioning costs of the Project. If the results of the study show it costs more to decommission the Project than the salvage value of the materials, GBE will establish a decommissioning fund.³⁸ This process will help preserve effective Commission jurisdiction.

18. Paragraph 9.c. also preserves effective Commission jurisdiction by requiring GBE to return to the Commission if its proposed cost recovery methodology changes. Paragraph 9.d. preserves Commission jurisdiction by conditioning the waiver or inapplicability of the affiliate transaction requirements on GBE continuing to act within FERC's jurisdiction and maintaining its merchant model cost recovery. Finally, Paragraph 9.f. enhances the quarterly reporting requirements to provide the Commission more information about GBE's progress with easement acquisitions. Accordingly, the Transaction satisfies Merger Standard (d).

MERGER STANDARD (e)

19. The Commission agrees with Staff and Joint Applicants that Merger Standard (e), the effect of the Transaction on shareholders, is not applicable because Joint Applicants are both privately owned.³⁹

³⁷ Zadlo Supporting Testimony, pp. 10-12; Settlement Agreement, ¶¶ 9.a. – 9.d., 9.f.

³⁸ Settlement Agreement, ¶ 9.b; Grady Supporting Testimony, p. 12.

³⁹ Zadlo Direct, p. 14; Unrein Direct, p. 36.

MERGER STANDARD (f)

20. Merger Standard (f), whether the Transaction maximizes the use of Kansas energy resources, is also satisfied by the Transaction. Zadlo stated:

High capacity factor wind energy sourced from Western Kansas is the cheapest form of renewable energy in the Midwest. Consequently, the Project's delivered energy cost to neighboring states, including the costs of transmission, will be less expensive than alternatives to meet the demand for both renewable and non-renewable energy resources, and will promote the use of plentiful Kansas energy resources.⁴⁰

Staff agrees that the benefits of Invenenergy's development of the Project would increase current Kansas wind generation and advance the development potential of future Kansas wind energy resources.⁴¹

MERGER STANDARDS (g) and (h)

21. Joint Applicants and Staff agree that the proposed Transaction will reduce the possibility of economic waste in accordance with Merger Standard (g).⁴² The Transaction will reduce the possibility of economic waste by improving the ability of the GBE Project to reach completion⁴³ and by exporting the available excess wind capacity generated within the SPP Integrated Marketplace and delivering cost-competitive renewable wind energy from western Kansas to eastern load centers in the regions operated by the Midcontinent Independent System Operator and the PJM Interconnection.⁴⁴ Further, in accordance with Merger Standard (h), the Transaction will either have no impact on public safety or it will be beneficial to public safety, as the Unanimous Settlement Agreement requires GBE to continue to comply with all applicable

⁴⁰ Zadlo Direct, p. 14.

⁴¹ Unrein Direct, p. 37.

⁴² Zadlo Direct, p. 15; Unrein Direct, p. 38.

⁴³ Zadlo Direct, p. 15.

⁴⁴ Unrein Direct, p. 38.

safety rules and regulations and requires GBE to maintain sufficient personnel in the region of the GBE facilities for adequate emergency response.⁴⁵

22. Accordingly, the Commission finds that the Transaction, as conditioned by the Unanimous Settlement Agreement, satisfies all applicable Merger Standards and is therefore in the public interest.

SETTLEMENT STANDARDS

23. The law generally favors compromise and settlement of disputes between parties when they enter into an agreement knowingly and in good faith to settle the dispute.⁴⁶ 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,⁴⁷ establishes just and reasonable rates, and is in the public interest.⁴⁸

24. Substantial competent evidence possesses something of substance and relevant consequence, which furnishes a substantial basis of fact to reasonably resolve the issues.⁴⁹ 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.”⁵⁰ The Commission reviewed the Joint Application and supporting testimony and exhibits, testimony from the Commission Staff, rebuttal testimony from Joint Applicants, and both written and oral testimony from the parties in support

⁴⁵ See Settlement Agreement, ¶ 9.g.

⁴⁶ *Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-42 (2001).

