STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

| | |
|---|---|
| VERIFIED JOINT PETITION OF GRAIN BELT EXPRESS CLEAN LINE LLC AND INVENERGY TRANSMISSION LLC FOR: (1) A DETERMINATION THAT INVENERGY TRANSMISSION LLC HAS THE REQUISITE TECHNICAL, FINANCIAL, AND MANAGERIAL CAPABILITY TO ACQUIRE, OWN, AND OPERATE GRAIN BELT EXPRESS CLEAN LINE LLC; (2) APPROVAL, TO THE EXTENT REQUIRED, OF THE ACQUISITION, OWNERSHIP AND OPERATION OF GRAIN BELT EXPRESS CLEAN LINE LLC BY INVENERGY TRANSMISSION LLC; (3) A DETERMINATION THAT THE COMMISSION SHOULD CONTINUE TO DECLINE TO EXERCISE CERTAIN ASPECTS OF ITS JURISDICTION OVER GRAIN BELT EXPRESS CLEAN LINE LLC, AND SHOULD CONTINUE TO TREAT GRAIN BELT EXPRESS CLEAN LINE LLC AS AN INDIANA PUBLIC UTILITY; (4) AUTHORITY TO TRANSFER FUNCTIONAL CONTROL TO AN RTO; AND (5) ACCEPTANCE BY THE COMMISSION OF INVENERGY TRANSMISSION LLC'S INVENERGY TRANSMISSION LLC'S COMMITMENT, WITH MINOR EXCEPTIONS, TO THE TERMS AND CONDITIONS IMPOSED ON GRAIN BELT EXPRESS CLEAN LINE LLC IN THE COMMISSION'S MAY 22, 2013 ORDER IN CAUSE NO. 44264. | CAUSE NO. 45294 |



# VERIFIED JOINT PETITION OF

# GRAIN BELT EXPRESS CLEAN LINE LLC AND INVENERGY TRANSMISSION LLC;

# CASE-IN-CHIEF; AND

# MOTION FOR PROTECTIVE ORDER

*For Ice Miller LLP:*
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| Cause No. 45294<br>Table of Contents | |
|---|---|
| **Document Description** | **Tab** |
| Exhibit 1: Hans Detweiler Testimony and Attachments | 1. |
| Exhibit 2: Kris Zadlo Testimony and Attachments | 2. |
| Exhibit 3: Andrea Hoffman Testimony and Attachments | 3. |
| Joint Petition of Grain Belt Express Clean Line LLC and Invenergy Transmission LLC | 4. |

# DIRECT TESTIMONY OF HANS DETWEILER

## ON BEHALF OF JOINT PETITIONERS

## IURC CAUSE NO. 45294

## JOINT PETITIONERS' EXHIBIT 1

**September 20, 2019**

# TABLE OF CONTENTS

## I. INTRODUCTION AND PURPOSE

**Q. Please state your name and business address.**

A. My name is Hans Detweiler. I am the lead developer of the Grain Belt Express Project[1] ("Grain Belt Express Project" or "Project") for Clean Line Energy Partners LLC ("Clean Line"). I am based in Chicago, Illinois, but my business address is 1001 McKinney Street, Suite 700, Houston, Texas 77002.

**Q. Please describe your educational background and professional experience in the energy and utility industries.**

A. Since joining Clean Line, I have led or advised on the development on all of Clean Line's electric transmission projects. In this role, I have been responsible for permitting, land acquisition, routing, and numerous other project development activities. Regarding the Project, I have provided strategic guidance regarding the Certificate of Public Convenience and Necessity ("CPCN") proceedings at the Illinois Commerce Commission, and participated in several of the public meetings as part of the public outreach regarding the development of the route in Illinois. I negotiated the Project's Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture, and have continuously handled the Project's negotiations with organized labor. Prior to joining Clean Line, I was Director of State Policy for the American Wind Energy Association ("AWEA") where I supervised all of AWEA's direct state legislative campaigns and state regulatory efforts, and served as primary liaison to AWEA's regional partners. Previously, I was Deputy Director of the Illinois Department of

[1] The Grain Belt Express Project referred to herein is the multi-terminal ±600 kilovolt ("kV") high voltage direct current ("HVDC") transmission line, and an HVDC converter station and associated transmission facilities, running from near the Spearville 345 kV substation in Ford County, Kansas, to a delivery point near the Sullivan 765 kV substation in Sullivan County, Indiana.

## I. INTRODUCTION AND PURPOSE

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Commerce and Economic Opportunity. I have also worked in a variety of policy and advocacy roles with organized labor and other non-profit organizations. I received a Bachelor of Arts degree in political science from Grinnell College, Grinnell, Iowa.

**Q. Have you previously testified before any regulatory commissions?**

A. Yes. I testified in support of Rock Island Clean Line LLC for a CPCN before the Illinois Commerce Commission in Docket No. 12-0560. I also testified in support of the application of Mesa Canyons Wind LLC for approval of the location of the Mesa Canyons Wind Project before the New Mexico Public Regulation Commission in Case No. 17-00221-UT. I also testified before the Missouri Public Service Commission ("MPSC" or "Commission") in support of Grain Belt Express Clean Line LLC, for approval of a Certificate of Convenience and Necessity ("CCN") for the GBE Project, in Case No. EA-2016-0358, as well as in the related Case No. EM-2019-0150 requesting approval of the transaction between Grain Belt Express and Invenergy. Finally, in Kansas Corporation Commission Docket No. 19-GBEE-253-ACQ, I provided testimony in support of the acquisition of GBE by Invenergy.

**Q. What is the purpose of your testimony?**

A. The purpose of my testimony is to introduce the witnesses filing testimony in this matter, provide a brief background on Grain Belt Express Clean Line LLC ("Grain Belt Express"), an overview of the proposed acquisition of Grain Belt Express by Invenergy Transmission LLC ("Invenergy Transmission") (the "Transaction"), and a status update on the Project. Collectively, I refer to Invenergy Transmission and its affiliates, Invenergy LLC and Invenergy Investment Company LLC ("Invenergy Investment"), as

"Invenergy." The corporate structure of Invenergy is discussed in the Direct Testimony of Kris Zadlo, Senior Vice President of Invenergy LLC.

## II. WITNESSES AND BACKGROUND

**Q. Please identify the witnesses filing testimony in this matter.**

A. In addition to myself, the other witnesses filing testimony in this matter are as follows:

| Witness | Primary Testimony Topics |
|---|---|
| Kris Zadlo (Invenergy) | • Introduction to Invenergy, including its history, organization, business model, and asset ownership and operating philosophy.<br>• Description of Invenergy Transmission's pending acquisition of Grain Belt Express.<br>• Discussion of the technical and managerial qualifications of Invenergy to acquire, own, and operate the Project.<br>• Explanation as to how the public interest will be promoted by the Transaction. |
| Andrea Hoffman (Invenergy) | • Explanation of Invenergy's financial abilities to provide service in connection to Invenergy Transmission's pending acquisition of Grain Belt Express.<br>• Provide an overview of Invenergy's extensive experience and success in financing large energy projects.<br>• Describe the financial considerations particular to the Grain Belt Express Project. |

**Q. Please provide an overview of Grain Belt Express.**

A. Grain Belt Express is a wholly-owned direct subsidiary of Grain Belt Express Holding LLC ("Grain Belt Express Holding"), which in turn is a wholly-owned direct subsidiary of Clean Line Energy Partners LLC, as identified previously. Grain Belt Express is an

independent, transmission-only limited liability company organized under Indiana law and based in Houston, Texas. Grain Belt Express was formed by Clean Line for the purpose of the development and construction of the Grain Belt Express Project. Grain Belt Express is a certificated public utility in Indiana pursuant to the Commission's May 22, 2013 Order in Cause No. 44264.

The Project is a multi-terminal ±600 kilovolt ("kV") high voltage direct current ("HVDC") transmission line, and an HVDC converter station and associated transmission facilities, running from near the Spearville 345 kV substation in Ford County, Kansas, to delivery points in the eastern load centers of Missouri, Illinois, and Indiana.

## III. OVERVIEW OF PROPOSED TRANSACTION

**Q. Please provide an overview of the proposed Transaction.**

A. As discussed in greater detail by Invenergy witnesses Mr. Zadlo and Ms. Hoffman, on November 9, 2018, Grain Belt Express Holding entered into a Membership Interest Purchase Agreement ("MIPA") with Invenergy Transmission, which is a wholly-owned direct subsidiary of Invenergy Investment, for the sale of Grain Belt Express. The MIPA (exhibits and schedules omitted) is attached to my testimony as **Attachment HD-1**. Additionally, on November 9, 2018, Grain Belt Express Holding and Invenergy Transmission also entered into a Development Management Agreement ("DMA") to provide for ongoing Project development funding through the projected closing date of the MIPA. The DMA is attached to my testimony as **Attachment HD-2**. Mr. Zadlo and Ms. Hoffman will discuss those documents and Invenergy's plans with regard to funding the development costs of the Project provided that the proposed Transaction is approved and closed.

**Q. Is the proposed Transaction in the public interest?**

A. Yes. The Transaction is in the public interest because, as discussed below in greater detail, and in the testimonies of Mr. Zadlo and Ms. Hoffman, it will help ensure the Project reaches completion, which will result in the realization of all of the benefits that the Commission previously found to be associated with the Project.

**Q. What are some of the benefits this Commission found to be associated with the Project?**

A. As the Commission is aware, on May 22, 2013, Grain Belt Express received from this Commission an order: (1) approving Grain Belt Express as an Indiana public utility; (2) finding that Grain Belt Express possessed sufficient technical, managerial, and financial capability and expertise to operate as a transmission-only utility in Indiana, and should be granted authority to operate as such, including exercising all rights and privileges of public utilities under Indiana law; (3) finding that Grain Belt Express should be authorized to transfer functional control of the operation of its transmission facilities located in Indiana to PJM or MISO; (4) declining to exercise certain aspects of its jurisdiction over Grain Belt Express (specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial and financial capability), and certain public utility annual reporting requirements); (5) finding that Grain Belt Express should have the authority to maintain its books and records outside the State of Indiana; (6) consenting to the Boards of County Commissioners of all Indiana counties to grant Grain Belt Express such licenses, permits or franchises as may be necessary for Grain Belt Express to use county roads, highways or other property and public rights of

way; and (7) finding that certain information submitted in the proceeding constituted confidential and proprietary trade secret information and should be excepted from disclosure under Indiana law. (See copy of Order in Cause No. 44264, attached hereto as **Attachment HD-3**.)

As part of that Order, the Commission noted that the Project will provide benefits to the State of Indiana and the region. These benefits include the delivery of millions of MWh of renewable energy per year; cost effectively meeting growing demand for renewable energy; and increasing generator competition, which will exert downward pressure on wholesale energy prices in the MISO and PJM markets. The Commission noted that the Project will also provide a substantial opportunity for economic development in the manufacturing, installation, and operation of the transmission line and associated wind turbines; the Project will have a positive impact on the environment; and the Project will create geographical diversity in the wind projects that deliver into the MISO and PJM systems, thereby reducing variability, facilitating wind integration, and improving reliability.

## IV. STATUS UPDATE ON THE GRAIN BELT EXPRESS PROJECT

**Q. Please provide a status update on the Project.**

A. Grain Belt Express was granted a Certificate of Convenience and Necessity ("CCN") by the Missouri Public Service Commission ("MPSC") on March 20, 2019 with an effective date of April 19, 2019. In addition, the MPSC approved Invenergy Transmission's acquisition of Grain Belt Express on June 5, 2019 with an effective date of June 30, 2019. Grain Belt Express also holds an active CCN and Siting Permit for the Project and associated facilities from the Kansas Corporation Commission ("KCC"), and the KCC

approved Invenergy Transmission's acquisition of Grain Belt Express on June 18, 2019. Grain Belt Express intends to seek regulatory approvals for the Project in Illinois after Missouri, Kansas and Indiana processes have concluded.

## V. CONCLUSION

**Q. Do you have any final comments with regard to the Transaction?**

A. Yes. Clean Line was founded with an ambitious vision to undertake innovative transmission projects that would revolutionize the transmission grid. The Grain Belt Express Project was conceived because Clean Line recognized the inadequacies of the existing transmission grid to efficiently and economically export wind inter-regionally. This Commission understood the importance and significance of the Project and the benefits to be reaped by Indiana and the region. While the development of the Project has encountered significant regulatory delays in other states, the Project is now on the cusp of coming to fruition. My hope is that the Commission will remain steadfast in its past support for the Project and approve Invenergy as a successor owner and operator for the Project, to allow Indiana and its citizens to reap the benefits of the Project.

**Q. Does this conclude your direct testimony?**

A. Yes, it does.

## VERIFICATION

I, Hans Detweiler, affirm under penalties for perjury that the foregoing representations are true and correct to the best of my knowledge, information, and belief.

Date: 9-18-19

Hans Detweiler

# MEMBERSHIP INTEREST PURCHASE AGREEMENT

**By and among**

**Grain Belt Express Holding LLC ("Seller")**

**and**

**Invenergy Transmission LLC ("Buyer")**

**And**

**Grain Belt Express Clean Line LLC ("Company")**

**Dated as of November 9, 2018**

## Table of Contents

**TABLE OF CONTENTS**
(continued)

**Page**

## TABLE OF CONTENTS
(continued)

**Page**

Exhibits and Schedules



***Seller's Disclosure Schedules:***

# MEMBERSHIP INTEREST PURCHASE AGREEMENT

This MEMBERSHIP INTEREST PURCHASE AGREEMENT (this "Agreement"), is made and entered into as of November 9, 2018 (the "Effective Date"), by and among Invenergy Transmission LLC ("Buyer"), Grain Belt Express Holding LLC ("Seller"), and Grain Belt Express Clean Line LLC ("Company"). Buyer, Seller and Company shall each individually be referred to herein as a "Party" and collectively as the "Parties".

## RECITALS

**WHEREAS,** the Company is developing a high voltage direct current transmission line (as further described in Exhibit A, the "GBX Transmission Line"), and associated transmission facilities, which are being designed to run from Ford County, Kansas, to Sullivan, Indiana, with a mid-point converter station in Ralls County, Missouri (together with all assets associated therewith, the "Project").

**WHEREAS**, Seller is the beneficial and record holder of all of the issued and outstanding membership interests of the Company (the "Membership Interests").

**WHEREAS**, Seller wishes to sell, and Buyer wishes to purchase, the Membership Interests on the Closing Date on the terms and subject to the conditions of this Agreement.

**WHEREAS**, concurrently with the execution and delivery of this Agreement, Seller and the Company and Buyer are executing the Development Management Agreement (defined below) [redacted].

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

## ARTICLE 1
## DEFINITIONS AND CONSTRUCTION

1.1 Definitions.

As used in this Agreement, the following terms shall have the meanings ascribed to them below:

"**Acquisition Proposal**" shall mean any written offer, proposal, inquiry or indication of interest from any third party relating to any transaction involving (a) any acquisition or purchase by any Person (other than Buyer or an Affiliate of Buyer) of any of the Membership Interests; (b) any merger, consolidation, business combination, or other similar transaction involving the Company; (c) any sale, lease, exchange, transfer, acquisition or disposition of the assets of the Company or its Affiliates, which assets are required for the

Project; or (d) any liquidation, dissolution, recapitalization or other significant corporate reorganization of the Company.

"**Affiliate**" of a specified Person shall mean any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the Person specified. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"**Agreement**" shall have the meaning given to it in the Preamble to this Agreement and shall include all exhibits, schedules (including the Disclosure Schedules) and annexes hereto, as any of the same may be amended, modified or supplemented from time to time.

"**Ancillary Documents**" shall mean the Assignment of Membership Interests, the Development Management Agreement, [redacted] the other documents identified in Section 6.1, and any additional documents evidencing or necessary to record any transfer to or from the Company contemplated by this Agreement or any of the foregoing documents.

"**Applicable Law**" shall mean all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, Permits, directives, and requirements of all Governmental Authorities (including with respect to the environment) having jurisdiction over a Person (as to that Person), this Agreement, or the Project, as applicable.

"**Applicable Permits**" shall mean all Permits for or necessary for the development, construction, ownership, leasing, operation or maintenance of the Project.

"**Assignment of Membership Interests**" means the assignment of membership interests in the form of Exhibit B hereto.

"**Balance Sheet**" shall have the meaning set forth in Section 4.12.1.

"**Balance Sheet Date**" shall mean October 31, 2018.

"**Benefit Plan**" shall mean "employee benefit plan," as such term is defined in Section 3(3) of ERISA, or other pension, bonus, profit sharing, stock option or other agreement or arrangement providing for employee remuneration or benefits, including a "multiemployer plan," as that term is defined in Section 4001(a)(3) of ERISA.

"**Books and Records**" shall mean all books, files, papers, agreements, material correspondence, databases, information systems, programs, software, documents, records and documentation thereof related to the Company or any of the Project Assets, in each case, in all formats in which they are reasonably and practically available, including original and electronic

versions, where applicable, in each case, in the possession or control of Seller or any of its Affiliates to the extent relating to the Project.

"**Business Day**" shall mean any day other than a Saturday, Sunday or a day on which commercial banks are closed in the State of New York.

