

**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)

**JOINT MOTION FOR APPROVAL OF
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 motion to request approval of a Unanimous Settlement Agreement (“Settlement Agreement”), attached hereto. Joint Applicants and Staff are collectively referred to herein as “Joint Movants.” In support of their Motion, Joint Movants hereby state as follows:

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, LLC (“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 to discuss settlement terms and eventually reached agreement upon the terms reflected in the attached Settlement Agreement.

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

II. Request for Approval of Settlement Agreement

7. The attached Settlement Agreement represents a full and complete resolution of the issues raised by Joint Applicants' request for Commission approval of Invenergy Transmission's acquisition GBE. The only intervener in the proceeding, 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. Accordingly, the Settlement Agreement meets the definition of "unanimous settlement agreement" pursuant to K.A.R. 82-1-230a(a)(2).

8. As discussed further in supporting testimony, the Settlement Agreement meets the Commission's standards for approval of settlements, as the Settlement Agreement: (i) is supported by substantial competent evidence in the record as a whole; (ii) results in just and reasonable rates (or rather, has no rate impact on Kansas citizens); and (iii) is in the public interest. Additionally, the terms of the Settlement Agreement enhance the proposed Transaction's satisfaction of the Merger Standards as most recently confirmed in Docket No. 18-KCPE-095-MER.

9. The agreed-upon terms of the Settlement Agreement represent a compromise between the positions proposed by the Joint Movants and are within the original positions of the parties on the items addressed.

10. The terms of the Settlement Agreement are fair, reasonable, and fully supported by the evidence in the case. The terms were fully and fairly negotiated by the Joint Movants in good faith and with the opportunity for all parties to the proceeding to participate and represent their unique interests. Therefore, Joint Movants submit the terms of the Settlement Agreement promote the public interest and should be approved by the Commission.

III. Request for Confidential Treatment of Certain Terms of Settlement

11. Joint Movants request confidential treatment of certain limited terms contained in Paragraph 9.e of the Settlement Agreement pursuant to K.S.A. 66-1220a and K.A.R. 82-1-221a. The confidential terms relate to future easement negotiations, and if released, would damage GBE's ability to negotiate easement agreements on neutral and reasonable grounds. Joint Movants are submitting both confidential and public versions of the Settlement Agreement. Given the limited nature of the redactions contained in the public version of the Settlement Agreement, interested parties that have not intervened and filed non-disclosure agreements will not be substantially hindered in their review of the settlement terms.

IV. Request to Convert the Evidentiary Hearing to a Hearing on the Settlement

12. Given the Settlement Agreement filed herewith, the Joint Movants request that the Commission convert the evidentiary hearing, currently scheduled to commence on May 9, 2019 at 9:00 AM, to a hearing on the settlement. To that end, Joint Movants have prepared and will file testimony in support of the Settlement Agreement and will have their witnesses available at the hearing to answer any questions from the Commission.

WHEREFORE, for the reasons cited above, Joint Movants respectfully request the Commission grant their Joint Motion for approval of the Settlement Agreement attached hereto and convert the evidentiary hearing to a hearing on the settlement.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,

/s/ Frank A. Caro, Jr.

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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

I. PROCEDURAL BACKGROUND

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

PUBLIC VERSION

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

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.

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 (ii), 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).

- 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

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] [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]*****
*****[REDACTED]*****
*****[REDACTED]*****
*****[REDACTED]*****

⁴ *****[REDACTED]*****
*****[REDACTED]*****
*****[REDACTED]*****
*****[REDACTED]*****

at least **[REDACTED]** 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.

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- 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

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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.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading has been emailed this 1st day of May 2019, to:

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