⁴⁷ *Herrera-Gallegos v. H&H Delivery Service, Inc.*, 42 Kan.App.2d 360 (2009).

⁴⁸ *Citizens’ Util. Ratepayer Bd. v. Kansas Corp. Comm’n*, 28 Kan.App.2d 313, 316 (2000), *rev. denied* March 20, 2001.

⁴⁹ *Farmland Indus., Inc. v. Kansas Corp. Comm’n*, 25 Kan.App.2d 849, 852 (1999).

⁵⁰ *Id.* at 851.

of the Unanimous Settlement Agreement. Based on its review of the record, the Commission finds substantial competent evidence to approve the Unanimous Settlement Agreement in its entirety.

25. The Commission finds that approval of the Transaction, in accordance with the Unanimous Settlement Agreement, is in the public interest. The Signatories agree that the Unanimous Settlement Agreement is in the public interest and should be approved by the Commission.⁵¹ The Signatories explain that the terms of the Unanimous Settlement Agreement represent an equitable balancing of the interests of all parties.⁵² The public interest is also served by minimizing the costs of litigation.⁵³

26. The Unanimous Settlement Agreement does not establish any rates in the traditional sense; however, the Unanimous Settlement Agreement reaffirms GBE's commitment to recovering the costs of the Project through the merchant model and not through SPP cost allocation.⁵⁴ If GBE wishes to modify the cost recovery mechanism, it must return to the Commission for an amended certificate of convenience and necessity. Accordingly, the Unanimous Settlement Agreement should not impact rates for Kansas retail ratepayers.⁵⁵

27. The Unanimous Settlement Agreement is in the public interest because Invenergy's acquisition of GBE increases the likelihood that the GBE Project will be constructed, and the Commission has previously found that the GBE Project is in the public interest.⁵⁶ Invenergy's acquisition of GBE does not significantly alter the GBE Project, and therefore, the benefits

⁵¹ Joint Motion for Approval of Unanimous Settlement Agreement, ¶ 10.

⁵² Zadlo Supporting Testimony, pp. 14-15.

⁵³ *Id.*, p. 15.

⁵⁴ See Grady Supporting Testimony, 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.")

⁵⁵ *Id.*, pp. 15-16; Tr., pp. 52-53 (Grady).

⁵⁶ Grady Supporting Testimony, p. 16; Tr., pp. 53-54 (Grady); Siting Permit Order, ¶¶ 36-37, 57; Order Approving Stipulation & Agreement and Granting Certificate (Certificate Order), Docket No. 11-GBEE-624-COC, Dec. 7, 2011, ¶¶ 63-65.

identified in the Commission's prior orders have not significantly changed.⁵⁷ These benefits include the merchant model cost-recovery plan,⁵⁸ billions of dollars of economic development in Kansas,⁵⁹ and the development of environmentally friendly sources of energy.⁶⁰

28. After careful consideration of the terms of the Unanimous Settlement Agreement, the Commission finds it is in the public interest. The Unanimous Settlement Agreement is a balanced agreement that is fair to all parties and enhances the Transaction's satisfaction of the Merger Standards. Therefore, the Commission finds the terms of the Unanimous Settlement Agreement are fair and reasonable, and are in the public interest.

29. The Commission approves the Unanimous Settlement Agreement in its entirety. Further, pursuant to the conditions set forth in the Unanimous Settlement Agreement, the Commission approves the proposed Transaction whereby Invenergy Transmission will acquire GBE in accordance with the Membership Interest Purchase Agreement.

THEREFORE, THE COMMISSION ORDERS:

A. The Joint Motion for Approval of Unanimous Settlement Agreement is granted. The Unanimous Settlement Agreement is approved in its entirety and it is incorporated into this Order.

B. Pursuant to the conditions set forth in the Unanimous Settlement Agreement, Invenergy Transmission LLC's proposed acquisition of Grain Belt Express Clean Line LLC is approved.

⁵⁷ Zadlo Direct, p. 15; Unrein Direct, p. 14; Grady Supporting Testimony, p. 16.

⁵⁸ Siting Permit Order, ¶¶ 28; Certificate Order, ¶ 50.

