

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

In the Matter of the Application of Grain Belt)
Express, LLC for a Siting Permit for the)
Construction of Two 345 kV Transmission) Docket No. No. 24-GBEE-790-STG
Lines and Associated Facilities Through Gray,)
Meade, and Ford Counties, Kansas.)

MOTION FOR AMENDED PROTECTIVE ORDER

Pursuant to K.S.A. 66-1220a, K.S.A. 77-521 and 77-522, and Kansas Rules of Civil procedure, Grain Belt Express LLC (“Grain Belt Express”) for its Motion for Amended Protective Order states as follows:

I. BACKGROUND & AUTHORITY

1. On May 31, 2024, Grain Belt Express filed its Application for Line Siting Permits (“Application”) requesting that the State Corporation Commission of the State of Kansas (“KCC” or “Commission”) issue a siting permit establishing the route for two inter-related transmission lines and associated facilities as part of the previously approved “AC Collector System.”¹

2. Grain Belt Express is a wholly-owned subsidiary of Invenergy Transmission LLC (“Invenergy Transmission”), a Delaware limited liability company, which is a wholly-owned subsidiary of Invenergy Renewables LLC (“Invenergy Renewables”), also a Delaware limited liability company. Invenergy Transmission is an affiliate company of Invenergy LLC, which is an Illinois limited liability company. For purposes of this Motion, together, Invenergy Transmission, Invenergy Renewables and Invenergy LLC will be referred to as “Invenergy.”

3. K.S.A. 77-521(c) provides that a presiding officer may impose conditions upon an intervener’s participation in the proceedings, either at the time that intervention is granted or at

¹ Application for Transmission Line Siting Permits, p. 1 (May 31, 2024) (“Application”).

any subsequent time. Conditions may include limiting the intervener's participation to designated issues in which the intervener has a particular interest demonstrated by the petition and limiting the intervener's use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings.²

4. Additionally, the Commission has authority to issue protective orders to limit disclosure of confidential information under K.S.A. 66-1220a and K.A.R. 82-1-221a. The Commission has substantial latitude in deciding the degree of protection that is required.

5. Pursuant to K.S.A. 66-1220a(a)(4), the Commission is to consider alternatives to disclosure that will serve the public interest and protect the regulated entity. In addition to the Commission's general authority to limit disclosure of confidential business information, the Commission and presiding officer may impose conditions upon an intervener's participation in the proceedings, including limiting the intervener's use of discovery.³

6. Here, in the course of the Staff of the Commission's ("Staff") pursuit of discovery, Staff inquired into "contracts in place that commit to the delivery of capacity of 2500 MW into Missouri" and requested that Grain Belt Express "provide the terms of the contracts with the utilities purchasing the power." Notwithstanding Grain Belt Express' objection to the discovery request, Grain Belt Express intends to provide the requested contracts; however, the highly confidential nature of the contracts requires an amendment to the Commission's June 11, 2024 Protective Order.

7. These contracts require additional protection because they pertain to sensitive commercial terms between Grain Belt Express and Invenergy and potential or current transmission

² K.S.A. 77-521(c)(1)–(3).

³ K.S.A. 77-521.

customer(s). The highly confidential nature of the contracts causes particular concern for Grain Belt Express because, under the current Protective Order, the contracts could be available to in-house attorneys and in-house experts of other customers or potential customers who are or may in the future be in negotiation with Grain Belt Express for transmission capacity.

8. If such highly confidential information is disclosed, Grain Belt Express, Grain Belt Express' customers, and Grain Belt Express' potential customers will be competitively disadvantaged in future negotiations because customers and competitors would possess knowledge of sensitive commercial terms.

9. Grain Belt Express acknowledges that there are no current intervenors who are customers or potential customers of the Grain Belt Express Project. However, Grain Belt Express submits that it is preferable to establish the protections sought by this Motion at the outset, rather than be faced with the need to reclassify documents from Confidential to Highly Confidential-Competitive in the future. Reclassifying documents after they have been distributed often leads to confusion and could lead to inadvertent release of documents.

II. MOTION FOR AMENDED PROTECTIVE ORDER

10. Grain Belt Express appreciates that the Commission traditionally files a standard interim protective order, however, special circumstances exist for the Commission to issue a more tailored order designed to protect categories of information specific to this case that are included in the Application and the testimony in support of the Application.

