

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. 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 the sunset date be extended to November 7, 2023.⁷ The Joint Motion requested extending the sunset date by five years,⁸ 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.⁹

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

³ *Id.*, ¶¶ 46, 52.

⁴ Order, ¶ 55.

⁵ *Id.*

⁶ *Id.*, ¶ 53.

⁷ *Id.*, ¶ 17.

⁸ *Id.*, ¶ 16.

⁹ *Id.*, ¶¶ 16-18.

6. 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;¹⁰ (2) the route selection study is five years old and may need to be reconsidered;¹¹ (3) Grain Belt's financial ability to build the line and its managerial ability to run the line need to be reevaluated;¹² and (4) Grain Belt may not get approval from Illinois or Missouri.¹³

7. 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.¹⁴

8. 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.¹⁵ The Commission also gave Grain Belt until November 29, 2018, to submit evidence of its financial, managerial and technical ability to complete the Project.¹⁶ 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

¹⁰ 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.

¹¹ *Id.*, ¶ 12.

¹² *Id.*, ¶ 13.

¹³ *Id.*, ¶ 14.

¹⁴ 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.

¹⁵ Order Granting Limited Extension of Sunset Provision, Oct. 4, 2018, ¶ 16.

¹⁶ *Id.*, ¶ 17.

the Project.¹⁷ 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.¹⁸

9. 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.¹⁹

10. On December 6, 2018, the Commission issued its Order Canceling Procedural Schedule and Granting Limited Extension of Sunset Provision, extending the Sunset Provision until December 2, 2019, to allow the Commission to rule on Invenergy's Application to acquire Grain Belt.²⁰ The Commission noted, by addressing the merger standards, it will hear evidence regarding Invenergy's financial, managerial and technical ability to complete the Project.²¹ Therefore, a five-year siting authority extension is not warranted.²²

11. On June 18, 2019, the Commission issued its Order Approving a Unanimous Settlement Agreement in the 19-GBEE-253-ACQ (19-253 Docket), approving Invenergy's acquisition of Grain Belt.²³ As part of the Settlement, Staff and Grain Belt agreed to request replacing the December 2, 2019 Sunset Term with specific deadlines to obtain easements or financing.²⁴ Accordingly, on July 9, 2019, Grain Belt and Staff filed a Joint Motion to Replace

¹⁷ *Id.*, ¶ 18.

¹⁸ *Id.*, ¶ 19.

¹⁹ 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.

²⁰ Order Canceling Procedural Schedule and Granting Limited Extension of Sunset Provision, Dec. 6, 2018, Ordering Clause A.

²¹ *Id.*, ¶ 12.

²² *Id.*

²³ Joint Motion of Grain Belt Express Clean Line LLC and Commission Staff to Replace Sunset Term with Settlement Deadlines, July 9, 2019, ¶ 10.

²⁴ *Id.*, ¶ 9.

Sunset Term with Settlement Deadlines, requesting the Commission adopt the following settlement deadlines²⁵ in place of the December 2, 2019 Sunset Term:

- By December 2, 2024, Grain Belt shall show that through a combination of the following, a majority of the easements necessary to build the Kansas portion of the Project: (1) have been executed, (2) are demonstrably being negotiated, or (3) are subject to proceedings in state court. Alternatively, Grain Belt must show it has obtained financing for the complete Project. If Grain Belt is unable to meet the required percentage of easements or obtain financing, it is subject to sanctions or shall file a new transmission line siting permit application under K.S.A. 66-1, 178.
- By December 2, 2026, the percentage of easements necessary to build the Kansas portion of the Project escalates. If Grain Belt is unable to meet the required percentage of easements or obtain financing, it is subject to increased sanctions or shall file a new transmission line siting permit application under K.S.A. 66-1,178.
- By December 2, 2028, the percentage of easements necessary to build the Kansas portion of the Project escalates. If Grain Belt is unable to meet the required percentage of easements or obtain financing, Grain Belt must either: (1) shall file a new transmission line siting permit application under K.S.A. 66-1,178; or (b) abandon the Project and allow all easements to revert to the landowners.

12. No responses to the Joint Motion to Replace Sunset Term with Settlement Deadlines were filed.

13. The Commission's previously voiced concerns over Grain Belt's financial, managerial and technical abilities to complete the Project were addressed in the 19-GBEE-253-

²⁵ See *Id.*, ¶ 11; Unanimous Settlement Agreement, Docket No. 19-GBEE-253-ACQ, May 1, 2019, ¶ 9.

ACQ Docket where the Commission determined that Invenergy possesses the financial, managerial and technical abilities to complete the Project²⁶ and that Kansas ratepayers will not pay for the revenue requirement associated with the GBE project.²⁷ The Commission's remaining concern was the impact on affected landowners. The Commission approved the Siting Application back on November 7, 2013. In the subsequent five and a half years, the affected landowners have had their land encumbered, while waiting to see if the Project would be built. As of March 2019, Grain Belt only had easements from seven of the affected tracts of land and had stopped actively pursuing easements in 2015.²⁸ Affected landowners have been deprived of their full use and enjoyment of their land while the Project has been in legal limbo. The Commission believes the proposed settlement deadlines, with escalating goals for easements and escalating sanctions for failure to reach those goals will provide additional protection to landowners that either the Project will be completed or that it will be abandoned. Accordingly, the Commission grants the Joint Motion to Replace Sunset Term with Settlement Deadlines and adopts the proposed settlement deadlines.

THEREFORE, THE COMMISSION ORDERS:

A. The December 2, 2019 Sunset Term is replaced with the settlement deadlines contained in Paragraph 11. Paragraph 11 does not limit or modify the obligations imposed on Grain Belt by Paragraph 9 of the Unanimous Settlement Agreement in Docket No. 19-GBEE-253-ACQ.

²⁶ See Order Approving Unanimous Settlement Agreement, Docket No. 19-GBEE-253-ACQ, June 18, 2019, ¶¶ 12, 21.

²⁷ *Id.*, ¶ 9.

²⁸ Direct Testimony of Leo M. Haynos, Docket No. 19-GBEE-253-ACQ, March 26, 2019, p. 15.

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.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 09/26/2019



Lynn M. Retz
Executive Director

BGF

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

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