⁵⁹ Siting Permit Order, ¶¶ 22-23, 25-26, 33; Certificate Order, ¶¶ 50-52.

⁶⁰ Siting Permit Order, ¶¶ 22, 31-32; Certificate Order, ¶¶ 36, 57, 65.


C. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.⁶¹

D. The Commission retains jurisdiction over the subject matter and the parties to enter further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner.

Dated: 06/18/2019



Lynn M. Retz
Secretary to the Commission

BGF

⁶¹ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

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

In the Matter of the Joint Application of)
Invenergy Transmission LLC, Invenergy)
Investment Company LLC, Clean Line)
Energy Partners LLC, Grain Belt Express) Docket No. 19-GBEE-253-ACQ
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)

ERRATA FILING FOR UNANIMOUS SETTLEMENT AGREEMENT

COMES NOW, Invenergy Transmission LLC (“Invenergy Transmission”), on behalf of itself and its parent company Invenergy Investment Company LLC (together with Invenergy Transmission, “Invenergy”), as well as Clean Line Energy Partners LLC (“Clean Line EP”) and its subsidiaries, Grain Belt Express Clean Line LLC (“GBE”) and Grain Belt Express Holding LLC (together with Clean Line EP and GBE, “Clean Line”) (collectively, the “Joint Applicants”) and the Staff of the State Corporation Commission of the State of Kansas (“Staff”) and jointly submit this errata filing to correct an error in the previously filed Unanimous Settlement Agreement (“Settlement Agreement”). In support of this errata filing, the foregoing parties (collectively referred to as “Signatories”) state as follows:

1. On May 1, 2019, the Signatories filed confidential and public versions of the Settlement Agreement in this case. The Settlement Agreement included an error on Page 4 in Paragraph 9.a.iv. That Paragraph references “the total project cost provided in subsection (ii), above,” when the correct reference should be to “the total project cost provided in subsection (iii), above.” (emphasis added).

2. The corrected public version of the Settlement Agreement is attached to this errata filing. A corrected confidential version of the Settlement Agreement will be filed separately.

WHEREFORE, for the reasons cited above, Signatories respectfully request the Commission accept this corrected version of the Settlement Agreement.

Respectfully submitted,

/s/ Frank A. Caro, Jr.

Frank A. Caro, Jr. (#11678)
Anne E. Callenbach (#18488)
Andrew O. Schulte (#24112)
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
Telephone: (816) 572-4754
fcaro@polsinelli.com
acallenbach@polsinelli.com
aoschulte@polsinelli.com

ATTORNEYS FOR INVENERGY INVESTMENT
COMPANY LLC AND INVENERGY
TRANSMISSION LLC

/s/ Glenda Cafer

Glenda Cafer (#13342)
(785) 271-9991
Terri Pemberton (#23297)
(785) 232-2123
Cafer Pemberton LLC
3321 SW 6th Avenue
Topeka, Kansas 66606
glenda@caferlaw.com
terri@caferlaw.com

ATTORNEYS FOR CLEAN LINE ENERGY
PARTNERS LLC, GRAIN BELT EXPRESS
HOLDING LLC, AND GRAIN BELT EXPRESS
CLEAN LINE LLC

/s/ Cole Bailey

Amber Smith (#23911)
Cole Bailey (#27586)
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
a.smith@kcc.ks.gov
c.bailey@kcc.ks.gov

ATTORNEYS FOR THE COMMISSION STAFF

Attachment: Unanimous Settlement Agreement – Public Version¹

¹ Confidential Version filed separately

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

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.)