"**Buyer**" shall have the meaning given to it in the Preamble to this Agreement, and shall include its successors or assigns.

"**Buyer Consents and Approvals**" shall have the meaning given to it in Section 5.5.

"**Buyer Indemnified Party**" shall mean Buyer, its successors and assigns, its Affiliates, and its Representatives.

"**Claim Certificate**" has the meaning given to it in Section 8.9.2

"**Closing**" shall have the meaning given to it in Section 2.2.

"**Closing Date**" shall have the meaning given to it in Section 2.2.

"**Closing Payment**" shall have the meaning set forth in Section 3.1.

"**Code**" shall mean the United States Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"**Commercial Operation Date**" shall mean, with respect to the Project [redacted] the date upon which the Project [redacted] is physically completed, commissioned and fully operational and capable of continuous operation, is energized and will have interconnected with the interconnection provider's system in accordance with an interconnection agreement with an interconnection provider, is available to transmit electricity and is available to provide service under any executed transmission service agreement, delivery service agreement or similar agreement.

"**Commission Approvals**" shall mean (i) the KCC CP Certificate Matters, (ii) the MPSC Approvals, (iii) Permits necessary or materially desirable for the Project from the Illinois Commerce Commission and (iv) Permits necessary or materially desirable for the Project from the Indiana Utility Regulatory Commission.

"**Company**" shall have the meaning given to it in the recitals of this Agreement.

**"Condemnation"** shall have the meaning given to it in Section 6.3.1.

"**Confidential Information**" shall mean any and all information provided (i) either by Buyer or any of its Affiliates to Seller or by Seller or any of its Affiliates to Buyer or in writing and identified by the Disclosing Party as confidential and (ii) any and all information with respect to the Project, the Project Assets, or the Transaction.

"**Continuous**" or "**Continuously**" shall mean uninterrupted, except for interruptions (i) of one (1) month or less due to any circumstances, or (ii) of any duration, so long as (x) such interruption results from a force majeure event, change in Applicable Law, or other event outside of the reasonable control of one or more of the parties that own or are utilizing [redacted] and (y) the utilization of [redacted] resumes promptly after the resolution of such force majeure event, change in Applicable Law or other event.

"**Contract**" shall mean any written or oral contract, lease, sublease, license, purchase order, commitment, note, bond, deed of trust, evidence of Indebtedness, mortgage, indenture, binding bid, letter of credit, security agreement or other similar instrument entered into by a Person or by which a Person or any of its assets are bound, including all amendments, modifications or supplements thereto.

**"Damages"** shall mean and include any loss, damage, injury, decline in value, lost opportunity, liability, claim, demand, settlement, judgment, award, fine, penalty, tax, fee (including any legal fee, accounting fee, expert fee or advisory fee), charge, cost (including any cost of investigation) or expense of any nature.

"**Development Costs**" shall have the meaning set forth in the Development Management Agreement.

"**Development Management Agreement**" shall mean the Development Management Agreement, dated as of the Effective Date, by and among Seller, the Company and Buyer, attached hereto as Exhibit H.

"**Disclosure Schedules**" shall mean the disclosure schedules attached to this Agreement and dated as of the Effective Date.

"**Disclosing Party**" shall have the meaning given to it in Section 10.3.

"**Dispute**" shall have the meaning given to it in Section 10.4.

"**Dollar**" or "**$**" shall mean United States dollars.

"**Effective Date**" shall have the meaning given to it in the Preamble to this Agreement.

"**Environment**" shall mean soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, cultural and historic resources, and any other environmental medium or natural resource related to the Project.

"**Environmental Claims**" shall mean any claims, actions, suits, fine, penalty, request, demand, complaint, consent decree, notice, proceeding, investigation or Order imposed upon, asserted against or incurred, directly or indirectly, whether made by a Governmental Authority or another Person, arising from, in connection with, as a result of or in any way related

to any of the following: (a) the Release or Threat of Release of any Hazardous Substances on, in, over, under, from or affecting the Environment, the Real Property subject to the Real Property Documents or the Project or any portion thereof; (b) the treatment, storage, disposal, Release or Threat of Release, or the arrangement or transportation for treatment, storage or disposal, of any Hazardous Substances on, in, over, under, from or affecting any other property; or (c) any actual or alleged violation of, any actual or alleged failure to comply with, or any actual or alleged Liability arising under or in connection with any Order, Permit (including any Environmental Permits), decree, rule, regulation, requirement or demand of any Governmental Authority, or any Environmental Laws, affecting the Environment, the Real Property subject to the Real Property Documents or the Project.

"**Environmental Event**" shall mean the Release or Threat of Release or the presence or suspected presence or Remediation of any Hazardous Substances.

"**Environmental Laws**" shall mean any legal requirement or Applicable Law pertaining to the quality of, protection, clean-up, Remediation or damage of or to the Environment, including the following laws: the Clean Air Act, 42 U.S.C. §7401, et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; the Resource, Conservation and Recovery Act, 42 U.S.C. §6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.§ 9601, et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f, et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Rivers and Harbors Act, 33 U.S.C. §401, et seq.; the Transportation Safety Act of 1974, 49 U.S.C. §1801 et seq.; and the Endangered Species Act, 16 U.S.C. §1531, et seq.; the National Environmental Policy Act, 42 USC § 4321 et seq.; the National Historic Preservation Act, 16 U.S.C § 470 et seq.; Federal Land Policy and Management Act, 43 U.S.C. § 1701 et seq; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 et seq.); and the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq. (including any future change in judicial or administrative decisions interpreting or applying any of the Applicable Laws, rules or regulations referred to herein) relating to emissions, disposals, discharges, releases or threatened releases of any Hazardous Substances into ambient air, land, soil, subsoil, surface water or groundwater or any adverse impacts or damage to natural resources (including protected species) or cultural or historic resources.

"**Environmental Permits**" shall mean any Permit pertaining to any Environmental Laws.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"**FERC**" shall mean the Federal Energy Regulatory Commission and its successors, including its staff acting under delegated authority.

"**Financial Statements**" has the meaning set forth in Section 4.12.1.

"**FPA**" shall mean the Federal Power Act, as amended, and the rules and regulations promulgated thereunder.

"**Fundamental Representations**" means the representations and warranties contained in Section 4.1 (*Organization*), Section 4.2 (*Authority*), Section 4.3 (*Title to Membership Interests*), Section 4.4 (*Binding Effect*), Section 4.5 (*No Violation*), Section 4.8 (*Consents and Approvals*), Section 4.16 (*Brokers or Finders*), Section 5.1 (*Organization*), Section 5.2 (*Authority*), Section 5.3 (*No Violations*), Section 5.4 (*Binding Effect*), Section 5.5 (*Consents and Approvals*) and Section 5.6 (*Brokers or Finders*).

"**GAAP**" means generally accepted accounting principles in the United States of America as recognized by the American Institute of Certified Public Accountants, consistently applied for a Person throughout the specified periods and maintained on a consistent basis for a Person throughout the period or periods indicated and consistent with such Person's prior financial practice.

"**GBX Transmission Line**" shall have the meaning given to it in the Recitals to this Agreement.

"**Governmental Authority**" shall mean any (a) national, state, county, municipal or other local government (whether domestic or foreign) and any political subdivision thereof, (b) any court or administrative tribunal, (c) any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity of competent jurisdiction (including any zoning authority, FERC, any state regulatory commission or any comparable authority), (d) any non-governmental agency, tribunal or entity that is vested by a governmental agency with applicable jurisdiction, or (e) any arbitrator with authority to bind a Party at law or otherwise.

"**Hazardous Substances**" shall have the meaning given to it in Section 4.13.1.

"**Indebtedness**" of any Person at any date shall mean, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except accounts payable of less than Fifty Thousand Dollars ($50,000) in the aggregate, (d) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (e) all obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (f) all obligations of others secured by a Lien on any asset of such Person, whether or not such obligation is assumed by such Person, and (g) all obligations of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guaranty.

"**Indemnified Parties**" means the Seller Indemnified Parties and the Buyer Indemnified Parties.

"**Indemnifying Party**" has the meaning given to it in Section 8.7.2.

"**Intellectual Property**" means all intellectual property, including: (a) patents, inventions, discoveries, processes, designs, techniques, developments, technology, and related

improvements and know-how, whether or not patented or patentable; (b) copyrights and works of authorship in any media, including computer hardware, software, firmware, applications, files, systems, networks, databases and compilations, documentation and related textual works, graphics, advertising, marketing and promotional materials, photographs, artwork, drawings, articles, textual works, and Internet site content; (c) trademarks, service marks, trade dress, logos, Internet domain names, any and all common law rights thereto, and registrations and applications for registration thereof, all rights therein provided by international treaties or conventions, and all reissues, extensions and renewals of any of the foregoing; and (d) trade secrets and confidential information, including the ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes and other know-how, whether or not patentable.

"**Interconnection Queue Positions**" means (i) PJM Queue Position X3-028 and (ii) the Company's Interconnection Rights under or with respect to that certain Interconnection Agreement between ITC Great Plains, LLC, Southwest Power Pool, Inc, and Grain Belt Express Clean Line LLC, dated October 17, 2016.

"**Interconnection Rights**" means any and all of Seller's or its Affiliates' rights and interests in interconnection rights related to the Project, including but not limited to, the Interconnection Queue Positions, agreements, studies, reports or other documents relating to the interconnection of the Project, including any interconnection agreements.

[redacted]

"**Interconnection Termination Notice**" shall have the meaning given to it in Section 3.3.

"**Interim Period**" shall have the meaning given to it in Section 7.2.2.

"**Interim Period Matters**" shall have the meaning given to it in Section 7.9.

"**Knowledge**" shall mean, (i) with respect to Seller, the Company and with respect to any matter, any facts, circumstances or other information relating thereto, the actual knowledge of David Berry, Jayshree Desai, Hans Detweiler or Michael Skelly (with no duty of inquiry or investigation); and (ii) with respect to Buyer and with respect to any matter, any facts, circumstances or other information relating to Buyer or relating to the Company, the Project or the Project Assets prior to the Closing Date, the actual knowledge of those individuals employed by Buyer or its Affiliates prior to the expiration of the Interim Period and for whom the development of the Project is one of their primary responsibilities (with no duty of inquiry or investigation).

"**KCC**" shall mean the Kansas State Corporation Commission.

"**KCC Certificate**" shall mean, collectively, (a) the "Order Approving Stipulation & Agreement And Granting Certificate", issued December 7, 2011, in Docket No. 11-GBEE-

624-COC, *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Limited Certificate of Public Convenience to Transact the Business of a Public Utility in the State of Kansas*, and (b) the "Order Granting Siting Permit" issued November 7, 2013 (as modified in a non-material manner by the KCC's "Order on Petitions for Reconsideration and Order Nunc Pro Tunc" issued on December 19, 2013), and the "Order Granting Limited Extension of Sunset Provision" issued on October 4, 2018, in Docket No. 13-GBEE-803-MIS, *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, 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.*

"**KCC CP Certificate Matters**" shall mean each of the following from the KCC with respect to the KCC Certificate (or applicable portions thereof): (1) an extension of the KCC Certificate to a date no earlier than the date that is five (5) years following the original expiration date of the KCC Certificate (which is November 7, 2018) and (2) approval of the change in ownership of the Project to the Buyer.

"**Liabilities**" shall mean any and all liabilities, Indebtedness, obligations, commitments, losses, damages, expenses, claims, deficiencies, or guaranties of any type, whether accrued or unaccrued, asserted or unasserted, fixed absolute or contingent, matured or unmatured, liquidated or unliquidated, incurred, due or to become due, known or unknown, whenever or however arising (including whether arising out of any Contract or tort based on negligence, strict or joint and several liability, or otherwise).

"**Lien**" shall mean any mortgage, deed of trust, lien (choate or inchoate), pledge, charge, security interest, assessment, reservation, absolute assignment, collateral assignment, hypothecation, option, purchase right, defect in title, encroachment or other burden, or encumbrance of any kind, whether arising by contract or under any Applicable Law and whether or not filed, recorded or otherwise perfected or effective under any Applicable Law, or any preference, priority or preferential arrangement of any kind or nature whatsoever including the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement.

"**Losses**" shall mean any and all actual losses, liabilities, claims, damages (including any governmental penalty or punitive damages), deficiencies, diminution in value, interest, costs and expenses and any actions, judgments, costs and expenses (including reasonable attorneys' fees and all other reasonable expenses incurred in investigating, preparing or defending any litigation or proceeding commenced incident to the enforcement of this Agreement).

"**Made Available**" shall mean made available to Buyer in the https://grainbeltexpresscleanline.datarooms.com site designated for this Agreement as the folder labeled "Grain Belt Express Data Room for Invenergy."

"**Material Adverse Effect**" shall mean any event, change, occurrence, circumstance, development or effect, which, individually or when taken together with the effect of all other events, changes, occurrences, circumstances, developments or effects, has caused or

could reasonably be expected to cause a (a) material adverse effect on the business, assets, prospects, operations, property or condition (financial or otherwise) of the Project, the Project Assets, the Company or Seller, taken as a whole, (b) a material adverse effect on the KCC Certificate, the KCC CP Certificate Matters or the MPSC Approvals or the proceedings for such matters, (c) material adverse effect on the validity or enforceability of this Agreement, the Ancillary Documents, the Project Contracts or the transactions contemplated hereby and thereby, (d) material adverse effect on the performance of or ability of Seller to perform its obligations hereunder or under the Ancillary Documents or the Project Contracts, or (e) material adverse effect on Buyer's ability to construct the Project and place it into commercial operation; provided, however, that the determination of whether a Material Adverse Effect has occurred shall exclude the following events, changes, occurrences, circumstances, developments and effects: (i) any event or circumstance resulting from either changes in the international, national or regional electric industry in general or changes in general international, national or regional economic or financial conditions, and that does not have a disproportionate impact on the Project, as compared to similar electric transmission development projects in the U.S. (including changes in the electric generating, transmission or distribution industry, the wholesale or retail markets for electricity, the general state of the energy industry, including natural gas and natural gas liquid prices, the transmission system, interest rates, outbreak of hostilities, terrorist activities or war), (ii) wholesale or retail prices for transmission capacity or changes in such prices, (iii) any change in Applicable Law or regulatory policy, (iv) effects of weather or meteorological events, (v) strikes, work stoppages or other labor disturbances, or (vi) the execution and delivery of this Agreement, any Ancillary Document or the transactions contemplated thereby, or the announcement of such transactions.

[redacted]

"**Membership Interests**" shall have the meaning given to it in the Recitals of this Agreement.

"**MPSC**" shall mean Missouri Public Service Commission.

"**MPSC Approvals**" shall mean (1) the MPSC Certificate and (2) the MPSC's approval of the change in ownership of the Project to the Buyer.

"**MPSC Certificate**" shall mean a Certificate of Convenience and Necessity or equivalent approval from the MPSC authorizing the construction of the Project.

"**MW**" shall mean megawatts.

"**Notice to Proceed**" shall mean the issuance of a full notice to proceed (or equivalent) for the sustained and significant construction toward the full construction of the Project [redacted].

"**Obtained Permits**" shall have the meaning given to it in Section 4.14.1.

"**Order**" shall mean any order, writ, injunction, Permit, judgment, decree, ruling, assessment, settlement, stipulation, determination or arbitration award of any Governmental Authority or arbitrator.

"**Outside Date**" shall have the meaning given to it in Section 6.3.

"**Party**" or "**Parties**" shall have the meaning given to them in the Preamble to this Agreement.

"**Permit**" shall mean (a) any action, approval, consent, waiver, exemption, variance, franchise, order, judgment, decree, permit, authorization, right, registration, filing, submission, tariff, rate, certification, plan or license of, with or from a Governmental Authority or (b) any required notice to, any declaration of, or with, or any registration by any Governmental Authority.

"**Permit Applications**" shall have the meaning given to it in Section 4.14.2.

"**Permitted Liens**" shall mean (a) Liens for Taxes if the same are not due and delinquent, (b) Liens listed on Schedule 1.1(b) granted by Seller in connection with the procurement of Permits or the procurement of utility agreements and interconnection and transmission rights, (c) as of any time prior to the Closing hereunder, any Liens that are discharged in full before or at the Closing, (d) Liens created by the act or omission of Buyer, (e) zoning, building and other generally applicable land use restrictions which are not violated by the current or proposed use of the Project, (f) any Lien individually or in the aggregate, (i) arising in the ordinary course of business by operation of law that is not yet due or delinquent, and (ii) that does not interfere in any material respect with the Company's ability to locate, construct, operate and maintain the Project; (g) easements, rights of way and similar restrictions of record that do not, individually or in the aggregate, materially interfere with the Company's uses or occupancy of Real Property; (h) zoning ordinances, building codes and other land use regulations regulating the use or occupancy of Real Property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such Real Property and which are not violated by the current use or occupancy of such Real Property or the operation of the Project and that do not interfere in any material respect with the Company's ability to locate, construct, operate and maintain the Project; (i) any matters that would be disclosed by an accurate survey of Real Property that do not, individually or in the aggregate, materially interfere with the Company's present uses or occupancy of such Real Property; (j) other imperfections of title or Liens, which would not materially impair the value of the Real Property to which it relates; and (k) any other Liens created or permitted with the written consent of Buyer in its sole discretion.

