

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

In the Matter of the Application of Grain Belt)
Express Clean Line LLC for a Siting Permit)
for the Construction of a High Voltage Direct)
Current Transmission Line in Ford,) Docket No. 13-GBEE-803-MIS
Hodgeman, Edwards, Pawnee, Barton,)
Russell, Osborne, Mitchell, Cloud,)
Washington, Marshall, Nemaha, Brown, and)
Doniphan Counties Pursuant to K.S.A. 66-)
1,177, et seq.)

**ORDER CANCELING PROCEDURAL SCHEDULE AND GRANTING LIMITED
EXTENSION OF SUNSET PROVISION**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its files and records, the Commission finds:

1. On July 15, 2013, Grain Belt Express Clean Line LLC (Grain Belt) filed an Application pursuant to the Kansas Electric Transmission Siting Act (Siting Act), K.S.A. 66-1,177 *et seq.*, for a siting permit to construct in Kansas approximately 370 miles of the approximately 750-mile HVDC transmission line that continues to Missouri, Illinois, and Indiana, a converter station in Ford County, Kansas, and facilities to interconnect the converter station with the Southwest Power Pool (SPP).¹

2. On November 7, 2013, the Commission issued its Order Granting Siting Application (Order), finding that the Grain Belt Express line is necessary because “[w]ithout this project, hundreds of millions of economic development dollars would not be spent in Kansas, and

¹ Application, July 15, 2013, ¶ 5.

the potential for large scale wind farm development would be lost” and “this project will have significant short- and long-term economic development benefits for the state of Kansas.”²

3. After considering comments from landowners, the Commission found the modified proposed route is reasonable and in the public interest.³ The Commission granting of a siting permit was conditioned on Grain Belt submitting quarterly reports detailing the progress and costs of the project, and beginning construction of the of the Grain Belt Express Project (Project) within five years from the date of the Order.⁴ If construction did not start within five years, Grain Belt would be required to submit a new application.⁵ Since the Order was issued November 7, 2013, Grain Belt would need to start construction in Kansas by November 7, 2018 or reapply.

4. Before starting construction in Kansas, the Order required Grain Belt to obtain approval from the other states where the Grain Belt Express would be built, namely Missouri, Illinois, and Indiana.⁶

5. The Illinois Courts have issued decisions requiring Grain Belt to acquire property in Illinois before it can submit a new application to the Illinois Commerce Commission for a certificate to build the Illinois portion of the transmission Project.⁷ Grain Belt is working to acquire property in Illinois to enable it to file a new certificate application with the ICC.⁸

6. In July 2015, the Missouri Public Service Commission (MPSC) denied Grain Belt’s application for a certificate to build the Missouri portion of the line.⁹ Grain Belt appealed the MPSC decision, resulting in a unanimous decision by the Missouri Supreme Court, issued on July

² Order Granting Siting Application (Order), Nov. 7, 2013, ¶ 36.

³ *Id.*, ¶¶ 46, 52.

⁴ Order, ¶ 55.

⁵ *Id.*

⁶ *Id.*, ¶ 53.

⁷ Joint Motion of Grain Belt Express Clean Line LLC and Commission Staff for Extension of Sunset Term, Sept. 6, 2018, ¶ 8.

⁸ *Id.*

⁹ *Id.*, ¶ 9.

17, 2018, finding the MPSC erred and remanding the matter back to the MPSC to determine whether the Missouri portion of the Project is necessary or convenient for the public service.¹⁰ Once the Missouri Supreme Court issues its mandate, Grain Belt will urge the MPSC to promptly issue a certificate to build the Missouri portion of the Project.¹¹

7. On September 6, 2018, Grain Belt and the Commission Staff (Staff) filed their Joint Motion for Extension of Sunset Term (Joint Motion), explaining that the litigation delays in Illinois and Missouri makes it unlikely Kansas construction would begin by November 7, 2018, and requesting extending the sunset date be extended to November 7, 2023.¹² The Joint Motion is limited to a request to extend the sunset date by five years,¹³ to allow Grain Belt an opportunity to complete the permitting process and pre-construction activities required prior to beginning construction of the Project in Kansas.¹⁴

8. On September 17, 2018, Matthew Stallbaumer filed his Protest to the Joint Motion, arguing the proposed extension is not in the public interest because: (1) the sunset provision protects landowners from having their lives placed on hold for a project that may never be built;¹⁵ (2) the route selection study is five years old and may need to be reconsidered;¹⁶ (3) Grain Belt's financial ability to build the line and its managerial ability to run the line need to be reevaluated;¹⁷ and (4) Grain Belt may not get approval from Illinois or Missouri.¹⁸

¹⁰ *Id.*, at 11.