UNANIMOUS SETTLEMENT AGREEMENT

Pursuant to K.A.R. 82-1-230a, Invenergy Transmission LLC (“Invenergy Transmission”), on behalf of itself and its parent company Invenergy Investment Company LLC (together with Invenergy Transmission, “Invenergy”), as well as Clean Line Energy Partners LLC (“Clean Line EP”) and its subsidiaries, Grain Belt Express Clean Line LLC (“GBE” or “Grain Belt Express”) and Grain Belt Express Holding LLC (together with Clean Line EP and GBE, “Clean Line”) (collectively, the “Joint Applicants”) and the Staff of the State Corporation Commission of the State of Kansas (“Staff”), by and through their undersigned counsel, enter into this Unanimous Settlement Agreement (“Settlement Agreement”) as a comprehensive settlement of all issues relevant to this proceeding involving the acquisition of GBE by Invenergy Transmission. Joint Applicants and Staff are collectively referred to herein as the “Signatories” or, individually, as a “Signatory.” Intervener ITC Great Plains, LLC (“ITC Great Plains”) is not a signatory to the Settlement Agreement but has indicated that it does not oppose the Settlement Agreement reached by the Signatories.¹

¹ Settlement Agreement meets the definition of “unanimous settlement agreement” pursuant to K.A.R. 82-1-230a(a)(2).

PUBLIC VERSION

I. PROCEDURAL BACKGROUND

1. On December 28, 2018, 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 Kansas Corporation Commission (“Commission” or “KCC”) of a transaction involving an upstream change in ownership of GBE. As discussed in the application, Joint Applicants have agreed pursuant to a Membership Interest Purchase Agreement that, pending a number of conditions precedent including review and approval by the Commission, Invenenergy Transmission will acquire GBE (the “Transaction”).

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 March 12, 2019, ITC Great Plains filed a petition to intervene in this matter, which was granted by Commission Order on April 4, 2019.

4. On March 26, 2019, Staff filed its direct testimony, and on April 15, 2019, Joint Applicants filed rebuttal testimony.

5. A settlement conference was convened on April 22, 2019 in accordance with the Procedural Schedule adopted by the Commission on February 26, 2019. Subsequent to the settlement conference on April 22, 2019, the Signatories continued diligently in those discussions in order to reach a stipulation and agreement regarding the proposed Transaction.

6. On April 29, 2019, the Signatories filed a Motion to extend the deadline for filing a settlement agreement and supporting testimony by two days. Accordingly, the Signatories

PUBLIC VERSION

anticipate an order extending the deadline to file a settlement agreement and supporting testimony to Wednesday, May 1, 2019.

7. As a result of the settlement discussions, the Signatories have agreed to the terms and conditions of this Settlement Agreement as a full and complete resolution of the issues raised by Joint Applicants' request for Commission approval of Invenergy Transmission's acquisition GBE.

II. TERMS OF SETTLEMENT AGREEMENT

8. Subject to the conditions set forth in Paragraph 9, the Signatories to this Settlement Agreement have evaluated the proposed Transaction pursuant to the Commission's Merger Standards, as most recently confirmed in Docket No. 18-KCPE-095-MER, and agree that, in accordance with those Standards, approval of the Transaction and the adoption of this Settlement Agreement are in the public interest.

9. The Signatories to this Settlement Agreement agree and request that the Commission issue an order in this proceeding that approves the acquisition of GBE by Invenergy Transmission in accordance with the Membership Interest Purchase Agreement² and that the following conditions be approved:

- a. 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 this multi-state transmission project ("Financing Requirement"). To allow the Commission to verify compliance with this condition, GBE shall file the following documents with the Commission at such a

² The Membership Interest Purchase Agreement was attached as Exhibit B to the application filed in this docket on December 28, 2018.

PUBLIC VERSION

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 GBE's multi-state transmission project that, in the aggregate, provide commitments for the total project cost.
- ii. An attestation by an officer of GBE that GBE 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.
- iii. 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 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 project cost provided in subsection (iii), 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).