"**Person**" shall mean any natural person, corporation, company, voluntary association, limited liability company, partnership, firm, association, joint venture, trust, unincorporated organization, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

"**Pre-Closing Period**" shall have the meaning in Section 4.7.2.

"**Post-Closing Period**" shall have the meaning in Section 4.7.1.

**"Proceeding"** shall mean any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation that is, has been or may in the future be commenced, brought, conducted or heard at law or in equity or before any Governmental Authority or any arbitrator or arbitration panel.

"**Project**" shall have the meaning given to it in the Recitals to this Agreement.

"**Project Assets**" means all of the right, title and interest of Seller, the Company or their Affiliates in and to the property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, related to the Project held by Seller, the Company or their Affiliates (or which such Persons are entitled to hold), including, without limitation, the following:

(a) the Membership Interests and any rights, benefits and interests related thereto or derived therefrom;

(b) the Real Property Documents;

(c) all Contracts, agreements and documents, including the Interconnection Rights;

(d) all Permits and all Permit Applications or renewals thereof pertaining to the Project;

(e) all Books and Records, Reports and Studies, data, books, safety and maintenance manuals, engineering and design plans, blue prints and as-built plans, specifications, procedures and similar items relating to the development, ownership, construction, licensing, leasing, operation, repair or regulation of the Project;

(f) all of the tangible and intangible rights and property material to the Project, including such rights and property pertaining to development, ownership, construction, leasing, licensing, operation, repair or maintenance of the Project;

(g) all insurance benefits, including claims, rights and proceeds, arising from or relating to the Project Assets;

(h) all rights or claims against third parties relating to the Project Assets, whether choate or inchoate, known or unknown, contingent or non-contingent; and

(i) all rights relating to warranty and/or damage payments related to the Project Assets, deposits and prepaid expenses, claims for refunds of utility charges and rights to offset in respect thereof.

"**Project Contract**" shall mean the Contracts that the Company is party to or that Seller or any of its Affiliates is party to in respect of the Project, including the Real Property Documents.

"**Project Insurance Policies**" shall have the meaning given in Section 4.21.

"**Prudent Industry Practices**" shall mean those practices, methods, equipment, specifications, standards and acts and the level of supervision and monitoring of performance as are generally used by those engaged in or approved by a significant portion of the electric power industry for similar transmission facilities of comparable type and complexity in similar locations in the United States that at a particular time in the exercise of good judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Laws, accepted standards of professional care, equipment manufacturer recommendations, safety, environmental protection, economy and expedition. Prudent Industry Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather include a spectrum of possible practices, methods or acts commonly employed in the electric power transmission industry.

"**PUHCA**" shall mean the Public Utility Holding Company Act of 2005, as amended, and the rules and regulations promulgated thereunder.

[redacted]

"**Quarterly Payment Date**" has the meaning given to it in Section 3.1.4.

"**RA Confirmation Date**" has the meaning given to it in Section 6.3.3.

"**Real Property**" shall mean (a) any real property that is, immediately prior to the Effective Date, (i) owned, leased or subleased by the Company or (ii) for which the Company holds an option to acquire fee ownership, a lease or a sublease of real property or an easement, and (b) any real property located within ten (10) miles on either side of the currently identified route of the Project described in Exhibit J attached hereto.

"**Real Property Documents**" shall mean each agreement, deed, permit, instrument, lease, sublease, or document, including any crossing agreements, subordination agreements, purchase agreements or options, which provides the Company with interests in or to the Real Property or that otherwise provides the Company with Real Property rights in furtherance of the Project or to purchase interests in the Real Property.

"**Receiving Party**" shall have the meaning given to it in Section 10.3.

"**Release**" shall mean any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, leaching on or into the Environment or into or out of any property.

filed with any Governmental Authority, including any schedule or attachment thereto, and including any amendment thereof.

"**Third Party Claim**" has the meaning given to it in Section 8.6.

"**Threat of Release**" shall mean a reasonable likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

"**Title Reports**" means any title commitments, preliminary title commitments or reports prepared by any title company with respect to the Real Property.

"**Transaction**" shall have the meaning given to it in Section 2.1.

"**Transfer**" shall mean any direct or indirect transfer, sale, assignment, conveyance, lease or other disposition (whether through a utility investment or otherwise) of all or a portion of the Membership Interests or other direct or indirect equity interests in the owner of the Project [redacted] or any assets of the Project [redacted].

"**Transfer Tax**" shall mean any sales Tax, conveyance Tax, recording Tax, value added Tax, transaction privilege Tax, transaction Tax, conveyance fee, use Tax, stamp Tax, stock transfer Tax or other similar Tax, including any related penalties, interest and additions thereto.

"**Use**" shall mean (a) the actual transmission of electricity across the Project [redacted] or (b) the right to use (by contract or otherwise), any of the transmission capacity of the Project [redacted].

1.2 Construction. A reference to an annex, schedule, exhibit, article or section or other provision shall be, unless otherwise specified, to annexes, schedules, exhibits, articles, sections or other provisions of this Agreement which are incorporated herein by reference; any reference in this Agreement to another agreement, document, Applicable Law or Applicable Permit shall be construed as a reference to that other agreement, document, Applicable Law or Applicable Permit as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated, assigned or otherwise transferred from time to time; any reference in this Agreement to "this Agreement," "herein," "hereof" or "hereunder" shall be deemed to be a reference to this Agreement as a whole and not limited to the particular article, section, schedule, exhibit or provision in which the relevant reference appears and this Agreement as varied, amended, supplemented, substituted, novated, assigned or otherwise transferred from time to time; references to any Party shall, where appropriate, include any successors, transferees and permitted assigns of such Party; references to the term "includes" or "including" shall be deemed to mean "includes, without limitation" or "including, without limitation"; references to "or" shall be deemed to be disjunctive but not necessarily exclusive (*i.e.*, unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or"; all accounting terms not specifically defined

herein shall be construed in accordance with GAAP; and terms defined in this Article 1 shall include the singular as well as the plural.

1.3 The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

## ARTICLE 2
## PURCHASE AND SALE

2.1 Purchase and Sale. On the Closing Date and subject to and upon the terms and conditions of this Agreement, Seller shall irrevocably, unconditionally sell, assign, transfer, convey and deliver to Buyer, and Buyer shall irrevocably and unconditionally purchase, acquire and accept from Seller, all of the Membership Interests, free and clear of all Liens and rights of others (the "Transaction").

2.2 Closing. Subject to the satisfaction (or waiver in writing by Buyer or Seller, as applicable) of all of the conditions precedent set forth in Article 6, the consummation of the Transaction (the "Closing") shall take place at the offices of Buyer, located at One South Wacker Drive, Suite 1800, Chicago, IL 60606, on the date all of the conditions precedent set forth in Article 6 have been satisfied (or waived in writing by Buyer or Seller, as applicable), or at such other time and place as Seller and Buyer may mutually agree in writing (the "Closing Date").

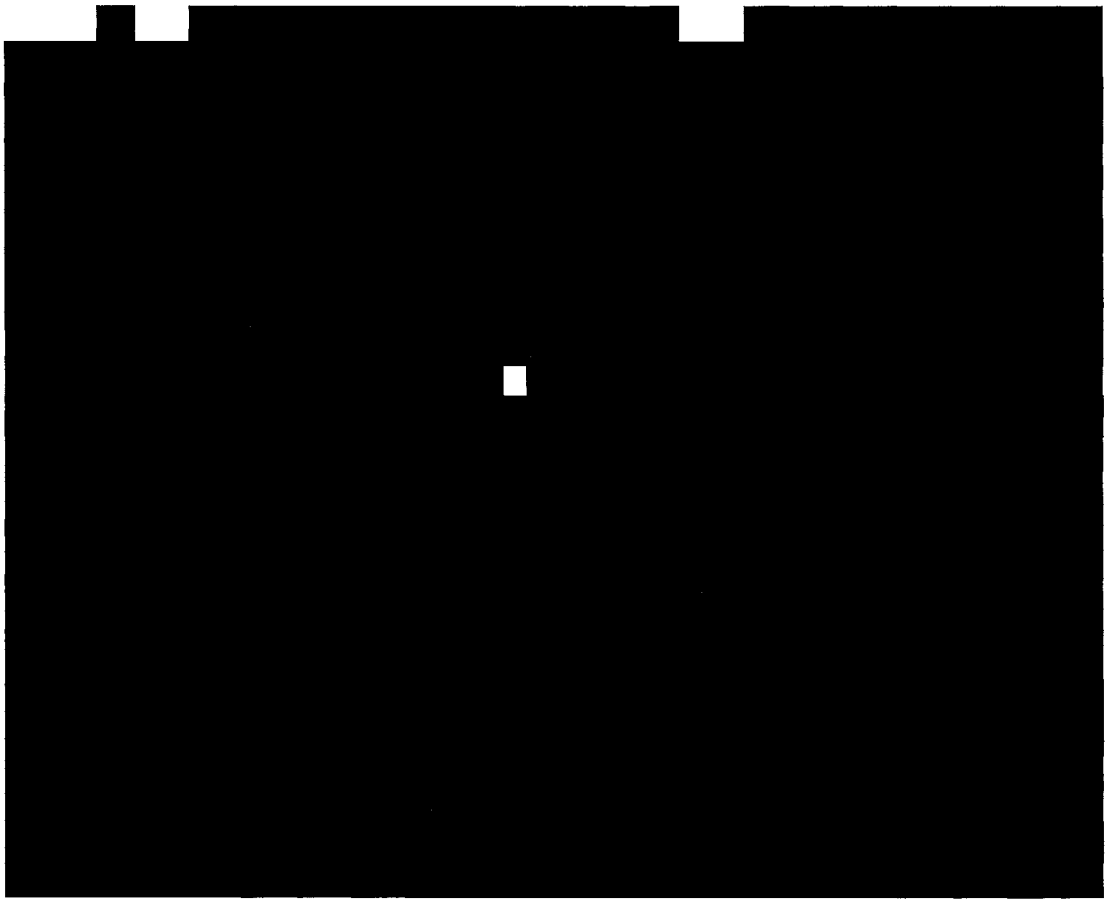
## ARTICLE 3
## PURCHASE PRICE AND PAYMENT

3.1 Purchase Price. Upon the terms and subject to the conditions set forth in this Agreement, Buyer shall make payment to Seller by wire transfer of immediately available funds to the accounts specified in writing by Seller for such purpose, as follows:

[redacted]

and delivered via, the Project, and the calculation of any Subscription Payment and any STS Payments made pursuant to this Agreement. Any such audit(s) shall be undertaken by Seller, or its Representatives, accountants and attorneys, with reasonable frequency, at reasonable times and appropriate locations and in conformance with generally accepted auditing standards. Buyer shall, or shall cause its relevant Affiliates to, cooperate reasonably with any such audit. The costs of any audit shall be paid by Seller, unless the audit reveals a discrepancy or discrepancies in excess of five percent (5%) of the amounts reported in favor of Seller, in which case, Buyer shall pay the reasonable and documented costs of the audit. If the Parties agree that a supplemental Subscription Payment or STS Payment is due to Seller (as a result of information revealed by the audit, Buyer's error or otherwise), then Buyer shall make (or cause its relevant Affiliate to make) such payment to Seller within ten (10) Business Days of such agreement. If Buyer, in good faith, disputes any supplemental amount claimed due pursuant to an audit hereunder or other claim of error by Seller, Buyer shall notify Seller of the specific basis for the dispute and Buyer shall pay that portion of supplemental Subscription Payment or STS Payment, as applicable, that is undisputed, if any, on or before the due date.

3.2 Manner of Payment. Unless otherwise directed by Seller, Buyer shall pay the amounts due hereunder to Seller by wiring the applicable amounts in immediately available funds to the account designated by Seller on Schedule 3.2.



[redacted]

3.4 Transfer Taxes; Fees. Seller shall timely pay all Transfer Taxes and filing fees associated with the Transaction. If Seller does not timely pay any such amounts, Buyer may pay such amounts directly, and Seller agrees to promptly reimburse Buyer for any such amounts paid by Buyer. If Seller does not promptly reimburse Buyer for any such amounts, Buyer may setoff such amounts against any obligations of Buyer to Seller.

## ARTICLE 4
## REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Schedules, Seller hereby represents and warrants to Buyer (x) that the statements contained in this Article IV (excepting Section 4.24) are true and correct as of the Effective Date and (y) that the statements contained the Fundamental Representations in this Article IV, Section 4.19, and Section 4.24, and to Seller's Knowledge, Section 4.7, Section 4.9 and Section 4.10, (collectively, the representations referenced in this clause (y), "**Seller's Closing Date Reps**") are true and correct as of the Closing Date:

4.1 Organization. Each of Seller and the Company (a) has been duly formed, is validly existing and is in good standing under its jurisdiction of formation and (b) has been duly qualified to do business in and is in good standing in all jurisdictions in which its properties (or the character of its business) require such qualification, except where the failure to be so qualified would not materially affect its ability to perform such actions.

4.2 Authority. Seller has the requisite power and authority to own the Membership Interests, to execute and deliver this Agreement and the Ancillary Documents and to perform fully its obligations hereunder and thereunder and under the Project Contracts and Permits to which it is a party, including transferring, or causing the transfer of, the Membership Interests to Buyer. Company has the requisite power and authority to carry on its business as currently conducted.

4.3 Title to Membership Interests.

4.3.1 Seller is the lawful record and beneficial owner of the Membership Interests constituting one hundred percent (100%) of the issued and outstanding ownership, equity and voting interests in the Company. Seller owns the Membership Interests free and clear of all Liens except for applicable restrictions on transfer under federal and state securities laws.

4.3.2 There are no outstanding warrants, options, rights, or other securities, agreements, subscriptions or other commitments, arrangements or undertakings pursuant to which any Person is or may become obligated to issue, deliver or sell, or cause to be issued, delivered or sold, any additional ownership, equity or voting interests or other securities of the Company or to issue, grant, extend or enter into any such warrant, option, right security, agreement, subscription or other commitment, arrangement or undertaking.

4.3.3 There are no outstanding options, rights or other securities, agreements or other commitments, arrangements or undertakings pursuant to which the Company is or may become obligated to redeem, repurchase, or otherwise acquire or retire any Membership Interests or other securities of the Company or any securities of the type described in this Section 4.3.3, which are presently outstanding or which the Company is currently obligated to issue in the future.

4.3.4 There are no outstanding options, rights, or other securities, agreements or other commitments, arrangements or undertakings pursuant to which the Seller is or may become obligated to sell, transfer or assign any portion of the Membership Interests, or any securities of the type described in this Section 4.3.4 with respect to the Company, which are presently outstanding or which the Company is currently obligated to issue in the future.

4.3.5 There are no Contracts relating to the voting of the Membership Interests.

4.3.6 The Company is not obligated to make any distributions with respect to any Membership Interests.

4.4 Binding Effect. Seller has taken all necessary limited liability company action to authorize, effect and approve the transactions set forth in this Agreement and the Ancillary Documents, including transferring the Membership Interests to Buyer. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity). Upon the execution and delivery by Seller or the Company of the Ancillary Documents to which it is a party, each such Ancillary Document will constitute the legal, valid and binding obligation of Seller or the Company, as applicable, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity).

4.5 No Violations. Seller's execution and delivery of this Agreement and the execution and delivery by Seller and the Company of the Ancillary Documents, together with the consummation and performance of their obligations hereunder and thereunder (including causing the transfer of the Membership Interests to Buyer) do not (a) conflict with or violate the organizational documents of Seller or the Company, (b) conflict with or violate or constitute a default or trigger any "change of control" rights, remedies under, or impose or create any Lien, acceleration of remedies, any buy-out right or any rights of first offer or refusal or of termination under any Project Contract, (c) conflict with or violate any Applicable Law or Order applicable to Seller, the Company, or any of their properties or assets, including the Project Assets or (d) require the consent or approval of

any Person, which has not already been obtained or will be obtained on or prior to the Closing Date and shall be delivered to Buyer prior to the Closing.

4.6 Project Assets.

4.6.1 Schedule 1.1(a) is a true, correct and complete list of all material Project Assets. To Seller's Knowledge, the Company has good, marketable and indefeasible title to all the Project Assets listed on Schedule 1.1(a), subject to any Permitted Liens.

4.6.2 Except as set forth on Schedule 4.6.2(i), to Seller's Knowledge, there are no condemnation or other land use proceedings by or before any Governmental Authority, now pending or threatened with respect to the Project, or any portion thereof, material to the development, construction, leasing, licensing, ownership, operation or maintenance of the Project that would adversely affect, interfere with or alter in any material respect the use of the Real Property or the development of the Project nor has Seller, the Company or any of their Affiliates received written notice of any pending special assessment proceedings affecting any portion of the Real Property which propose to impose new special assessments upon the Real Property or any portion thereof. Except as set forth on Schedule 4.6(ii), none of Seller, the Company or any of their Affiliates has received written notice of any proposals, plans, studies, or investigations of any Governmental Authority which has or could reasonably be expected to have a Material Adverse Effect.