11. To accommodate intervenors' due process rights and protect Grain Belt Express' rights to protect sensitive commercial terms, Grain Belt Express proposes establishing two classes of confidential materials—a "Confidential" class of information encompassing the usual scope of protected information in Commission proceedings and a "Highly Confidential-Competitive" class

of information limited to information which the designating party reasonably believes, in good faith, to be so competitively sensitive that it is entitled to additional protections (including, for example, financial information, sensitive negotiations, and sensitive commercial terms that would cause significant harm to a party's ability to negotiate future contracts).

12. Under this tiered system, any intervener who signs a regular Nondisclosure Certificate will be entitled to unredacted Confidential information. For Highly Confidential-Competitive information, Grain Belt Express (or potentially intervening parties with such information) shall disclose such information only to state agency parties and their employees covered by statutory confidentiality; to non-state agency party representatives that are not potential or current transmission customers (for example, CURB, environmental NGOs, and customer groups) who have filed Highly Confidential-Competitive Nondisclosure Certificates; and to non-state agency party representatives for parties that are potential or current transmission customers, provided that the representative is outside counsel or an outside expert with a demonstrable need to see sensitive commercial information and who has signed a Highly Confidential-Competitive Nondisclosure Certificate.

13. This tiered approach to confidentiality has been approved by the Presiding Officers in similar cases to restrict access to competitive information.⁴

14. This tiered approach properly protects Grain Belt Express' sensitive commercial information and confidential information. It also supports the due process rights of potential intervenors who are potential or current transmission customers, as their attorneys and outside

⁴ See, e.g., Presiding Officer's Amended Protective Order, Docket No. 21-KGSG-332-GIG (Oct. 27, 2021) (restricting competitively sensitive information from competitors); Order Granting Evergy Intervention and Protective and Discovery Order, Docket No. 22-NETE-419-COC (April 21, 2022).

experts will still be allowed to review unredacted information included in filings, testimony, and responses to data requests.

15. These protections are also in the public interest because they will maintain the integrity of the competitive commercial contracting process, which results in demonstrable savings for the public.

16. Attached hereto, Grain Belt Express provides a Proposed Protective Order that is largely taken from the protective orders the Commission has issued in previous cases—namely, Docket No. 21-GIMX-303-MIS.

WHEREFORE, Grain Belt Express respectfully requests the Commission issue a Protective Order substantially in the form of the attached proposal.

Respectfully submitted,

/s/ Anne E. Callenbach _____

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ATTORNEYS FOR GRAIN BELT EXPRESS,
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PROPOSED PROTECTIVE ORDER

1. K.S.A. 66-1220a and K.A.R. 82-1-221a set forth requirements for the designation and treatment of information deemed confidential in Commission proceedings. The Commission finds it appropriate to issue this Protective Order to establish procedures relating to confidential data and information.

2. K.S.A. 66-1220a limits disclosure of trade secrets or confidential commercial information of regulated utilities. Under K.S.A. 66-1220a(a)(4), the Commission is to consider alternatives to disclosure that will serve the public interest and protect the regulated entity. This Protective Order provides an interim procedure under K.S.A. 66-1220a(a)(4) to facilitate the prompt and orderly conduct of this case. This Protective Order will govern the treatment and handling of confidential information until further order of the Commission.

3. A party may designate as confidential any information that it believes, in good faith, to be a trade secret or other confidential commercial information. The party designating the information as confidential must provide a written statement of the specific grounds for the designation at the time the designation is made.⁵ The party claiming confidentiality has the burden of proving the confidential status of the information. Designating information as confidential does not establish that the information will be kept from disclosure after review by the Commission.⁶

4. This Protective Order applies to all parties in this proceeding, unless specifically stated otherwise. The provisions of the Protective Order apply to Commission Staff (“Staff”), except that Staff is not required to sign nondisclosure certificates or view voluminous materials on site and is not required to return or destroy confidential information upon request at the conclusion

⁵ K.A.R. 82-1-221a(a)(5).

⁶ K.S.A. 66-1220a.

of a proceeding. Outside experts and consultants used by Staff shall have access to information and voluminous materials on the same basis as Staff, except that outside Staff experts and consultants are required to read this Protective Order and to sign any applicable nondisclosure agreements as contained in Appendix A and Appendix B. Parties who do not sign a nondisclosure certificate will not be granted access to confidential information filed in this docket.

5. The following definitions shall apply:

Information: “Information” refers to all documents, data, including electronic data, studies and other materials furnished pursuant to requests for information or other modes of discovery, or any other information or documents that are otherwise a part of the Commission record.

Competitor: “Competitor” refers to parties who are potential or current commercial partners to another party in this proceeding.