PUBLIC VERSION

- b. Within ten (10) years after the Commercial Operation Date, GBE shall undertake, or engage a third-party to undertake, a study to quantify the estimated decommissioning costs of the project, taking into account the remaining useful life of the Project, the cost to remove installed facilities, and the salvage value of those facilities. Based upon this study, GBE shall, if necessary, establish a decommissioning fund in an amount and at a time reasonably necessary to perform the wind-up activities described below, at GBE's sole cost and expense. In any circumstance in which the Project is retired from service, GBE shall promptly perform the following wind-up activities: (i) dismantling, demolishing and removing all equipment, facilities and structures; (ii) 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; (iii) securing, maintaining and disposing of debris with respect to the Project facilities; and (iv) 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. The decommissioning fund may take the form of a letter of credit, insurance, cash, surety bond, other acceptable credit support, or any combination thereof.
- c. Invenenergy Transmission must commit to recovering the cost of the GBE Project through the rate authority granted to GBE by the Federal Energy Regulatory Commission ("FERC") to negotiate transmission service agreements for transmission capacity with its customers. If GBE seeks any alternative cost-recovery methodology affecting Kansas ratepayers, such as cost recovery through a Southwest Power Pool ("SPP") Open Access Transmission Tariff ("OATT"), GBE would be required to file

PUBLIC VERSION

an Application with the Commission to amend its Certificate, including supporting evidence that such an amendment is in accordance with applicable public convenience standards. Unless and until the Commission issues an Order approving a change in cost-recovery plan, GBE commits to not recover the transmission project's costs through the SPP cost allocation process or from Kansas ratepayers. For the avoidance of doubt, this Paragraph 9.c does not apply to de minimis costs ancillary to any needed interconnection to SPP, consistent with Paragraph 4.c. of the Stipulation and Agreement in Docket No. 11-GBEE-624-COC.

- d. In furtherance of the Stipulation and Agreement in 11-GBEE-624-COC, Invenergy Transmission and GBE agree that the FERC preempts the KCC unless Invenergy Transmission or GBE acts outside the conduct covered by FERC jurisdiction, at which time the KCC will determine the applicability of K.S.A. 66-1403. The KCC has granted a waiver of K.S.A. 66-1402, which is effective only as long as GBE continues to use a cost recovery mechanism that does not recover costs through SPP, other than de minimis costs ancillary to any needed interconnection to SPP, consistent with Paragraph 4.c. of the Stipulation and Agreement in Docket No. 11-GBEE-624-COC.
- e. Staff and GBE shall use all reasonable efforts to replace the Sunset Term established in Docket No. 13-GBEE-803-MIS with the following provisions:
 - i. By December 2, 2024, GBE shall have either (i) obtained executed easement agreements, demonstrably commenced negotiations to obtain easements, or instituted proceedings in state district court to obtain easements, or any combination thereof, for at least ** [REDACTED] ** of the total number of easements

required to construct the Kansas portion of the Project; or (ii) satisfied the Financing Requirement as defined in Paragraph 9.a. hereof. If unable to meet the requirements of the preceding sentence, GBE shall either, at GBE's election: (a) commit to ** [REDACTED] **,³ or (b) file for an updated transmission line siting permit under K.S.A. 66-1,178.

ii. Unless GBE has elected to proceed with an updated transmission line siting permit under K.S.A. 66-1,178 in subsection (b) in the preceding paragraph, by December 2, 2026, GBE shall have either (i) obtained executed easement agreements, demonstrably commenced negotiations to obtain easements, or instituted proceedings in state district court to obtain easements, or any combination thereof, for at least ** [REDACTED] ** of the total number of easements required to construct the Kansas portion of the Project; or (ii) satisfied the Financing Requirement. If unable to meet the requirements of the preceding sentence, GBE shall either, at GBE's election: (a) commit to ** [REDACTED] **⁴ or (b) file for an updated transmission line siting permit under K.S.A. 66-1,178.

iii. Unless GBE has elected to proceed with an updated transmission line siting permit under K.S.A. 66-1,178 in subsection (b) of the preceding paragraph, if by December 2, 2028, the Financing Requirement has not been satisfied or if

³ ** [REDACTED] **

**

⁴ ** [REDACTED] **

**

**

**

PUBLIC VERSION

at least **■■■■** of the total number of easements has not been executed, then GBE agrees to either: (a) file for an updated transmission line siting permit under K.S.A. 66-1,178; or (b) abandon the Project and allow all easements to revert to the landowners.