4.6.3 Exhibit J provides a map identifying the Real Property and Schedule 4.6.3 is a true, correct and complete list of the Real Property Documents to which the Company is a party.

4.6.4 With respect to each of the Real Property Documents:

(a) each Real Property Document is legal, valid, binding, and enforceable against the Company and, to Seller's Knowledge, each other party thereto, in accordance with its terms;

(b) to Seller's Knowledge, each Real Property Document is in full force and effect and no defaults have occurred and are continuing thereunder, and no event has occurred which, with or without notice or lapse of time or both, would constitute a breach or default thereunder or permit termination, modification or acceleration by any party under any such Real Property Document, and, to Seller's Knowledge, neither Seller nor the Company has received from, or given to, any counterparty thereto any written notification that any event has occurred which (whether with or without notice, lapse of time or both) would constitute a material breach or default thereunder;

(c) true, correct and complete copies of the Real Property Documents and all amendments to any of the Real Property Documents have been Made Available to Buyer;

(d) no Real Property Document has been materially amended, modified or supplemented except as described in Schedule 4.6.3;

(e) all amounts due and payable by the Company through the Effective Date under any Real Property Document have been fully paid, and no counterparty to any such Real Property Document has any right to offsets or defenses in connection therewith;

(f) neither Seller nor the Company is required to deliver to any landowner or any other Person any letter of credit, cash deposit or any similar financial assurance under any Real Property Document;

(g) the Company is a party to each of the Real Property Documents and has not assigned or transferred all or any of its interests under the Real Property Documents to any Person; and

(h) there are no disputes, oral agreements or forbearance programs as to any of the Real Property Documents.

4.6.5 Except as set forth on Schedule 4.6.5, there are no commitments or agreements between Seller, the Company or any of their Affiliates and any Governmental Authority or public or private utility affecting the Real Property, or any portion thereof, or any improvements, the Obtained Permits or the Permit Applications.

4.6.6 Other than amounts payable pursuant to the Real Property Documents and applicable federal, state and local Taxes, there are no rents, royalties, fees, Taxes or other amounts payable or receivable by Seller or the Company in connection with any of the Real Property Documents.

4.6.7 Except for Clean Line Energy Partners, LLC, no Persons that are Affiliates of Seller (other than the Company) are involved in the development of the Project. No Affiliate of Seller (other than the Company) is party to any Project Contract.

4.6.8 There are no existing or continuing claims against the Project or the Project Assets by any prior developers of the Project (or partners of or investors in Seller, the Company, or any of their Affiliates).

4.6.9 Neither Seller nor the Company has used or operated under any other name, including a "doing business as" name or title. At no time during its existence has the Company had any subsidiaries, and the Company does not hold equity interests, directly or indirectly, in any other Person or have any obligation to acquire equity interests in any other Person and is not a participant in any joint venture, partnership or similar arrangement.

4.6.10 The Company does not hold any assets, is not party to any Contracts or other obligations, and has no Liabilities other than those related to the development of the Project. Since its formation, the Company does not conduct, and has

never conducted, (a) any business other than the development or ownership of the Project, or (b) any operations other than those incidental to the development or ownership of the Project. The Company has not incurred any capital expense or acquired any real or personal property other than as specifically related to the Project.

4.7 Taxes.

4.7.1 Buyer shall not be liable for Taxes of Seller except: (i) as set forth on Schedule 4.7 and (ii) for Taxes due on or after the Closing Date (the "**Post-Closing Period**").

4.7.2 All material Tax Returns required to have been filed by or with respect to Seller, the Company, the Project and the Project Assets have been duly and timely filed (or, if due between the date hereof and the Closing Date (the "**Pre-Closing Period**"), will be duly and timely filed), and each such Tax Return was true correct and complete in all material respects. All Taxes required to be paid by Seller, the Company or with respect to the Project or any of the Project Assets (whether or not shown or required to be shown on any Tax Return) during the Pre-Closing period have been, or will be duly and timely paid. Each of Seller and the Company has adequately provided for and fully accrued, in its books of account and related records, liability for all Taxes relating to the Pre-Closing Period, even if not yet due and payable.

4.7.3 There is no action or audit now pending, threatened, or to Seller's Knowledge, proposed action or audit against, or with respect to, Seller, the Company, the Project or any of the Project Assets in respect of any Taxes. Neither Seller nor the Company is the beneficiary of any extension of time within which to file any Tax Return, nor has Seller or the Company made (or had made on its behalf) any requests for such extensions. There are no Liens (except Permitted Liens) for Taxes on any of the Project Assets. Neither the Seller nor the Company has commenced a voluntary disclosure proceeding in any state or local or non-U.S. jurisdiction that has not been fully resolved or settled.

4.7.4 Each of Seller and the Company has withheld and paid all material Taxes required to be withheld or collected by the Company in a timely manner, and has complied in all material respects with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto.

4.7.5 There is no dispute or claim concerning any liability for Taxes with respect to Seller, the Company or the Project Assets for which written notice has been provided, threatened or asserted, or which is otherwise Known to Seller. No issues have been raised in any examination by any Governmental Authority with respect to Seller or the Company that, by application of similar principles, reasonably could be expected to result in a proposed deficiency for any other Tax period of such Person not so examined for which the statute of limitations has not closed. Neither Seller nor the Company has waived (and is not subject to a waiver of) any statute of limitations in respect of Taxes or agreed to (and is not subject to) any extension of time with respect to a Tax assessment or deficiency.

4.7.6 Except as provided in Schedules 4.6.5 and 4.7, neither Seller nor the Company has received (or is subject to) any ruling from any Governmental Authority or entered into (or is subject to) any agreement with a Governmental Authority with respect to Taxes (other than with respect to property Taxes unrelated to the Project).

4.7.7 None of Seller, the Company or any of their Affiliates is party to any Tax allocation or sharing agreement.

4.7.8 For purposes of Section 1445(b)(2) of the Code, neither Seller nor the Company is a "foreign person" as defined in Section 1445(f)(3) of the Code.

4.7.9 Neither the Seller nor the Company has received a material Tax holiday or Tax incentive or grant in any jurisdiction that based on applicable Law could be subject to recapture at or following the Closing.

4.7.10 The Company has never been a party to any "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code or Treasury Regulation Section 1.6011-4.

4.7.11 Each of Seller and the Company is treated as a "disregarded entity" for U.S. federal income tax purposes pursuant to Treasury Regulation Section 301.7701-3(b)(1)(ii) and has been at all times since its formation a "disregarded entity" for federal income tax purposes and applicable state and local income tax purposes and no elections have been filed with the IRS or with any state or other jurisdiction to treat either Seller or the Company as an association taxable as a corporation.

4.8 Consents and Approvals. Except as set forth on Schedule 4.8, neither Seller nor the Company is, nor will Seller or the Company be, required to give any notice or obtain any consent, approval, order or authorization of or registration, declaration or filing with or exemption from (collectively, the "Seller Consents and Approvals") any Governmental Authority or any other Person in connection with the execution and delivery of this Agreement or the Ancillary Documents or the consummation of the transfer of the Membership Interests to Buyer.

4.9 Compliance with Law. The Company has complied in all material respects with all Applicable Laws and Orders, and neither Seller nor the Company has received any written notice of any non-compliance with, or any violation of, any Applicable Law or Order. To Seller's Knowledge, Seller and each of Seller's Affiliates have complied in all material respects with all Applicable Laws and Orders related to the Project Assets and the Project, and Seller has no Knowledge of any non-compliance with, or any violation of, any Applicable Law or Order by Seller or any of Seller's Affiliates (including the Company).

4.10 Litigation. Except as set forth in Schedule 4.10, none of Seller, the Company and any of their Affiliates has received written notice of any Proceeding, and there is no Proceeding pending or, to Seller's Knowledge, threatened in writing against

Seller related to the Project, the Company or that relates in any way to the Project, this Agreement or the Ancillary Documents or any Project Assets.

4.11 Project Contracts.

4.11.1 Schedule 4.11.1 is a true, correct and complete list of the Project Contracts, and there has not been any amendment, waiver or termination of any Project Contract other than as set forth on such Schedule 4.11.1.

4.11.2 Each Project Contract has been duly authorized, executed and delivered as applicable by the Company, Seller, and their Affiliates, and constitutes a legal, valid, binding and enforceable agreement of such Person, and, to Seller's Knowledge, the respective counterparties thereto, and will not be rendered invalid or unenforceable as a result of the transactions contemplated by this Agreement and the Ancillary Documents, except, in each case, as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and subject to general equitable principles.

4.11.3 None of the Company, Seller or any of their Affiliates, or, to Seller's Knowledge, any other Person, is in material breach of or in default under any Project Contract to which such Person is a party, and no event has occurred which with the passage of time or giving of notice or both would constitute such a default, result in a loss of material rights or permit termination or acceleration under, or result in the creation of any Lien under any Project Contract. None of the Company, Seller or any of their Affiliates has waived any of its material rights under any Project Contract.

4.11.4 True, correct and complete copies of all Project Contracts have been Made Available to Buyer.

4.12 Financial Statements; No Undisclosed Liabilities.

4.12.1 Financial Statements. Seller has Made Available to Buyer true and correct copies of the Company's unaudited balance sheet (the "Balance Sheet") as of the Balance Sheet Date, and the related unaudited statement of income and cash flows for the year-to-date period then ended, each certified by an officer or authorized representative of the Company (together with the Balance Sheet, the "Financial Statements"). The Financial Statements (a) have been prepared in accordance with GAAP (or are accompanied by GAAP reconciliations, other than footnotes), using the same accounting principles, policies and methods as have been historically used in connection with the calculation of the items reflected thereon, and (b) present fairly in all material respects the financial condition of the Company as of the Balance Sheet Date.

4.12.2 No Undisclosed Liabilities. The Company has no Liability that would be required to be disclosed in a balance sheet prepared in accordance with GAAP, except Liabilities (a) under Project Contracts, (b) reflected or reserved in the Financial Statements, or (c) incurred pursuant to this Agreement.

4.13 Environmental Matters.

4.13.1 Except as provided in Schedule 4.13.1, neither Seller nor the Company is subject to any binding and enforceable orders issued by a court or Governmental Authority with jurisdiction over the Project or applicable Real Property, or any consent decree with such a Governmental Authority, in each case relating to protection of the Environment related to the Project: (a) including any requirements related to soil, environmental, cultural, habitat, water or geologic resources, (b) including any requirements related to Releases of petroleum and petroleum-derived products, pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes (collectively, "Hazardous Substances"), (c) relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Substances, or (d) including the requirements set forth in Environmental Laws.

4.13.2 There are no pending Environmental Claims or, to Seller's Knowledge, Environmental Claims threatened in writing arising under or pursuant to any Environmental Law or Environmental Permit asserting any actual or potential Environmental Event or violation or future violation of any Environmental Law with respect to or affecting the Project. There are no other pending Environmental Claims or, to Seller's Knowledge, Environmental Claims threatened in writing with respect to or affecting the Project.

4.13.3 Except as set forth in any of the Reports and Studies, none of Seller, the Company, or their Affiliates has and, to Seller's Knowledge, no other Person has made, caused or allowed any (a) Releases of Hazardous Substances which have occurred on the Real Property that is the subject of a Real Property Document, or (b) Releases of Hazardous Substances which have occurred immediately adjacent to the Real Property that is the subject of a Real Property Document, in each case which are or were required to be investigated or reported by Seller, the Company, or their Affiliates, or with respect to the Project or any Project Assets, under any Environmental Law.

4.14 Permits. Part I of Schedule 4.14 includes all Permits obtained by the Company or obtained by Seller or any Seller Affiliate with respect to the Project. Part II of Schedule 4.14 lists all Permits for which the Company has filed applications (but has not yet received Permits) or for which Seller or a Seller Affiliate (other than the Company) has filed applications (but has not yet received Permits) with respect to the Project. Seller has Made Available to Buyer true, correct and complete copies of all applications and Permits listed in Part I and Part II of Schedule 4.14. Each Permit listed on Part I of Schedule 4.14 was validly issued, is in full force and effect and, except as set forth on Part III of Schedule 4.14, is not subject to an appeal or otherwise appealable, and has not been modified, revoked or amended since its issuance.

4.15 Reports and Studies. Seller has Made Available to Buyer true, correct and complete copies of the Reports and Studies listed on Schedule 4.15. Schedule 4.15 includes a list of all material Reports and Studies and all Reports and Studies obtained since the date that is two (2) years prior to the Effective Date. "Reports and Studies"

means reports, studies, and tests prepared by any third party (and all amendments and supplements thereto) related to the Project or the Project Assets, prepared, commissioned by, or delivered or available to, Seller or any Affiliate of Seller, including any such reports, studies and tests that address any of the following matters in connection with the Project: the Real Property, design studies, geotechnical studies, transportation studies, environmental studies, engineering studies, anthropological studies, geotechnical studies, geological studies, cultural resources studies, feasibility studies, air studies, transmission or interconnection studies, flora and fauna studies, wildlife studies (including endangered or threatened species), state department of transportation analyses, zoning studies, and visual impact studies.

4.16 Brokers or Finders. Except as set forth on Schedule 4.16, none of Seller, the Company and any of their Affiliates has engaged any broker, finder or other agent with respect to the transactions contemplated by this Agreement and the Ancillary Documents, any sale or financing of the Project, for which Buyer or the Project could become, or are, liable or obligated and no broker, finder or other agent is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement.

4.17 Regulatory Matters.

4.17.1 Neither Seller nor the Company is an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act of 1940.

4.17.2 Each of Seller and the Company is in compliance with PUHCA and the FPA, to the extent applicable. Neither Seller nor the Company is a "public utility" as that term is defined under Section 201(e) of the FPA or a "transmitting utility" as that term is defined under Section 3(24) of the FPA. Neither Seller nor the Company is (a) a "public-utility company," (b) a "holding company" of any "public-utility company," or (c) a "subsidiary company" of a "holding company" or any "public-utility company" under PUHCA.

4.17.3 Other than as regulated by the energy or public utility regulatory commissions in Kansas, Illinois, Indiana or Missouri or by any local governmental agencies or bodies in those states, neither Seller nor the Company is subject to regulation as a "public utility" or an "electrical corporation" or an "electric utility" or any equivalent entity under state or local laws and regulations governing such entities.

4.18 Intellectual Property.

4.18.1 None of Seller, the Company or any of their Affiliates has any Intellectual Property necessary for the development or use of the Project.

4.18.2 To Seller's Knowledge, neither Seller nor the Company has (a) infringed upon or misappropriated any Intellectual Property rights of any Person or (b) received any written charge, complaint, claim, demand, or notice alleging any such

interference, infringement, misappropriation, or violation (including any written claim that a Person must license or refrain from using any Intellectual Property rights of any such Person in connection with the Project).

4.19 Solvency. No petition or notice has been presented, no order has been presented, no order has been made and no resolution has been passed for the bankruptcy, liquidation, winding-up or dissolution of Seller, the Company or any Affiliate of Seller. No receiver, trustee, custodian or similar fiduciary has been appointed over the whole or any part of the Project Assets or the income of Seller, the Company or any Affiliate of Seller, nor does Seller or the Company have any plan or intention of, or have received any notice that any other Person has any plan or intention of, filing, making or obtaining any such petition, notice, order or resolution seeking the appointment of a receiver, trustee, custodian or similar fiduciary. Each of Seller and the Company is solvent and has sufficient assets and capital to carry on its businesses as now conducted and to perform its obligations hereunder.

4.20 Support Obligations. Except as set forth on Schedule 4.20, no Support Obligations have been issued or posted for the account of the Company.

4.21 Insurance. Schedule 4.21 sets forth a list, as of the date hereof, of all insurance policies maintained by Seller or the Company that insure the Company, the Project or the Company Assets (the "**Project Insurance Policies**"). Such Project Insurance Policies are (a) in full force and effect, all premiums with respect thereto covering all periods up to and including the date as of which this representation is being made have been paid (other than retroactive premiums which may be payable with respect to comprehensive general liability insurance policies), and (b) no notice of cancellation or termination has been received by the owner or holder of any such Project Insurance Policy with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. Except as set forth on Schedule 4.21, there are no pending claims under the Project Insurance Policies and no Project Insurance Policy provides for any retrospective premium adjustment or other experience-based liability on the part of Seller or the Company.

4.22 Employees; Benefit Plans; Labor Matters.

4.22.1 The Company does not have, nor has it ever had, any employees.

4.22.2 The Company has never sponsored, maintained or contributed to any Benefit Plan. There do not exist now, nor do any circumstances exist that reasonably could be expected to impose, any Liability on the Company with respect to any Benefit Plan that any Person maintains or in the past maintained (or to which such Person ever contributed or was required to contribute) if such Person, together with the Company, could be deemed a single employer within the meaning of Section 4001(b) of ERISA.

4.22.3 The Company is not nor has ever been a party to any collective bargaining agreement or other labor Contract. There has not been, there is not now pending or existing, and, to Seller's Knowledge, there is not threatened, any strike,

slowdown, picketing, work stoppage, employee grievance process, organizational activity, or other material labor dispute involving the Project, or the Company.