Confidential Information: “Confidential information” refers to information which, if disclosed, would likely result in harm to a party’s economic or competitive interests or which would result in harm to the public interest, generally, and which is not otherwise available from public sources. “Confidential information” may include, but is not limited to: (1) material or documents that contain information relating directly to specific customers; (2) employee sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration; (6) contract negotiations; and, (7) information concerning trade secrets, as well as private technical, financial, and business information.

Highly Confidential-Competitive Information: “Highly Confidential-Competitive Information” means any Confidential Information which the designating party reasonably believes, in good faith, to be so competitively sensitive that it is entitled to additional protections (including, for example, financial information, sensitive negotiations, and sensitive commercial terms that would cause significant harm to a party’s ability to negotiate future contracts).

6. A party designating information as Confidential or Highly Confidential-Competitive shall make the confidential information available to parties seeking access or discovery under the restrictions in this Protective Order, if such disclosure is not otherwise privileged or objectionable on other evidentiary grounds.

7. Disclosure of Confidential information shall be made to attorneys of record and to authorized representatives, including outside experts, who are consulting with parties or intend to file testimony in this proceeding. Attorneys or authorized representatives seeking access to confidential information shall first read this Protective Order and sign a nondisclosure certificate as provided in Appendix A. In cases in which a utility’s rates are being reviewed, attorneys and representatives of the utility whose rates are being reviewed are not required to sign nondisclosure certificates in order to receive copies of documents containing the utility’s own confidential information. The nondisclosure certificate shall contain the signatory’s name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of a party to this proceeding. The nondisclosure certificate shall be filed in the docket. The party claiming confidentiality shall provide legible copies of the confidential information to requesting parties by serving one copy upon counsel for the requesting party. The requesting party may copy the confidential information and make it available to its authorized representatives who have signed

and filed nondisclosure certificates. If a response to a discovery request requires the duplication of voluminous material, or the material is not easily copied because of its binding or size, the furnishing party may require that the voluminous material be viewed on its own premises. If duplication of voluminous material can be accomplished without undue burden on the party disclosing the information, the voluminous material may be copied at the expense of the requesting party. Voluminous material shall include documents or materials comprised of 200 pages or more.

8. Disclosure of Highly Confidential-Competitive Information shall be made pursuant to the terms of Paragraph 7, but with the following additional protections:

- a. Disclosure of materials or Information designated by a party as “Highly Confidential-Competitive” may be made available to only the following individuals who have executed the Commission-approved Competitive Nondisclosure Agreement attached as Appendix B: (a) outside retained attorneys of record for Competitors; (b) outside consultants for Competitors; (c) representatives of Staff and CURB, and other non-Competitor parties to the proceeding, except that Staff is not required to sign nondisclosure certificates.
- b. No Highly Confidential-Competitive Information may be provided directly or indirectly to any other person, including in-house counsel, other than as specified in parts (a) above.

9. A party may designate pre-filed testimony and exhibits as Confidential or Highly Confidential-Competitive pursuant to this Protective Order. The specific grounds for any such designation shall be stated in writing at the time the designation is made or the testimony filed. Any party obtaining confidential information may use or refer to such information in pre-filed or

oral testimony provided that the confidentiality is maintained, unless otherwise ordered by the Commission.

10. If information to be disclosed in response to a data request contains Confidential or Highly Confidential-Competitive information designated by another party in this docket, the furnishing party shall maintain the confidential status by marking the information as “Confidential” or “Highly Confidential-Competitive” and only provide response to parties that have signed nondisclosure certificates appropriate for the type of information requested. If information that a party intends to use in this proceeding or that would be disclosed in response to a data request contains confidential information obtained from a source outside of this proceeding, the party intending to use or provide the confidential information must notify the original source which claimed confidential status to allow that entity to decide whether to claim confidentiality in this proceeding.

11. When pleadings, pre-filed testimony, or exhibits include Confidential or Highly Confidential-Competitive information, the parties are to follow these procedures:

a. File seven⁷ copies of the complete document, including all confidential information.