- f. In its quarterly reports to the Commission, in addition to the information already required, GBE shall provide: (i) the number of Kansas easements obtained; (ii) significant Kansas landowner contacts; (iii) significant outreach events in Kansas; and (iv) significant communications sent to Kansas landowners. Such reports shall continue to be considered confidential; however a public version of the report shall be filed in the compliance docket.
- g. When the GBE Project and/or AC Collector System become operational, GBE will maintain sufficient personnel (employees or local contractors) in the region of the facilities such that it can provide adequate emergency response to any portion of its Kansas operations in accordance with good utility practices. Good utility practices include:
 - i. When the GBE Project and/or AC Collector System become operational, GBE shall contact, on an annual basis, the emergency management coordinators for each county through which the GBE Project and/or AC Collector System passes to explain what is expected of county first responders in the event of an emergency involving a GBE Project facility.
 - ii. When the GBE Project and/or AC Collector System become operational, GBE shall compile and maintain on an annual basis, a contact list for all utilities crossed by the GBE Project or AC Collector System.

PUBLIC VERSION

iii. When the GBE Project and/or AC Collector System become operational, GBE shall review all regional options to establish maintenance agreements or participate in mutual aid programs, and where possible based on GBE's status and resources, engage with local transmission operators or electrical contractors to provide reciprocal assistance in emergency conditions.

10. This Settlement Agreement is the result of negotiations among the Signatories and the terms hereof are interdependent. In the event the Commission does not approve and adopt this Settlement Agreement in total or materially changes the terms of the Settlement Agreement, the Settlement Agreement shall be voidable and, if voided, no Signatory shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Each Signatory reserves the right to withdraw its support in the event that the Commission materially modifies the Settlement Agreement in a manner which is adverse to the Signatory.

11. This Settlement Agreement represents a negotiated settlement that fully resolves the issues raised in the proceeding. The Signatories represent that the terms of this Settlement Agreement constitute a fair and reasonable resolution of the issues addressed herein, in a manner which is not detrimental to the public interest. Except as specified herein, the Signatories shall not be prejudiced, bound by, or in any way affected by the terms of this Settlement Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Settlement Agreement.

12. In the event the Commission accepts the specific terms of this Settlement Agreement without material modification, the Signatories waive, with respect to the issues resolved herein: cross examination of the Signatories' witness on testimony pre-filed prior to the

PUBLIC VERSION

date of filing of this Settlement Agreement; any respective rights they may have to seek rehearing; and judicial review pursuant to the Kansas Judicial Review Act, K.S.A. 77-601, *et seq.* Furthermore, in the event the Commission accepts the specific terms of this Settlement Agreement without material modification, the Signatories agree that the pre-filed testimony of all of the Signatories' witnesses who have pre-filed testimony in this case shall be included in the record of the proceeding without the necessity of such witness taking the stand.

WHEREFORE, the Signatories hereto recommend that the Commission approve this Settlement Agreement in its entirety without modification.

/s/ Frank A. Caro, Jr.
Frank A. Caro, Jr. (#11678)
Anne E. Callenbach (#18488)
Andrew O. Schulte (#24112)
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
Telephone: (816) 572-4754
fcaro@polsinelli.com
acallenbach@polsinelli.com
aoschulte@polsinelli.com

ATTORNEYS FOR INVENERGY INVESTMENT
COMPANY LLC AND INVENERGY
TRANSMISSION LLC

/s/ Glenda Cafer
Glenda Cafer (#13342)
(785) 271-9991
Terri Pemberton (#23297)
(785) 232-2123
Cafer Pemberton LLC
3321 SW 6th Avenue
Topeka, Kansas 66606
glenda@caferlaw.com
terri@caferlaw.com

ATTORNEYS FOR CLEAN LINE ENERGY
PARTNERS LLC, GRAIN BELT EXPRESS
HOLDING LLC, AND GRAIN BELT EXPRESS
CLEAN LINE LLC

/s/ Cole Bailey
Amber Smith (#23911)
Cole Bailey (#27586)
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
a.smith@kcc.ks.gov
c.bailey@kcc.ks.gov

ATTORNEYS FOR THE COMMISSION STAFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been emailed this day of May 2019, to:

Amber Smith
Chief Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
a.smith@kcc.ks.gov

Cole Bailey
Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
c.bailey@kcc.ks.gov

Brian G. Fedotin
Deputy General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604
b.fedotin@kcc.ks.gov

Orijit Ghoshal
Sr. Manager Regulatory Affairs
Invenergy LLC
1401 17th Street, Suite 1100
Denver, CO 80202
oghoshal@invenergyllc.com

Cory Blair
Manager, Transmission Development
Invenergy LLC
1401 17th Street, Suite 1100
Denver, CO 80202
cblair@invenergyllc.com

Holly Christie
Assistant General Counsel
Invenergy LLC
One South Wacker Drive, Suite 1800
Chicago, IL 60606

hchristie@invenergyllc.com

Hans Detweiler
c/o Clean Line Energy Partners LLC
1001 McKinney, Suite 799
Houston, TX 77002
hdetweiler@cleanlineenergy.com

Frank A. Caro, Jr.
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
fcaro@polsinelli.com

Anne E. Callenbach
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
acallenbach@polsinelli.com

Andrew O. Schulte
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
aschulte@polsinelli.com

Glenda Cafer
Cafer Pemberton LLC
3321 SW 6th Avenue
Topeka, Kansas 66606
glenda@caferlaw.com

Terri Pemberton
Cafer Pemberton LLC
3321 SW 6th Avenue
Topeka, Kansas 66606
terri@caferlaw.com

James W. Bixby
ITC Great Plains, LLC
601 Thirteenth Street N.W. Suite 710S
Washington, DC 20010
jbixby@itctransco.com

/s/ Andrew O. Schulte

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
06/18/2019
electronic service on _____.

* GLENDA CAFER, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
Fax: 785-233-3040
glenda@caferlaw.com

* TERRI PEMBERTON, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
Fax: 785-233-3040
terri@caferlaw.com

* HANS DETWEILER
GRAIN BELT EXPRESS CLEAN LINE LLC
1001 MCKINNEY ST STE 700
HOUSTON, TX 77002-6448
hdetweiler@cleanlineenergy.com

* CORY BLAIR, MANAGER TRANSMISSION
DEVELOPMENT
INVENERGY LLC
101 17TH STREET SUITE 1100
DENVER, CO 80202
cblair@invenergyllc.com

* HOLLY CHRISTIE, ASSISTANT GENERAL COUNSEL
INVENERGY LLC
ONE SOUTH WACHER DRIVE SUITE 1800
CHICAGO, IL 60606
hchristie@invenergyllc.com

* ORIJIT GHOSHAL, SENIOR MANAGER REGULATORY
AFFAIRS
INVENERGY LLC
101 17TH STREET SUITE 1100
DENVER, CO 80202
oghoshal@invenergyllc.com

JAMES W. BIXBY, ATTORNEY - REGULATORY &
LEGISLATIVE
ITC GREAT PLAINS, LLC
601 THIRTEENTH STREET NW
STE 710S
WASHINGTON, DC 20010
jbixby@itctransco.com

HOLLY FISHER, ATTORNEY-CAP. PROJECTS &
MAINTENANCE
ITC GREAT PLAINS, LLC
3500 SW FAIRLAWN RD STE 101
TOPEKA, KS 66614-3979
hfisher@itctransco.com

* COLE BAILEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
c.bailey@kcc.ks.gov

* BRIAN G. FEDOTIN, DEPUTY GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
b.fedotin@kcc.ks.gov

CERTIFICATE OF SERVICE

19-GBEE-253-ACQ

* AMBER SMITH, CHIEF LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3167
a.smith@kcc.ks.gov

* ANNE E. CALLENBACH, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
Fax: 913-451-6205
acallenbach@polsinelli.com

* FRANK A. CARO, JR., ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
Fax: 816-753-1536
fcaro@polsinelli.com

* ANDREW O. SCHULTE, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
Fax: 816-753-1536
aschulte@polsinelli.com

/S/ DeeAnn Shupe

DeeAnn Shupe

* Denotes those receiving the Confidential version