4.23 Information. Seller has disclosed and made available to Buyer all material information related to the Project and Known to Seller and to which Seller acquired Knowledge within the two (2) years immediately preceding the Effective Date. To Seller's Knowledge, there is no information Seller has not disclosed to Buyer, or that is not Known by Buyer, that could reasonably be expected to have a Material Adverse Effect.

4.24 Interim Period Information. As of the Closing Date, to Seller's Knowledge, there is no information Known to Seller and to which Seller acquired Knowledge during the Interim Period that Seller has not disclosed to Buyer, or that is not Known by Buyer, and that could reasonably be expected to have a Material Adverse Effect.

4.25 No Other Representations and Warranties. Except for the representations and warranties contained in this Article IV (including the related portions of the Disclosure Schedules), none of the Seller, the Company or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Seller, the Company or their Subsidiaries, including as to the future revenue, profitability or success of the Company or the Project.

## ARTICLE 5
## REPRESENTATIONS AND WARRANTIES OF BUYER

As of the Effective Date and the Closing Date, Buyer hereby represents and warrants to Seller the following:

5.1 Organization. Buyer (a) has been duly incorporated, is validly existing and is in good standing under its jurisdiction of formation and (b) has been duly qualified to do business in and is in good standing in all jurisdictions in which its properties (or the character of its business) requires such qualification.

5.2 Authority. Buyer has the requisite power and authority to execute and deliver this Agreement and to perform fully its obligations hereunder.

5.3 No Violations. Buyer's execution and delivery of this Agreement, together with the performance of its obligations hereunder do not (a) violate the organizational documents of Buyer, (b) violate or constitute a default under any material agreement or instrument to which Buyer is a party or by which Buyer may be bound, (c) violate any Applicable Law, order, writ, injunction, decree, statute, rule or regulation applicable to Buyer, or its properties or assets, or (d) as of the Closing Date, require the consent or approval of any Person, which has not already been obtained or which, if not obtained, could reasonably be expected to have a material adverse effect on Buyer's ability to consummate the Transaction.

5.4 Binding Effect. As of the Effective Date, Buyer has taken all corporate action necessary as of the Effective Date to authorize, effect and approve the transactions set forth herein. As of the Closing Date, Buyer has taken all corporate action necessary as of the Closing Date to authorize, effect and approve the transactions set forth herein. This Agreement has been duly executed and delivered by Buyer and constitutes a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity).

5.6 Brokers or Finders. Buyer has not engaged any broker, finder or other agent with respect to the transactions contemplated by this Agreement, any purchase or financing of the Project for which Seller could become, or is, liable or obligated and no broker, finder or other agent is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement.

5.7 Investment Purpose. Buyer is acquiring the Membership Interests solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any public distribution thereof. Buyer acknowledges that the Membership Interests are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the Membership Interests may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable.

5.8 Sufficiency of Funds. Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the amount payable by Buyer to Seller as and when required pursuant to Section 3.1.1.

5.9 Legal Proceedings. Buyer has not received written notice of any Proceeding, and there is no Proceeding pending or, to Buyer's knowledge, threatened in writing against Buyer which seeks a writ, judgment, order, injunction or decree restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated under this Agreement or the Ancillary Documents.

5.10 No other Representations and Warranties. Notwithstanding anything to the contrary contained in this Agreement, Seller agrees that Buyer is making no

representation or warranty whatsoever, express or implied, except those applicable representations and warranties contained in this Article 5.

## ARTICLE 6
## CONDITIONS PRECEDENT

6.1 Conditions Precedent.

6.1.1 Conditions Precedent to Buyer's Obligation to Close. The obligations of Buyer to consummate the Transaction and take the other actions required to be taken by Buyer on or prior to the Closing Date are subject to the satisfaction of each of the following conditions (except to the extent waived in writing by Buyer) on or prior to the Closing Date:

(a) Representations and Warranties. All of the representations and warranties of Seller in this Agreement shall have been true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representations or warranty not qualified by materiality or Material Adverse Effect) on and as of the Effective Date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). All of Seller's Closing Date Reps shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representations or warranty not qualified by materiality or Material Adverse Effect) on and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). Other than Seller's Closing Date Reps, the representations and warranties of Seller in Article 4 of this Agreement shall be true and correct in all respects as of the Closing Date (except for those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not reasonably be expected to have a Material Adverse Effect. Notwithstanding anything to the contrary, all of Seller's representations and warranties shall be modified, if applicable, pursuant to the terms of Section 7.9 hereof.

(b) Covenants. Seller shall have performed and complied with all agreements and covenants required by this Agreement to be performed or complied with by Seller prior to or on the Closing Date.

(c) Closing Deliverables. Seller shall have delivered or caused to be delivered to Buyer the following:

(i) the Assignment of Membership Interests duly executed by Seller;

(ii) a certificate of an appropriate officer of Seller in the form attached hereto as Exhibit C, dated as of the Closing Date, certifying to the effect of clauses (a) and (b) of this Section 6.1.1;

(iii) a certificate of the secretary of Seller, dated as of the Closing Date, in the form of Exhibit C, certifying as to and, as applicable, attaching copies of (i) the organizational documents of Seller and the Company, (ii) resolutions authorizing the execution, delivery and performance of this Agreement and each Ancillary Document to which Seller or the Company is a party and the consummation by Seller of the transactions contemplated hereby and thereby, (iii) the incumbency of the officers of Seller executing this Agreement and the Ancillary Documents to be executed by Seller on the Closing Date as contemplated herein; and (iv) good standing certificates of the Company and Seller, dated no earlier than five (5) Business Days prior to the Closing Date;

(iv) a certificate from Seller, in the form of Exhibit E, as to the non-foreign status of Seller, satisfying in all respects the requirements of Section 1.1145-(2)(b)(2) of the Treasury Regulations;

(v) evidence that all of the Project Assets that were not in the name of the Company as of the Effective Date have been duly transferred to the Company on terms reasonably acceptable to Buyer and that all third-party consents to effect any such transfer have been obtained, in each case, in form and substance reasonably acceptable to Buyer;

(vi) copies of all Real Property Documents, and, to the extent in Seller's possession, originals of all Real Property Documents, and, to the extent in Seller's possession, copies of any Title Reports or Surveys;

(vii) copies of all Project Contracts, Obtained Permits, Permit Applications, Books and Records (that are in Seller's possession), Reports and Studies; and

(viii) such other certificates, instruments or documents required by the provisions of this Agreement or otherwise necessary or appropriate to transfer the Membership Interests in accordance with the terms hereof and consummate the Transaction, and to vest in Buyer or its Affiliates and its or their successors and assigns full, complete, absolute, legal and equitable title to the Membership Interests, free and clear of all Liens.

(d) No Liens. Buyer shall have received the results through a date that is within ten (10) Business Days of the Closing Date (or through such earlier date as Buyer may agree, in its sole discretion), of: (i) searches of the UCC records of the applicable Secretaries of State against Seller, Company and any other person or entity from whom Seller or Company acquired the Project Assets, evidencing that no UCC financing statements have been filed against (A) Seller in respect of the Membership Interests, or (B) any of the Project Assets; and (ii) Tax Lien, judgment and litigation

searches and searches of any other appropriate records that Buyer reasonably and timely requests of Seller in Kansas, Missouri, Indiana and Illinois evidencing that no other Lien exists against the Membership Interests and that no other Lien (other than a Permitted Lien) exists against any of the Project Assets.

(e) Material Adverse Effect. Since the Effective Date, no event or condition has occurred which has or could reasonably be expected to have a Material Adverse Effect that has not ceased to exist prior to the Closing.

(f) Regulatory Approvals. Subject to Buyer's termination rights in Section 6.3.3 below (including that the RA Confirmation Date shall have occurred without termination of this Agreement), each of the MPSC Approvals and the KCC CP Certificate Matters shall have been issued and be effective.

6.1.2 Conditions Precedent to Seller's Obligation to Close. The obligations of Seller to consummate the Transaction and take the other actions required to be taken by Seller on or prior to the Closing Date are subject to the satisfaction of each of the following conditions (except to the extent waived in writing by Seller) on or prior to the Closing Date:

(a) Representations and Warranties. All of the representations and warranties of Buyer in this Agreement shall have be true and correct in all material respects as of the Effective Date and the Closing Date (except, in each case, to the extent that any of representations or warranties relate to an earlier or other specific date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier or other specific date).

(b) Covenants. Buyer shall have performed and complied in with all agreements and covenants required by this Agreement to be performed or complied with by Buyer prior to or on the Closing Date.

(c) Closing Deliverables. Buyer shall have delivered or caused to be delivered to Seller the following:

(i) the Assignment of Membership Interests, duly executed by Buyer;

[redacted]

(iii) a certificate of an appropriate officer of Buyer in the form attached hereto as Exhibit F, dated as of the Closing Date, certifying to the effect of clauses (a) and (b) of this Section 6.1.2; and

(iv) a certificate of the secretary of Buyer, dated as of the Closing Date, in the form of Exhibit F, certifying as to and, as applicable, attaching copies of (i) organizational documents of Buyer, (ii) resolutions authorizing the

execution, delivery and performance of this Agreement and each Ancillary Document to which Buyer is a party and the consummation by Buyer of the transactions contemplated hereby and thereby, (iii) the incumbency of the officers of Buyer executing this Agreement and the Ancillary Documents to be executed by Buyer on the Closing Date as contemplated herein; and (iv) a good standing certificate dated no earlier than five (5) Business Days prior to the Closing Date.

(d) Closing Payment. Buyer shall have paid to Seller the Closing Payment.

(e) Consents and Approvals. Buyer shall have obtained the Buyer Consents and Approvals (provided that, if Buyer waives any Buyer Consent or Approval and the Parties are able to consummate the Transaction pursuant to Section 6.1.4, Seller shall be deemed to have waived this condition precedent to Closing).

6.1.3 Conditions to Obligations of Each Party to Close. The respective obligations of each Party to consummate the Transaction and take the other actions required to be taken by each Party on or prior to the Closing Date shall be subject to the satisfaction of the following conditions (unless waived in writing by Buyer or Seller, as applicable): (a) there shall not be in effect any Order issued by any Governmental Authority preventing the consummation of the Transaction, seeking any Damages as a result of the Transaction, or otherwise materially and adversely affecting the right or ability of the Company to develop, construct, own, lease, license, operate or maintain the Project or the Project Assets or of Buyer to acquire the Membership Interests, nor shall any Proceeding be pending that seeks any of the foregoing; and (b) there shall not be any Applicable Law prohibiting Seller from selling the Membership Interests, prohibiting Buyer from acquiring the Membership Interests or prohibiting the Company from developing, constructing, owning, leasing, licensing, operating or maintaining the Project or the Project Assets, or that makes this Agreement or the consummation of the Transaction illegal.

6.1.4 Waiver of Conditions. If a Party's election to waive a condition precedent to Closing in this Section 6.1 (or any portion thereof) and to cause Closing to occur would result in it being unlawful for Seller or the Company to consummate this Transaction, then the Parties shall mutually agree on an approach to consummate the Transaction (which may include Seller or the Company transferring Project Assets or terminating any Contracts or Permits) so that the Transaction can be consummated without violating any applicable laws (and each Party agrees that if there is any approach that allows the Transaction to be consummated without violating any applicable laws, each Party agrees to such approach), but any such transfer of Project Assets or termination of Contracts or Permits shall not affect any of the other terms of this Agreement. If the Closing occurs, then all conditions precedent to such Closing set forth in this Section 6.1 shall be deemed to have been satisfied or waived by the Party benefited by such conditions.

6.2 Obligations Related to Conditions Precedent. Seller shall use commercially reasonable efforts to cause each of the conditions specified in Section 6.1.1

to be satisfied on or before the Outside Date. Buyer shall use commercially reasonable efforts to cause each of the conditions specified in Section 6.1.2 to be satisfied on or before the Outside Date.

6.3 Termination. The obligations of Buyer and Seller to consummate the Transaction may be terminated prior to the Closing by any Party by the delivery by either Party of a written notice to the other Party stating that this Agreement is being terminated, at any time after 11:59 pm (Central Time) on the date that is fifteen (15) months after the Effective Date (which may be extended by agreement of the Parties, the "**Outside Date**"), if by such time all of the conditions precedent set forth in Article 6 have not been satisfied (or waived in writing by Buyer or Seller, as applicable); provided, that the terminating party is not, on the date of termination, in material breach of any provision of this Agreement. If Buyer determines, in its reasonable discretion, that the conditions set forth in Section 6.1.1(c) (Closing Deliverables), Section 6.1.1(e) (Material Adverse Effect) or Section 6.1.1(f) (Regulatory Approvals) cannot be met on or prior to the Outside Date, Buyer shall be entitled to terminate this Agreement by providing written notice to Seller. Notwithstanding anything to the contrary contained in this Agreement, either Buyer or Seller (as indicated below) shall have the right, prior to the Closing Date, to terminate this Agreement if any of the following events shall have occurred prior to the Closing Date:

6.3.1 If all or any material portion of the Project Assets are taken or threatened to be taken by a condemnation, eminent domain or similar Proceeding (a "**Condemnation**"), Seller shall notify Buyer promptly in writing of such fact. Subject to the next sentence, Seller may at its sole option in accordance with Prudent Industry Practices repair or replace any such Project Assets. If such asset is (i) not replaced within seven (7) Business Days after Condemnation and (ii) the exclusion of such asset from the Project Assets could reasonably be expected to have a Material Adverse Effect, then Buyer shall be entitled to terminate this Agreement by providing written notice to Seller and Seller shall be under no obligation to replace or repair such asset.

6.3.2 If, all or any material portion of the Project Assets are expropriated or are the subject of a pending or, to the Knowledge of Seller, contemplated expropriation which has not been consummated, Seller shall notify Buyer promptly in writing of such fact. Subject to the next sentence, Seller shall at its sole option replace or repair any expropriation to the Project Assets in accordance with Prudent Industry Practices. If such expropriation would have a Material Adverse Effect or the Project Assets expropriated have not been repaired or replaced, Buyer shall be entitled to terminate this Agreement by providing written notice to Seller and Seller shall be under no obligation to replace or repair any expropriation.

6.3.3 Buyer shall be permitted to terminate this Agreement by providing written notice to Seller, at any time after the issuance of any of the KCC CP Certificate Matters and the MPSC Approvals and before the date that is within two (2) Business Days after the expiration of the last to expire statutory appeal period that is applicable to the issuance or approval of the MPSC Approvals (by the MPSC) or the KCC CP

Certificate Matters (by the KCC) (such later date, the "**RA Confirmation Date**"), that any of such MPSC Approvals or KCC CP Certificate Matters either (i) includes, with respect to the KCC CP Certificate Matters, a condition imposed by the KCC with respect to the KCC CP Certificate Matters that is not included in the KCC Certificate as of the Effective Date, (ii) includes, with respect to the MPSC Approvals, a condition imposed by the MPSC with respect to the MPSC Approvals that is not included in the conditions that Company agreed to accept in Section IV: Conditions Related to the Project, of the Initial Post-Hearing Brief of Applicant Grain Belt Express Clean Line LLC (MPSC Docket No EA-2016-0358), or (iii) is subject to an actual appeal by any individual or group opposed to the Project. As used in this Section 6.3.3, "statutory appeal period" shall mean, with respect to each of the MPSC Approvals and the KCC CP Certificate Matters, the appeal period prescribed by statute or applicable regulations within which the Company or any other Person may challenge or appeal the approval of such MPSC Approval or such KCC CP Certificate Matter, but shall not include any additional appeal period that may be available to the Company or any other Person that challenges or appeals such approval after the expiration of such initial appeal period. Buyer's written notice delivered pursuant to this Section 6.3.3 shall state the basis upon which Buyer asserts that any of the circumstances in clauses (i), (ii) or (iii) above have occurred. Buyer's failure to terminate this Agreement pursuant to this Section 6.3.3 with respect to any of the MPSC Approvals or KCC CP Certificate Matters on or before the RA Confirmation Date shall constitute Buyer's acceptance of all of the KCC CP Certificate Matters and the MPSC Approvals and Buyer's waiver of its right to terminate this Agreement pursuant to this Section 6.3.3.

6.3.4 If any of the KCC Certificate, the KCC CP Certificate Matters (after their issuance), or the MPSC Approvals (after their issuance) is rescinded or amended (and if such amendment would have a Material Adverse Effect) and was not the result, directly or indirectly, of any action of Buyer or its Affiliates, Buyer shall be entitled to terminate this Agreement by providing written notice to Seller.

6.3.5 If a Governmental Authority shall have issued an Order or taken any other action (which Order the Parties hereto shall use their commercially reasonable efforts to lift) permanently restraining, enjoining or otherwise prohibiting the Transaction and such Order or other action shall have become final and non-appealable, either Party shall be entitled to terminate this Agreement by providing written notice to the other Party.

6.3.6 If a Material Adverse Effect shall have occurred, which (a) cannot be cured on or before ten (10) Business Days after such occurrence and (b) has not been waived by Buyer, then Buyer shall be entitled to terminate this Agreement by providing written notice to Seller.