- i. In cases where there is both Highly Confidential-Competitive and Confidential information, the cover is to clearly state “HIGHLY CONFIDENTIAL-COMPETITIVE.” Highly Confidential-Competitive pages shall be stamped “HIGHLY CONFIDENTIAL-COMPETITIVE,” and the specific Highly Confidential-Competitive information shall be identified by being underlined, bolded, and

⁷ Only one copy must be submitted when a party utilizes electronic filing.

highlighted. Any information that is Confidential but not Highly Confidential-Competitive shall be identified by being underlined.

ii. In cases where there is only Confidential information, the cover is to clearly state “CONFIDENTIAL.” Confidential pages shall be stamped “CONFIDENTIAL,” and the specific Confidential information shall be identified by being underlined.

b. File one copy with the Highly Confidential-Competitive and/or Confidential portions redacted, for use as a public document. The cover is to clearly state “PUBLIC VERSION.”

c. File one copy of the pages that contain Highly Confidential-Competitive and/or Confidential information in a separate envelope marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-COMPETITIVE.”⁸ This filing will be maintained in the docket room file under seal. If there are multiple pages with confidential information and it is impracticable to separate the pages with the confidential information, the party may file instead one copy of the entire document that is stamped “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-COMPETITIVE.”

12. Confidential and Highly Confidential-Competitive testimony may be offered or subject to cross-examination at hearings. Parties have the right to object to the admissibility of confidential information on standard evidentiary grounds such as relevance. Confidential and Highly Confidential-Competitive information that is received into evidence will be kept under seal. Confidential information shall be discussed only after the hearing is closed to all persons except the Commission, its Staff, hearing examiners, court reporters, attorneys of record and

⁸ Envelopes are not required when a party utilizes electronic filing, but electronically filed documents must be clearly labeled.

individuals to whom the designated information is available under the terms of this Protective Order. Highly Confidential-Competitive information shall be discussed only after the hearing is closed to all persons except the Commission, its Staff, hearing examiners, court reporters, attorneys of record and individuals who are permitted to receive Highly Confidential-Competitive information as specified in this Order. Parties shall make every effort at hearings to ask and answer questions in such a way as to preserve the confidentiality of the information without the need to close the hearing. The transcript of live testimony or oral argument disclosing Highly Confidential-Competitive and/or Confidential information shall be kept under seal and copies provided only to persons entitled to access the Highly Confidential-Competitive and/or Confidential information. Neither the parties nor their attorneys shall disclose or provide copies of the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order.

13. If a party disagrees with a claim that information is confidential or should not be disclosed, the parties shall first attempt to resolve the dispute on an informal basis. If the parties cannot resolve the dispute informally, the party contesting the confidential treatment may file a motion with the Commission. Commission Staff should also be prepared to challenge a confidential designation when Staff believes the information does not meet the definition of confidential information. When a dispute concerning confidentiality is brought before the Commission, the Commission will review the matter to determine (1) if the party claiming confidentiality has met its burden of establishing the confidential designation is proper, and (2) whether disclosure is warranted under K.S.A. 66-1220a. The contested information shall not be disclosed pending the Commission's ruling.

14. All persons who are afforded access to confidential information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and litigation of this proceeding. During the course of this proceeding, parties shall keep confidential information secure in accordance with the purposes and intent of this order. At the conclusion of this proceeding, including judicial review, a party claiming that information was confidential may require that other persons in possession of its confidential information return or destroy all such confidential information and all notes, tapes, documents, and any other medium containing, summarizing, or otherwise embodying such confidential information. If the party claiming confidentiality requests destruction, the person destroying the information shall certify its destruction. Counsel shall be entitled to retain memoranda or pleadings including or embodying confidential information to the extent reasonably necessary to preserve a file on this proceeding.

APPENDIX A

Docket No. 24-GBEE-790-STG
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS
NONDISCLOSURE CERTIFICATE
(To Access Confidential Information)

I, _____, have been presented a copy of the Protective Order issued in Docket No. 24-GBEE-790-STG on the ____ day of _____, 2024.

I have requested review of confidential information produced in the above-mentioned docket on behalf of _____.

I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

Dated this _____ day of _____, 2024.

Printed name and title

Signature

Party/Employer

Address (City, State and ZIP)

Telephone

Email

APPENDIX B

Docket No. 24-GBEE-790-STG
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS
NONDISCLOSURE CERTIFICATE
(To Access Highly Confidential-Competitive Information)

I, _____, have been presented a copy of the Protective Order issued in Docket No. 24-GBEE-790-STG on the ____ day of _____, 2024.

I have requested review of Highly Confidential-Competitive information produced in the above- mentioned docket on behalf of _____.

I am an employee of _____ acting as _____ [state role from list of eligible persons from Paragraph 24 of the Protective Order] for _____; and I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

Dated this _____ day of _____, 2024.

Printed name and title

Signature

Party/Employer

Address (City, State and ZIP)

Telephone

Email

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties listed below by email or U.S. mail, postage prepaid, this 26th day of June, 2024.

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