¹¹ *Id.*

¹² *Id.*, ¶ 17.

¹³ *Id.*, ¶ 16.

¹⁴ *Id.*, ¶¶ 16-18.

¹⁵ Protest of Matthew Stallbaumer to the Motion of Grain Belt Express Clean Line LLC and Commission Staff for Extension of Sunset Term (Stallbaumer Protest), Sept. 17, 2018, ¶ 11.

¹⁶ *Id.*, ¶ 12.

¹⁷ *Id.*, ¶ 13.

¹⁸ *Id.*, ¶ 14.

9. On September 24, 2018, Nemaha-Marshall Electric Cooperative, Inc. (NMEC) filed its Reply to the Joint Motion of Grain Belt Express Clean Line LLC's and Kansas Corporation Commission Staff and Proposed Order, urging the Commission to deny the proposed extension and instead require Grain Belt to pay it to bury its facilities.¹⁹

10. On October 4, 2018, the Commission issued its Order Granting Limited Extension of Sunset Provision, finding Stallbaumer's concerns regarding Grain Belt's financial, managerial and technical ability to complete the Project compelling and granted an extension of the sunset provision until March 1, 2019 to allow the Commission time to evaluate Grain Belt's financial, managerial and technical ability to complete the Project.²⁰ The Commission also gave Grain Belt until by November 29, 2018, to submit evidence of its financial, managerial and technical ability to complete the Project.²¹ Stallbaumer and NMEC were given the opportunity to file pleadings by December 21, 2018, limited to Grain Belt's financial, managerial and technical ability to complete the Project.²² Staff was directed to file a Report and Recommendation by February 6, 2019, evaluating Grain Belt's financial, managerial and technical ability to complete the Project.²³

11. On November 21, 2018, Grain Belt and Staff filed a Joint Motion for Stay of Procedural Schedule and Extension of Sunset Provision, explaining that on November 9, 2018, Grain Belt agreed to be purchased by Invenergy Transmission LLC (Invenergy), pending Commission approval of the acquisition.²⁴ The Joint Motion seeks a full review of the acquisition

¹⁹ Reply to the Joint Motion of Grain Belt Express Clean Line LLC's and Kansas Corporation Commission Staff and Proposed Order, Sept. 24, 2018, ¶ 5.

²⁰ Order Granting Limited Extension of Sunset Provision, Oct. 4, 2018, ¶ 16.

²¹ *Id.*, ¶ 17.

²² *Id.*, ¶ 18.

²³ *Id.*, ¶ 19.

²⁴ Joint Motion of Grain Belt Express Clean Line LLC and Commission Staff for Stay of Procedural Schedule and Extension of Sunset Term, Nov. 21, 2018, ¶ 4.

prior to ruling on the request for a five-year siting authority extension.²⁵ Grain Belt and Invenergy committed to filing the acquisition application in December 2018.²⁶

12. Under K.S.A. 66-131(c), the Commission must issue a decision on a public utility's application for a merger or acquisition within 300 days of receiving the application. In considering Invenergy's application to acquire Grain Belt, the Commission will apply its merger standards. Merger Standard (a)(1) reviews the effect of the proposed transaction on the financial condition of the newly created entity compared to the financial condition of the stand-alone entities.²⁷ Merger Standard (h) addresses the transaction's impact on the public safety.²⁸ Therefore, in addressing the merger standards, the Commission will hear evidence regarding Invenergy's financial, managerial and technical ability to complete the Project. A full review of the acquisition does not necessitate a five-year siting authority extension.

13. Grain Belt and Invenergy have pledged to file their Application in December 2018. The Commission would have 300 days from the date the Application is filed to issue its order on the Application. Therefore, the Commission is extending the Sunset Term to December 2, 2019. The filing deadlines from the Commission's October 4, 2018 Order Granting Limited Extension of Sunset Provision are canceled.

THEREFORE, THE COMMISSION ORDERS:

A. The Sunset Term is extended until December 2, 2019 to allow the Commission to rule on Invenergy's anticipated Application to acquire Grain Belt. The remainder of the procedural schedule is canceled.

²⁵ *Id.*, ¶ 6.

²⁶ *Id.*

²⁷ Order Approving Merger, Docket No. 18-KCPE-095-MER, May 24, 2018, ¶ 5.

²⁸ *Id.*

B. Any party may file and serve a petition for reconsideration pursuant to requirements and time limits established by K.S.A. 77-529(a)(1).²⁹

C. 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.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 12/06/2018



Lynn M. Retz
Secretary to the Commission

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²⁹ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

13-GBEE-803-MIS

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 12/06/2018.

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