6.3.7 If Seller or the Company shall become insolvent, or shall suffer or consent to or apply for the appointment of a receiver, trustee, custodian or liquidator of itself or any of its property, or shall generally fail to pay its debts as they become due, or shall make a general assignment for the benefit of creditors; or shall file a voluntary

petition in bankruptcy, or seeking reorganization, in order to effect a plan or other arrangement with creditors or any other relief under the Bankruptcy Reform Act, Title 11 of the United States Code, as amended or recodified from time to time ("**Bankruptcy Code**"), or under any state or federal law granting relief to debtors, whether now or hereafter in effect; or shall file an answer admitting the jurisdiction of the court and the material allegations of any involuntary petition; or shall be adjudicated a bankrupt, or an order for relief shall be entered against such Person by any court of competent jurisdiction under the Bankruptcy Code or any other applicable state or federal law relating to bankruptcy, reorganization or other relief for debtors; then Buyer shall be entitled to terminate this Agreement by providing written notice to Seller.

6.3.8 If the Development Management Agreement [redacted] is rescinded, terminated or rendered unenforceable for any reason, or the Company or Seller is in material default under the Development Management Agreement or [redacted], then Buyer shall be entitled to terminate this Agreement by providing written notice to Seller.

6.3.9 This Agreement may be terminated by Buyer in accordance with Section 7.9.

6.3.10 This Agreement may be terminated by Buyer if Seller is in material default under this Agreement and such default is not cured within thirty (30) days after written notice from Buyer.

6.3.11 This Agreement may be terminated by Seller if Buyer is in material default under this Agreement and such default is not cured within thirty (30) days after written notice from Seller.

6.3.12 This Agreement may be terminated at any time by the mutual written consent of Buyer and Seller.

6.4 Effect of Termination. If this Agreement is terminated pursuant to Section 6.3, all rights and obligations of the Parties hereunder shall terminate and no Party shall have any liability to the other Party, except for the rights and obligations of the Parties in Section 3.3 (*Interconnection Support Obligation*), this Section 6.4 and in Section 7.2.1 (*Payment of Seller Support Costs*), Article 8 (*Survival; Indemnification*), Article 9 *(Notices)*, Sections 10.1 *(Expenses)*, 10.3 *(Confidentiality)*, 10.4 *(Dispute Resolution)*, 10.14 *(Specific Performance)*, and 10.15 *(Public Announcements)*, which shall survive the termination of this Agreement. Notwithstanding anything to the contrary contained herein but subject to Section 7.9 herein, termination of this Agreement pursuant to Section 6.3 shall not release any Party from any liability for any breach by such Party of the terms and provisions of this Agreement prior to such termination.

## ARTICLE 7
## COVENANTS OF BUYER AND SELLER

7.1 Development Management Agreement.

7.1.1 Engagement. Seller and the Company have engaged Buyer to manage the development of the Project during the Interim Period pursuant to and in accordance with the Development Management Agreement. Pursuant to the Development Management Agreement [redacted] during the Interim Period, Buyer shall control, perform, execute and fund the development of the Project, including the Project's day to day activities and affairs, ordinary course matters, significant matters and strategic direction and decisions, all in accordance with and as more fully set forth in the Development Management Agreement. The Development Management Agreement grants Buyer agency authority to perform such activities on behalf of the Project, Seller and the Company, including the authority to execute documents on behalf of, and bind, the Project, Seller and the Company, all in accordance with and as more fully set forth in the Development Management Agreement.

7.1.2 Authority. During the Interim Period, Seller and the Company shall inform interested parties, stake holders, Governmental Authorities (including the MPSC, the KCC and the public utility commissions in Illinois and Indiana) and other third parties of Buyer's pending acquisition of the Project pursuant to this Agreement and Buyer's management of the development of the Project during the Interim Period pursuant to the Development Management Agreement. To the extent consistent with Applicable Law and pursuant to the terms of the Development Management Agreement, Seller and the Company shall direct and inform all such Persons to deal directly with Buyer regarding matters concerning the Project and that Buyer has taken control of the management of the Project.

7.2 Conduct of Business Pending the Closing.

7.2.1 From and after the Effective Date and until the earlier of the Closing Date and the termination of this Agreement pursuant to Section 6.3 (such period, the "Interim Period") and unless Buyer shall otherwise consent or agree in writing, Seller covenants and agrees to (in accordance with and subject to the Development Management Agreement, including Buyer's obligation to pay for the "Seller Support Costs" as defined in the Development Management Agreement): (a) use commercially reasonably efforts to not take any action that could reasonably impair the development of and maintenance the Project, (b) use commercially reasonable efforts to protect the Project and maintain the Project Assets in good repair, (c) maintain insurance coverage in amounts adequate to cover the reasonably anticipated risks of the Company and consistent with Prudent Industry Practices, (d) use commercially reasonable efforts to cause the Company to maintain goodwill with suppliers, contractors, Governmental Authorities, consultants, advisors, any other counterparties to Project Contracts, and any other participants in the Project, (e) provide Buyer prompt notice of any material communication, document or information, and promptly deliver to Buyer any material communications, notices or other documents or writings from any Person, in each case regarding the Project that is received by, or is in the possession of, Seller or the Company and (f) otherwise reasonably cooperate with and support Buyer in the development of the

Project and supply as promptly as practicable Buyer with any additional information or documentary material that is in Seller's possession, and, at Buyer's reasonable request, promptly execute such documents, that may be necessary or helpful to the Project. Buyer agrees that, except for Seller's refusal or failure to make any introductions requested by Buyer to any counterparties to Project Contracts, Governmental Authorities, or other material participants in the Project within a reasonable period of time after Buyer's written request, Seller shall not be in default of its obligation to provide cooperation and support pursuant to this Section 7.2.1 or pursuant to the Development Management Agreement unless Seller fails to provide the requested cooperation and support within a reasonable period of time after Buyer's written request for same pursuant to this Section 7.2.1 or pursuant to the Development Management Agreement and Buyer has agreed to pay (and pays in advance, if required under the circumstances) for any Seller Support Costs that will be incurred in connection with Seller's provision of such cooperation and support, as more particularly set forth in the Development Management Agreement. Except for payment of any Seller Support Costs that Buyer agrees to pay in advance or pay directly to any consultant, contractor or other third party engaged by Seller pursuant to this Section 7.2.1, Buyer shall reimburse Seller for such Seller Support Costs within thirty (30) days after receiving from Seller a request for payment, together with an invoice or other proof of payment by Seller. For clarity, any Seller Support Costs paid by Buyer pursuant to this Agreement or the Development Management Agreement, shall be Development Costs under the Development Management Agreement [redacted].

7.2.2 During the Interim Period, unless Buyer shall otherwise consent, agree in writing or otherwise cause to occur during the Interim Period pursuant to the Development Management Agreement, Seller covenants and agrees not to (and to cause its Affiliates and the Company not to) take any of the following actions:

(a) merge, combine or consolidate with any other entity;

(b) issue, sell or transfer any equity interest in the Company;

(c) acquire (by merger, consolidation or acquisition of stock or assets or otherwise) any corporation, partnership or other business organization or division thereof or collection of assets constituting all or substantially all of a business or business unit;

(d) sell, lease, mortgage, pledge, transfer or otherwise encumber, in whole or in part, any of the Project Assets or allow any of the Project Assets to become subject to any Liens (other than Permitted Liens);

(e) change, alter, amend or modify the corporate or organizational documents of the Company;

(f) enter into any Contracts or arrangements relating to the Project;

(g) undertake any recapitalization, reorganization, liquidation, dissolution, winding up, or not maintain the Company's existence as a limited liability company;

(h) engage in any line of business other than the continued development of the Project;

(i) amend, modify or supplement any Project Contract, Obtained Permit or Permit Application;

(j) enter into any transactions with any Affiliate of Seller relating to the Project;

(k) permit any Project Contract, Obtained Permit or Permit Application to lapse or terminate except at the expiration of its stated term (and in such a circumstance Seller shall timely to apply for a new, renewal or extension of any such Permit in consultation with Buyer);

(l) incur any Liabilities in respect of the Project Assets;

(m) amend any submissions to any Governmental Authority relating to the Project (including any applications for Permits, Permit modifications, or modifications to construction schedules) except in accordance with Section 7.2;

(n) enter into any compromise or settlement of any Proceeding relating to the Company or the Project Assets;

(o) permit any drawings under any Support Obligations, or commit a breach or default under any Support Obligations, or permit any Support Obligations to lapse, expire or be terminated, or make or permit any withdrawals of any Support Obligations posted in connection with any Project Contract;

(p) cancel, waive, release or otherwise compromise any debt or claim or any right of significant value, in each case, in respect of the Company or the Project Assets;

(q) (i) create, incur or assume any Indebtedness for borrowed money; (ii) mortgage, pledge or otherwise encumber, incur or suffer to exist any Lien on any of its properties or assets, except for Permitted Liens, (iii) create or assume any Indebtedness, except accounts payable and other Liabilities incurred under the Contracts, (iv) guaranty any Indebtedness of another Person or enter into any "keep well" or other agreement to maintain any financial condition of another Person, or (v) make any loans, advances or capital contributions to, or investments in, any other Person;

(r) redeem or repurchase, directly or indirectly, any equity interests of the Company or declare, set aside or pay any dividends or make any other

distributions, except cash distributions, with respect to any equity interest in the Company;

(s) institute any Proceeding relating to the Project;

(t) hire any employee or adopt a Benefit Plan or incur any Liability under a Benefit Plan;

(u) make or change any election concerning Taxes or Tax Returns, change an annual accounting period, adopt or change any accounting method, file any amended Tax Return, enter into any closing agreement with respect to Taxes, settle any Tax claim or assessment or surrender any right to claim a refund of Taxes or obtain or enter into any Tax ruling, agreement, contract, understanding, arrangement or plan;

(v) make any material change in the accounting methods used by Seller or the Company, except as required by GAAP;

(w) take any affirmative action, or fail to take any reasonable action within its control, as a result of which a Material Adverse Effect is reasonably likely to occur;

(x) take any other action with respect to the Project other than in accordance with this Agreement and the Development Management Agreement; or

(y) commit or agree orally or in writing to do any of the foregoing.

7.3 Commission Approvals.

[redacted]

7.3.2 During the Interim Period and subject to the terms and conditions of the Development Management Agreement (including Buyer's obligation to pay any "Seller Support Costs" as defined therein), (a) to the extent Buyer cannot perform any matter with respect to the Commission Approvals directly, Seller and the Company agree

to reasonably cooperate and support Buyer's direction regarding such matter, including by executing and delivering such documents reasonably necessary or helpful to such matter, (b) inform Buyer of any material communication received by Seller or the Company from any Governmental Authority with respect to the Commission Approvals and, to the extent Seller receives any other filings, material communications or notices from any Governmental Authority or other Person with respect to the Commission Approvals, deliver copies of such materials to Buyer, (c) cooperate in good faith with Buyer and the applicable Governmental Authorities and provide such information and communications to Buyer and such Governmental Authorities as Buyer and such Governmental Authorities may reasonably request in connection with the Commission Approvals and (d) otherwise reasonably cooperate with and support Buyer in the pursuit of the Commission Approvals and supply as practicable Buyer with any additional information or documentary material as Buyer may reasonably request in connection with the Commission Approvals, and, at Buyer's reasonable request, promptly execute such documents, that may be reasonably necessary or helpful to the Commission Approvals.

7.4 Buyer Access.

7.4.1 From and after the Effective Date and until the earlier of the Closing Date and the termination of this Agreement pursuant to Section 6.3, Seller shall, and shall cause the Company and its other Affiliates to, (a) provide Buyer and its Representatives, accompanied by a Representative of Seller, reasonable access to the Real Property to inspect the Project, (b) provide Buyer, promptly upon receipt by Seller or Company, copies of all newly available material documents, reports, studies, contracts, permits, licenses, governmental approvals, specifications, data, other tangible or electronic items regarding the Project, and (c) make reasonably available to Buyer (at Buyer's request) all consultants and advisors to Seller or Company who have performed or are performing work related to the Project. Seller shall, and shall cause Company to, use reasonable efforts to procure any and all consents required to disclose to Buyer, any additional due diligence materials becoming available during such period regarding the Project.

7.4.2 From and after the Effective Date and until the earlier of the Closing Date and the termination of this Agreement pursuant to Section 6.3, Seller shall, and shall cause the Company and its other Affiliates to, provide Buyer and its Representatives with reasonable access, upon reasonable prior notice and during normal business hours, to the Books and Records of Seller pertaining to the Project and any of the Project Assets, as well as all Books and Records of the Company; provided, however, that (a) such access does not unreasonably disrupt the normal operations of Seller or the Company, (b) any such access shall be conducted at Buyer's expense and (c) Buyer shall not have access to any individual performance or evaluation records, medical histories or other information that in Seller's reasonable judgment is privileged, sensitive or the disclosure of which would reasonably be expected to subject Seller, the Company or any Affiliate of Seller to risk of material liability. Buyer and Seller agree to conduct meetings as necessary in order to update one another as to on-going matters relating to the development of the Project.

7.4.3 In connection with the access rights granted under this Section 7.3, Buyer agrees to comply with all safety and security obligations of Seller and the Company that are disclosed to Buyer in advance of such access.

[redacted]

7.6 Further Assurances and Cooperation; Non-Compete.

7.6.1 Each Party agrees to execute and deliver, or cause its respective Affiliates to execute and deliver, such further documents and instruments and to take such commercially reasonable further actions after the Closing Date as may be necessary or desirable and reasonably requested by the other Party to give effect to the transactions contemplated by this Agreement.

7.6.2 Following Closing, (a) subject to Section 10.3, Seller shall not, and shall cause its Affiliates, employees, officers and directors to not, materially discuss the Project, its development or any of its affairs with any Person without Buyer's written authorization and (b) Buyer shall be free to hire, contract with or engage any of Seller's or its Affiliates' Representatives or other individual (notwithstanding any agreement to the contrary that Seller or its Affiliates may have with such Representative or other individual) and Seller and its Affiliates shall not be able to restrict in any manner the ability of Buyer or its Affiliates to hire or contract with any individual and no consent from Seller or its Affiliates shall be required for Buyer or its Affiliates to hire or contract with any individual.

7.7 Notification of Completion or Failure of Conditions. Each Party to this Agreement will promptly notify the other Party of any satisfaction or failure of conditions under this Agreement; and each Party shall keep the other Party reasonably apprised with respect to the status of satisfaction of the notifying Party's obligations hereunder.

7.8 Intercompany Obligations. At or prior to the Closing, Seller shall cause all intercompany account obligations (including Indebtedness) between the Company, on the one hand, and Seller or any of its Affiliates (other than the Company), on the other hand, to be settled by either causing such accounts and obligations to be (a) paid and discharged, including by netting of payables and receivables involving the same parties, or (b) cancelled without Seller or the Company paying any consideration therefor. In addition, other than the Ancillary Documents, any Contracts listed on Schedule 7.8, or as otherwise authorized by Buyer prior to the Closing Date, Seller shall cause all intercompany Contracts between the Company, on the one hand, and Seller or any of its Affiliates (other than the Company), on the other hand, to be terminated and (i) neither the Seller, nor any Affiliate of Seller, shall have any surviving rights or obligations under

any Contract between the Company, on the one hand, and Seller or any other Affiliate of Seller (other than the Company) on the other hand and (ii) the Company shall not have any surviving rights or obligations under any such Contract.

7.9 Updated Information. Seller and Buyer each agree that, if at any time during the Interim Period, any event occurs as a result of which its respective representations and warranties contained herein would then include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading, the Party whose representation or warranty is affected shall promptly notify the other Party of the occurrence of the same, which notice shall include all information then available regarding the occurrence and any required updates to the Disclosure Schedules. Buyer may terminate this Agreement upon notice to Seller in the event any such disclosure or update of such Disclosure Schedules made by Seller has or could reasonably be expected to have a Material Adverse Effect and Seller has not cured such matter within thirty (30) days of such notice. During the Interim Period, Seller additionally agrees to promptly notify Buyer of any of the following that occur to Seller's Knowledge (provided that Seller shall have no obligation to notify Buyer of any matter pursuant to this Section 7.9 if such matter is already Known to Buyer): (a) any event or condition that occurs that could reasonably be expected to have a Material Adverse Effect, (b) the institution of any Proceeding with respect to the Project, the Company or Seller or (c) any event or condition that will result in, or could reasonably be expected to result in, the failure of Seller to timely satisfy any of the closing conditions specified in Section 6.1.1 of this Agreement. In the event of Seller's breach of a representation or warranty that is discovered by or disclosed to Buyer during the Interim Period pursuant to this Section 7.9, or Seller's disclosure of an event, condition or other matter pursuant to this Section 7.9 that could reasonably be expected to have a Material Adverse Effect, then Buyer's sole remedy with respect to such a breach or disclosure shall be to terminate this Agreement. [redacted].

7.10 No Negotiation. During the Interim Period, neither Seller nor any of its Affiliates (or its or their agents or Representatives) shall, directly or indirectly: (a) solicit, initiate, or facilitate the making, submission or announcement of any Acquisition Proposal to any Person other than Buyer or an Affiliate of Buyer; (b) furnish any nonpublic information regarding Seller, the Company, the Project, the Project Assets or the terms of or transactions contemplated by this Agreement, to any Person other than Buyer or an Affiliate of Buyer in connection with or in response to an Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal; or (c) engage in discussions or negotiations with any Person other than Buyer or an Affiliate of Buyer with respect to any Acquisition Proposal or an inquiry or indication of interest that could lead to an Acquisition Proposal. In the event Seller, any of its Affiliates, its agents or Representatives receive any Acquisition Proposal by any Person other than Buyer or an Affiliate of Buyer, Seller shall: (i) immediately notify Buyer of

receipt of such Acquisition Proposal; (ii) comply with covenants (a), (b), and (c) of this Section 7.10; and (iii) immediately inform any and all third parties making the Acquisition Proposal of the covenants and prohibitions set forth in this Section.

7.11 Tax Matters. Buyer shall (i) prepare and timely file all Tax Returns that the Company is required under Applicable Laws during the Post-Closing Period and (ii) timely pay all Taxes required to be paid with respect to such Tax Returns. Buyer shall provide Seller with a copy of all Tax Returns of the Company that end on or include the Closing Date within thirty (30) days of filing and shall make such revisions to such Tax Returns that Seller reasonably requests. Seller shall cause an amount equal to any Pre-Closing Taxes paid by Buyer in connection with the filing of such Tax Returns to be paid to Buyer no later than fifteen (15) days after such payment by Buyer. Seller shall provide Buyer with a copy of all Tax Returns of the Company during the Pre-Closing Period. This provision does not apply to income taxes or taxes in lieu of income taxes. For the avoidance of doubt, each party shall file its own income tax return in a manner consistent with Section 7.1.2(u) and pay all taxes associated with such filing as it relates to the Pre-Closing Period and after the Closing Date.

[redacted]

## ARTICLE 8
## SURVIVAL; INDEMNIFICATION

8.1 Survival of Representations, Warranties, Covenants and Agreements. The representations, warranties, covenants, agreements and obligations of Seller and Buyer contained in this Agreement are material, were relied on by such Parties, and will survive the Closing Date as provided in Section 8.4.

8.2 Indemnification by Seller. From and after the Closing Date, subject to the terms and limitations set forth in this Agreement, Seller hereby indemnifies and holds harmless the Buyer Indemnified Parties in respect of, and holds each of them harmless from and against, (a) any and all Losses suffered, incurred or sustained by any of them or to which any of them become subject, resulting from, arising out of or related to any inaccuracy in or breach of any representation, warranty, covenant, agreement or obligation made by Seller in this Agreement, any Ancillary Document or any certificate delivered by Seller pursuant to this Agreement, (b) any Transfer Taxes payable by Seller hereunder, and (c) Taxes of the Company to the extent attributable to any Pre-Closing Tax Period, provided, however, that the foregoing indemnities shall not apply to Losses caused by the gross negligence, fraud or willful misconduct of Buyer or its agents, officers, employees or contractors.

8.3 Indemnification by Buyer. From and after the Closing Date, subject to the terms and limitations set forth in this Agreement, Buyer hereby indemnifies and holds

harmless the Seller Indemnified Parties in respect of, and holds each of them harmless from and against, (a) any and all Losses suffered, incurred or sustained by any of them or to which any of them become subject, resulting from, arising out of or relating to any inaccuracy in or breach of any representation, warranty, covenant, agreement or obligation made by Buyer in this Agreement, any Ancillary Document or any certificate delivered by Buyer pursuant to this Agreement and (b) Taxes of the Company to the extent attributable to any period following the Closing, provided, however, that the foregoing indemnity shall not apply to Losses to the extent caused by the gross negligence, fraud or willful misconduct of Seller or its agents, officers, employees or contractors.

8.4 Period for Making Claims. No claim under this Agreement (except as provided below) may be made unless such Party shall have delivered, with respect to any claim for inaccuracy or breach of any representation, warranty, covenant, agreement or obligation made in this Agreement, a written notice of claim prior to the date falling [redacted] after the Closing Date provided, however, that (i) the Fundamental Representations, and the indemnification obligations for inaccuracies or breaches with respect thereto, shall survive indefinitely following the Closing Date, (b) the representations and warranties in Section 4.7, and the indemnification obligations for inaccuracies or breaches with respect thereto, shall survive the Closing Date until sixty days (60) following the expiration of the applicable statute of limitations, (iii) the representations and warranties in Section 4.13, and the indemnification obligations for inaccuracies or breaches with respect thereto, shall survive the Closing for four (4) years following the Closing Date, and (iv) the covenants, agreements and obligations in this Agreement to be performed shall survive until the date on which they have been fully performed; provided further, that, if written notice for a claim of indemnification has been provided by the Indemnified Party pursuant to Section 8.9.2 on or prior to the applicable survival expiration date, then the obligation of the Indemnifying Party to indemnify the Indemnified Party pursuant to this Article 8 shall survive with respect to such claim until such claim is finally resolved.

8.5 Limitations on Claims.

8.5.1 Neither Party shall have any obligation to indemnify the other Indemnified Party until the aggregate amount of all Losses incurred by such Party that are subject to indemnification pursuant to this Article 8 equals or exceeds [redacted]

[redacted]

8.5.3 Payments by an Indemnifying Party pursuant to Section 8.2 or Section 8.3 in respect of any Loss shall be limited to the amount of any liability or

damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received by the Indemnified Party (or the Company) in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses.

8.5.4 In no event shall any Indemnifying Party be liable to any Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple, except, in each case, in the case of Third Party Claims.

8.5.6 Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

8.5.7 There shall be no limitation on the liability of Buyer or the Company for any of Buyer's or the Company's payment obligations under Section 3.1 of this Agreement and no such payments shall be credited towards achievement of a liability threshold or limitation on liability in this Section 8.5.

8.6 Indemnification Procedure and Third Party Claims. The Indemnifying Party shall assume on behalf of the Indemnified Party and conduct with due diligence and in good faith (a) the defense or settlement of any claim (including appeals) by any Person other than the Indemnifying Party (a "**Third Party Claim**"), whether or not the Indemnifying Party shall be joined therein, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense, (b) any and all negotiations with respect thereof, and (c) the assertion of any claim against any insurer with respect thereto. The Indemnified Party shall not compromise or settle any such Third Party Claim or agree to extend any applicable statute of limitations without the prior written approval of the Indemnifying Party. If such Third Party Claim is asserted against an Indemnified Party, the Indemnified Party shall notify the Indemnifying Party within a reasonable period of time of receipt of knowledge of such Third Party Claim and the Indemnified Party shall promptly provide to the Indemnifying Party all information that it has received with respect to such Third Party Claim. The Indemnified Party will continue to provide the Indemnifying Party with all reasonably available information, assistance and authority to enable the Indemnifying Party to effect such defense or settlement, and upon the Indemnifying Party's payment of any amounts due in respect of such Third Party Claim,

the Indemnified Party will, to the extent of such payment, assign or cause to be assigned to the Indemnifying Party the claims of the Indemnified Party, if any, against such third parties in respect of which such payment is made. Without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party's right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such Third Party Claim. The fees and expenses of counsel retained by the Indemnified Party shall be at the expense of such Indemnified Party unless (a) the Indemnified Party's participation is as a result of a material conflict of interest between the Indemnifying Party and such Indemnified Party in the conduct of the defense of such Third Party Claim (in which case the Indemnifying Party shall not have the right to control the defense or settlement of such Third Party Claim on behalf of such Indemnified Party, but no settlement shall be entered into without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld), or (b) the Indemnifying Party shall not have employed counsel to assume the defense of such Third Party Claim within a reasonable time after notice of the commencement thereof (and in such cases the reasonable fees and expenses of counsel shall be at the expense of the Indemnifying Party).

8.7 Exclusive Remedy. Subject to Section 10.14, and except with respect to Losses arising from or related to fraud or willful misconduct of the other Party and except for Buyer's and the Company's payment obligation under Section 3.1 of this Agreement, the Parties acknowledge and agree that the indemnification obligations of the parties contained in this Agreement shall, if the Closing Date occurs, be the sole and exclusive remedy of the Parties hereto and their Affiliates, successors and assigns with respect to any and all claims for Losses sustained or incurred arising out of or relating to any breach of representation, warranty, covenant or agreement contained in this Agreement, including any claims with respect to environmental, health and safety matters, including any such matters under any Environmental Laws, provided, however, that the Parties may seek to enforce the provisions of this Agreement by injunction or other equitable relief. Each Party hereby expressly waives and disclaims, and agrees that it shall not assert, any right, remedy (including the remedy of rescission) or claim in respect of any such breach or Losses based on any cause or form of action whatsoever, except as and to the extent permitted in this Article 8. Nothing in this Section is intended to constitute a waiver or limitation of any rights that either Party (or their respective Affiliates) may have to assert claims against third parties, including contractors performing any work in connection with the Project.

8.8 Adjustments to Purchase Price. Amounts paid in respect of the indemnification obligations pursuant to this Agreement shall be treated by Buyer and Seller as adjustments to the Purchase Price, except to the extent such amounts may not be properly so treated for Tax purposes by Law.

8.9 Additional Indemnity Provisions. The indemnification obligations of Seller and Buyer hereunder shall be subject to the following terms and conditions:

| | |
|---|---|
| To Buyer: | Invenergy Transmission LLC<br>One South Wacker Drive, Suite 1800<br>Chicago, IL 60606<br>Attn: Legal Department<br>Telephone: (312) 224-1400<br>Email: GeneralCounsel@invenergyllc.com |
| with a copy to: | Sheppard Mullin Richter & Hampton LLP<br>70 West Madison Street, 48th Floor<br>Chicago, IL 60602-4498<br>Attn: Matt Bonovich<br>Telephone: (312) 499-6309<br>Email: mbonovich@sheppardmullin.com |
| To Seller: | Grain Belt Express Holding LLC<br>c/o Clean Line Energy Partners LLC<br>1001 McKinney, Suite 700<br>Houston, TX 77002<br>Attn: Jayshree Desai<br>Telephone: (832) 319-6325<br>Email: jdesai@cleanlineenergy.com |
| with a copy to: | Akin Gump Strauss Hauer & Feld LLP<br>1999 Avenue of the Stars,<br>Suite 600<br>Los Angeles, CA 90067-6022<br>Attn: Thomas Dupuis<br>Telephone: (213) 254-1212<br>Email:<br>tdupuis@akingump.com |

9.2 Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (i) if sent by first class, registered, or certified United States mail or overnight delivery service, return receipt requested, postage prepaid, upon receipt by the receiving Party, (ii) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or paid through an arrangement with such carrier, the next Business Day after the same is delivered by the sending Party to such carrier, (iii) if sent by electronic mail and if concurrently with the transmittal of such electronic mail the sending Party contacts the receiving Party at the phone number set forth above to indicate such electronic mail has been sent (which indication by phone may be done by leaving a voicemail for the receiving Party at such phone number), at the time such electronic mail is transmitted by the sending Party as shown by the electronic mail transmittal confirmation of the sending Party, or (iv) if delivered in person, upon receipt by the receiving Party.

## ARTICLE 10
## MISCELLANEOUS

10.1 Expenses. Except as otherwise expressly set forth in this Agreement, all fees, costs and expenses incurred by a Party in connection with this Agreement and the transactions contemplated hereby, shall be the obligation of the Party incurring such fees, costs or expenses.

10.2 No Stockholder or Member Liability. The Parties acknowledge and agree that the officers, directors, stockholders, members, managers, other security holders, employees and consultants of Buyer, Seller and their respective Affiliates are not parties to this Agreement and that the representations, warranties, covenants and agreements made in this Agreement are provided only by Buyer and Seller, as the case may be. The Parties agree that neither Party shall have recourse against any officer, director, stockholder, member, manager, other security holder, employee or consultant of Buyer, Seller or their respective Affiliates under or in connection with this Agreement, whether for any representation, warranty, covenant, agreement (including any indemnification) or otherwise, [redacted].

10.3 Confidentiality. Neither Party shall disclose to any Person Confidential Information provided by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"). Confidential Information shall not be used for any purposes other than the purposes set forth in this Agreement, shall be held in strict confidence by the Receiving Party and shall not be disclosed without the prior consent of the Disclosing Party, except to such Party's Affiliates, Representatives or Governmental Authorities with a need to know the Confidential Information for the purposes of performing work or reviewing information related to this Agreement or the Project. The Receiving Party shall advise all such Persons receiving Confidential Information that such information is confidential and shall require such Persons to observe the confidentiality terms set forth in this Section 10.3. Notwithstanding anything in this Section 10.3 to the contrary, the Parties shall have no obligation with respect to any Confidential Information which (a) is proven to have been known by the Receiving Party prior to its disclosure by the Disclosing Party, (b) is, or becomes, publicly known through publications or otherwise without breach of this Agreement or any other obligation of confidentiality, (c) is received by the Receiving Party from a third party who rightfully discloses it without restriction on its subsequent disclosure and without breach of this Agreement; (d) is shown by an acceptable evidence to have been independently developed by the Receiving Party without access to, or use of, the Confidential Information, (e) is approved for release by authorization of the Disclosing Party, (f) is required to be disclosed by the Receiving Party pursuant to Applicable Law (*e.g.*, SEC disclosure obligations), or (g) is disclosed to Affiliates or Representatives of such Party directly involved in supporting Transaction and related due diligence, and to those involved in the creation of any Confidential Information exchanged pursuant to the Transaction and related due diligence, but only if such Affiliates or Representatives are advised of the confidential nature of such Confidential Information. Notwithstanding the foregoing, Buyer shall be

permitted to disclose Confidential Information related to the Project to any Person (x) after the Closing and (y) to the extent related to Buyer's development of the Project pursuant to this Agreement and the Development Management Agreement, during the Interim Period.

10.4 Dispute Resolution. The Parties shall attempt to resolve all disputes arising out of or in connection with the interpretation or application of any of the provisions of this Agreement or in connection with the determination of any other matters arising under this Agreement (each, a "**Dispute**") by mutual agreement in accordance with this Section 10.4.

10.4.1 Negotiation Period. If any Dispute arises between the Parties, then the disputing Party shall promptly notify the non-disputing Party of the Dispute and each Party shall cause a senior officer of its management with decision-making authority to meet, within ten (10) days of the non-disputing Party's receipt of notice of the Dispute, at the offices of the non-disputing Party, or at any other mutually agreed location, and to negotiate and attempt to resolve the Dispute on an amicable basis. If the Parties fail to resolve the Dispute for any reason within twenty (20) days after such notice, then each Party shall be free to pursue any right or remedy available at law or in equity, subject to and in accordance with this Agreement.

10.4.2 Continuation of Performance. Unless otherwise agreed in writing, the Parties shall continue to perform their respective obligations under this Agreement during any proceeding by the Parties in accordance with this Section 10.4.

10.4.3 Consent to Jurisdiction. Each of the Parties irrevocably consents and agrees that any judicial proceeding arising from or related to any Dispute may be brought in any of the state or federal courts having jurisdiction over this Agreement and located in New York, New York or the Southern District of New York, as applicable, and that, by execution and delivery of this Agreement, each Party (a) accepts the non-exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court and agrees that such final, nonappealable judgment may be enforced by suit on the judgment or in any other manner provided by Applicable Law, (c) irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of venue of any suit, action, or proceeding with respect to this Agreement in any such court, and further irrevocably waives, to the fullest extent permitted by Applicable Law, any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum, (d) agrees that service of process in any such action may be effected by delivering a copy thereof by the means of notice set forth in Article 9 hereof, to such Party at its notice address set forth herein, or at such other address of which the other Party hereto shall have been notified, and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Applicable Law. The Parties acknowledge that the foregoing consent to jurisdiction in federal or state courts in New York, New York or the Southern District of New York, as applicable, is not

intended to be exclusive, and that either Party may bring an action in any other federal or state court having jurisdiction over the matter in dispute and the Parties.

10.4.4 Waiver of Jury Trial. Should any Dispute result in a judicial proceeding, each of the Parties knowingly, voluntarily, and intentionally waives, to the extent permitted by Applicable Law, any right it may have to a trial by jury in respect of any such proceeding. Furthermore, each of the Parties waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. This provision is a material inducement for the Parties to enter into this Agreement.

10.4.5 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD APPLY ANY OTHER LAW.

[redacted]

10.6 Entire Agreement. This Agreement and the Ancillary Documents represent the entire understanding and agreement between the Parties hereto and thereto with respect to the subject matter hereof and thereof and supersedes all prior oral and written understandings and all contemporaneous oral negotiations, commitments and understandings between the Parties. This Agreement represents the result of negotiations between the Parties, each of which has been represented by counsel of its own choosing, and none of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, this Agreement shall be interpreted and construed in accordance with its usual and customary meaning, and the Parties hereby waive the application, in connection with the interpretation and construction of this Agreement, of any Applicable Law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Agreement. Buyer and Seller may only amend or modify this Agreement, in such manner as may be agreed upon, by a written instrument executed by the Parties.

10.7 Severability. Any provision of this Agreement which is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable. Upon such determination that any provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

10.8 Section Headings. The section headings are for the convenience of the Parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the Parties.

10.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. This Agreement and any amendments hereto, to the extent executed and delivered by means of a facsimile machine or e-mail of a PDF file containing a copy of an executed agreement (or signature page thereto), shall be treated in all respects and for all purposes as an original agreement or instrument and shall have the same binding legal effect as if it were the original signed version thereof.

10.10 Cooperation. Each of the Parties agrees to perform all such acts (including executing and delivering such instruments and documents) as shall be reasonably requested by the other Party to fully effectuate each and all of the purposes and intent of this Agreement. Following the Closing Date, Seller agrees to assist Buyer and the Company in securing debt and equity financing for the Project, including executing and delivering such estoppels and other documents reasonably requested by Buyer or the Persons providing such debt or equity financing, all at no cost to Seller and without altering any of Seller's rights or obligations hereunder or under the Ancillary Documents or with respect to the transactions contemplated hereby or thereby.

10.11 No Third-Party Beneficiaries. This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided in this Agreement (including with respect to Indemnified Parties), no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

10.12 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence. If the date specified in this Agreement for giving any notice or taking any action is not a Business Day (or if the period during which any notice is required to be given or any action taken expires on a date which is not a Business Day), then the date for giving such notice or taking such action (and the expiration date of such period during which notice is required to be given or action taken) shall be the next day which is a Business Day.

10.13 Waiver. Neither the failure of nor any delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power or privilege shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by Applicable Law, except as otherwise expressly provided in this Agreement: (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party, (b) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (c) no notice to or demand on one Party shall be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

10.14 Remedies. Seller and Buyer acknowledge that the rights of each Party to consummate the transactions contemplated hereby are unique and recognize and affirm that in the event of a breach of this Agreement by either Party, money damages may be inadequate and the non-breaching Party may have no adequate remedy at law. Accordingly, the Parties agree that such non-breaching Party shall have the right, in addition to any other rights and remedies existing in its favor at law or in equity, to enforce their rights and the other Party's obligations hereunder not only by an action or

actions for damages but also by an action or actions for specific performance, injunctive and/or other equitable relief (without posting of bond or other security). IN NO EVENT SHALL ANY PARTY OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, SHAREHOLDERS, PARTNERS, DIRECTORS, OFFICERS, MANAGERS, AGENTS OR EMPLOYEES BE LIABLE FOR ANY SPECIAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOST PRODUCTION, COST OF CAPITAL, LOSS OF GOODWILL, LOST REVENUES, OR LOSS OF CONTRACTS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EACH PARTY HEREBY RELEASES THE OTHER FROM ANY SUCH LIABILITY.

10.15 Public Announcements. No public announcement (whether in the form of a press release or otherwise) shall be made by or on behalf of Seller or its Representatives with respect to the subject matter of this Agreement unless: (a) Buyer has agreed in writing to such public announcement, which permission shall not be unreasonably withheld (provided that Buyer shall be deemed to have consented to the issuance by Seller of any public announcement with respect to the subject matter of this Agreement that is in substantially the same form and substance of any public announcement made by Buyer with respect to the subject matter of this Agreement), or (b) such public announcement is required by Applicable Law and Seller has given prior written notice in accordance with Article 9 to Buyer as promptly as practicable prior to such announcement. Any such public announcement made by Seller under this Section 10.15 shall be made only in accordance with a text mutually agreed upon by the Parties, such agreement not to be unreasonably withheld or delayed. Following the Effective Date and until the termination of this Agreement (if ever), Buyer and its Representatives may, in their discretion without the consent of Seller, make any public announcement (whether in the form of a press release or otherwise) with respect to the subject matter of this Agreement, but the commercial terms of this Agreement shall not be disclosed or announced without the prior written approval of both Buyer and Seller.

10.16 Setoff. Notwithstanding any provision to the contrary herein, Seller shall be permitted to setoff against any payments due and payable by Seller to Buyer hereunder the amount of any unpaid payments by Buyer to Seller hereunder, and Buyer shall be permitted to setoff against any payments due and payable by Buyer to Seller hereunder the amount of any unpaid payments by Seller to Buyer hereunder; provided, that, in each case, such right of set-off shall only be exercised (i) in good faith based on the bona fide determination by the Party setting-off such amount that such amount is due to such Party under this Agreement (the "Set-Off Amount"), and (ii) upon notice to the Party to whom an amount is otherwise due and payable under this Agreement specifying in reasonable detail the basis for such set-off and providing such Party with ten (10) Business Days to cure such amounts. With respect to any amount set-off by a Party pursuant to this Section 10.17, if a final determination is made that the Set-Off Amount (or any portion thereof) was greater than the amount of the other Party's liability or obligation to which such Set-Off Amount was applied, then the Party that exercised such set-off right shall pay such excess Set-Off Amount to the other Party hereunder promptly after such final determination, together with interest on such excess Set-Off Amount at the Default

Interest Rate from the date on which such set-off right was exercised until the date that the excess Set-Off Amount is paid.

10.17 Interest Upon Late Payment. If either Party should fail to pay the other Party any sum to be paid by such Party under this Agreement within ten (10) Business Days after such payment is due, then with respect to any such late payment, to the maximum extent allowed by law, the amount of such late payment shall accrue interest at a per annum rate equal the per annum rate of interest from time to time as published in the Wall Street Journal under "Money Rates" as the prime lending rate plus two percent (2%) (the "**Default Interest Rate**") (calculated from the date such late payment was due through the date such late payment plus such interest is paid in full), which amounts shall be payable to the applicable Party upon demand therefor.

[SIGNATURE PAGES TO FOLLOW]

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the Parties as of the date first above written.

**BUYER**:

**Invenergy Transmission LLC**,
a Delaware limited liability company


By: Kris Zadlo
Name: Kris Zadlo
Title: Vice President

**SELLER**:

**Grain Belt Express Holding LLC**,
a Delaware limited liability company

By:_____
Name:
Title:

**COMPANY**:

**Grain Belt Express Clean Line LLC**,
an Indiana limited liability company

By:_____
Name:
Title:

*[Signature page to MIPA]*

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the Parties as of the date first above written.

**BUYER:**

**Invenergy Transmission LLC,**
a Delaware limited liability company

By:_____
Name:
Title:

**SELLER:**

**Grain Belt Express Holding LLC,**
a Delaware limited liability company

By:_____
Name: Jayshree Desai
Title: Authorized Representative

**COMPANY:**

**Grain Belt Express Clean Line LLC,**
an Indiana limited liability company

By:_____
Name: Jayshree Desai
Title: Authorized Representative

# DEVELOPMENT MANAGEMENT AGREEMENT

This **DEVELOPMENT MANAGEMENT AGREEMENT** (the "***Agreement***"), made as of November 9, 2018, ("***Effective Date***") by and between **GRAIN BELT EXPRESS CLEAN LINE LLC**, an Indiana limited liability company ("***Owner***"), **GRAIN BELT EXPRESS HOLDING LLC**, a Delaware limited liability company ("***Holdings***" and together with Owner, collectively, the "***Owner Parties***"), and **INVENERGY TRANSMISSION LLC**, a Delaware limited liability company ("***Manager***"), referred to collectively as "***Parties***" and individually as "***Party***".

WHEREAS, Owner is developing a high voltage direct current transmission line and associated transmission facilities, which are being designed to run from Ford County, Kansas, to Sullivan, Indiana, with a mid-point converter station in Ralls County, Missouri (the "***Project***"); and

WHEREAS, Manager or certain of its Affiliates have expertise in development management services for the development of high voltage direct current transmission lines and their associated facilities;

WHEREAS, Manager, as buyer, and Holdings, as seller, and Owner are party to that certain Membership Interest Purchase Agreement, dated as of the date hereof (the "***MIPA***") and any capitalized terms used but not defined in this Agreement shall have the meanings given to them in the MIPA; and

WHEREAS, Manager and Owner Parties desire to set forth the full scope of Manager's obligations, responsibilities, and authority with respect to the development of the Project before the Closing Date.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

## ARTICLE I
## DEVELOPMENT MANAGEMENT

1.01 Scope of Work. Manager shall manage the business and affairs of the Project, and all activities incidental thereto, and shall perform (or cause to be performed) all services related to the development, ownership and maintenance of the Project, and any other assets of the Owner related to the Project, and all activities and matters incidental thereto, including the services more particularly described in the scope of work attached as Exhibit A hereto and made a part hereof (such services, collectively, the "***Work***" and such scope of work, the "***Scope of Work***"). To the extent that any such action is not a Restricted Action or otherwise expressly excluded from the Scope of Work under this Agreement, Manager is hereby authorized to take, or to cause the Owner or any of its subsidiaries to take, such action (and in the case of Restricted Actions, such actions shall only be taken in accordance with this Agreement). [redacted]

1.02 Standard of Performance. Subject to Section 9.01, Manager shall use commercially reasonable efforts to perform the Work, and shall perform the work in good faith, in each case consistent with Prudent Industry Practices, this Agreement, the MIPA and all Applicable Law, in each case in all material respects.

1.03 Reports. Manager shall provide copies of any reports regarding the Project that Manager provides to any Governmental Authority, and upon the reasonable request of Owner Parties with reasonable frequency, shall provide updates regarding the Project to Owner Parties.

1.04 Manager Agency and Authority. Throughout the Term, the Parties agree that, notwithstanding Owner's ownership of the Project, Manager shall have and shall maintain control of the Project with respect to matters relating to development, ownership and maintenance of the Project, and any other assets of the Owner related to the Project, and all activities and matters incidental thereto. Owner Parties acknowledge and agree that Manager will act as agent for and on behalf of Owner with respect to the Project at all times during the Term. To the extent necessary in connection with its role as agent for Owner hereunder, during the Term, Manager will have care, custody and control over the Project in all day-to-day activities. Subject to the provisions of this Agreement and with respect to the Work, Owner Parties hereby authorize Manager to, during the Term, act on behalf of Owner and bind the Owner and execute documents by and on behalf of the Owner. Manager will provide Owner Parties notice and a copy of any such binding act or executed document.

1.05 Treasury Management. During the term, Manager shall account for, arrange for, coordinate and pay all amounts due and payable with respect to the development of the Project, [redacted]

1.06 Owner Parties Cooperation and Limitations. From time to time during the Term and subject to Manager's agreement to pay all Seller Support Costs as Development Costs, Owner Parties shall reasonably cooperate with and support Manager in furtherance of the Work, including providing information, preparing and reviewing written materials, attending hearings, proceedings and meetings and introducing Manager to relevant parties and stakeholders. Other than such cooperation and support, Owner Parties agree that they shall not, during the Term, take any action with respect to the Project without Manager's written request, other than as directed or requested by Manager. As used herein, the term "***Seller Support Costs***" means the third-party costs incurred, or to be incurred, by the Owner Parties to engage consultants, legal counsel or other advisors, as well as reasonable travel and lodging expenses, in connection with providing the Owner Parties' support and cooperation pursuant to this Section 1.06 and pursuant to the MIPA, provided that Owner Parties shall obtain Manager's prior consent prior to incurring any such Seller Support Costs.

1.07 Access. During the Term, Owner Parties shall provide Manager and its representatives with reasonable access, upon reasonable prior notice and during normal business hours, to the Books and Records of Owner Parties pertaining to the Project and any of the Project Assets, including all Books and Records of Owner.

1.08 Restricted Actions. The authority granted to the Manager in this Agreement is expressly limited by the provisions of this Section 1.08. In furtherance of the foregoing, without the prior consent of any Owner Party, Manager shall not, and shall cause its Affiliates, directors, managers and officers, and shall instruct its other Representatives, not to take any of the actions set forth on Exhibit B (to the extent Manager has authority hereunder to cause any such action occur) (each such action, a "***Restricted Action***", and collectively, the "***Restricted Actions***").

## ARTICLE II
## PAYMENTS

[redacted]

2.03 Accounting. Manager shall maintain an accurate accounting of Development Costs, which records Manager will make available to Owner Parties upon reasonable request from any Owner Party with reasonable frequency.

## ARTICLE III
## TIME OF COMMENCEMENT AND COMPLETION

3.01 The Work to be performed shall commence upon the Effective Date and shall proceed without interruption throughout the Term.

## ARTICLE IV
## PERSONNEL

4.01 Development Personnel. Manager shall provide and make available qualified and competent professional, supervisory, managerial, administrative and other personnel as reasonably necessary to perform the Work in accordance with the terms of this Agreement.

4.02 Manager Representative. Manager shall appoint, and shall designate to Owner Parties, one of Manager's authorized individuals as Manager's representative for purposes of

coordinating with Owner Parties for purposes of this Agreement (the "***Manager Representative***"). The initial Manager Representative shall be Cory Blair, and such individual and any substitution or replacement of the Manager Representative shall have the requisite knowledge, experience and skills to perform such role.

4.03 Owner Party Representative. Owner Parties shall appoint, and shall designate to Manager, one of Owner Parties' authorized individuals as Owner Parties' representative for purposes of coordinating with Manager for purposes of this Agreement (the "***Owner Parties Representative***"). The initial Owner Parties Representative shall be Hans Detweiler, and such individual and any substitution or replacement of the Owner Parties Representative shall have the requisite knowledge, experience and skills to perform such role.

## ARTICLE V
## SUBCONTRACTORS

5.01 Manager may locate and procure the services of Subcontractors that, in Manager's judgment, may be necessary to complete the Work. The term "***Subcontractor***" shall mean a person (other than employees) or organization who has a direct contract with the Manager or any person or organization directly or indirectly in privity with Manager (including every sub-Subcontractor of whatsoever tier) to perform any portion of the Work for the Project whether for the furnishing of labor, materials, equipment, services or otherwise.

5.02 Manager shall be responsible for all portions of the Work performed by any Subcontractor engaged by Manager to the same extent as if such Work had been performed by Manager itself.

## ARTICLE VI
## DOCUMENTS AND WORK PRODUCT

6.01 All documents, information and other work product prepared or developed by Manager or its Affiliates, employees, or representatives in connection with the performance of the Work, including all records, reports and accounts related thereto, shall be maintained by Manager, and shall be the property of Manager and Company, and, if this Agreement expires or is terminated without Closing having occurred, Manager shall deliver such materials to Owner Parties upon such expiration or termination of this Agreement.

## ARTICLE VII
## ASSIGNMENT

7.01 Neither Party may assign this Agreement or the performance of all or any of its obligations hereunder without the prior written consent of the other Party. Any assignment in violation of this Article VII shall be voidable at the sole discretion of the non-assigning Party.

## ARTICLE VIII
## TERM AND TERMINATION

8.01 This Agreement, and the Work hereunder, shall commence on the Effective Date and continue through the earlier of (a) the Closing Date or (b) the termination of this Agreement in accordance with this Article VIII (the "***Term***").

8.02 If Manager is in material breach of any provision of this Agreement, the MIPA [redacted] and such breach is not cured within thirty (30) days after receiving written notice thereof from any Owner Party identifying the nature of such purported breach in reasonable detail, any Owner Party may terminate this Agreement [redacted] If any Owner Party is in material breach of any provision of this Agreement, the MIPA [redacted] and such breach is not cured within thirty (30) days after receiving written notice thereof from Manager identifying the nature of such purported breach in reasonable detail, Manager may terminate this Agreement.

8.03 In the event the MIPA expires or is otherwise terminated, this Agreement shall automatically terminate simultaneously with such expiration or termination of the MIPA without any further action by Manager or Owner Parties.

8.04 In the event of any expiration or termination of this Agreement, all amounts accrued and owed by Owner Parties to Manager shall remain due and payable in accordance with this Agreement [redacted]

8.05 Notwithstanding any expiration or termination of this Agreement, Articles II, VI, VIII, IX, X, XI, and XII and Sections 5.02 and 9.04 shall survive any such expiration or termination of this Agreement, and no other provisions or obligations shall survive any such expiration or termination of this Agreement.

## ARTICLE IX
## REMEDIES; LIMITATION OF LIABILITY

9.01 Manager shall have no liability to the Owner Parties for violation of, breach of, non-compliance with or otherwise with respect to any provision of this Agreement other than to the extent any such liability is the result of the gross negligence, willful misconduct, fraud or any criminal act or omission of Manager, any of its Affiliates or any of their respective employees, and in such case, Manager's liability shall be limited to the amount of Development Payments actually paid in cash to Manager and any indemnification pursuant to Section 9.04.

9.02 In no event shall any Party be liable to any other Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.

9.03 During the Term of this Agreement, at its own expense and not as a Seller Support Cost, Owner shall maintain commercial general liability insurance of not less than $2,000,000 per occurrence and in the aggregate, with Manager named as an additional named insured with respect to such insurance coverage. During the Term of this Agreement, at its own expense and not as a Development Cost, Manager shall maintain commercial general liability insurance of not less than $2,000,000 per occurrence and in the aggregate, with the Owner Parties named as additional named insureds with respect to such insurance coverage. Each Party shall provide evidence of its maintenance of insurance coverage pursuant to this Section 9.03 upon the reasonable request of the other Parties to this Agreement. Each Party shall waive all subrogation rights that its insurers may have or acquire again the other Party.

9.04 Manager agrees to indemnify, defend and hold harmless the Owner Parties and their respective owners, shareholders, members, managers, Affiliates, employees, agents and representatives from and against any and all third party claims, liabilities, demands, damages, losses, penalties and charges that result, or are alleged to have resulted, from the gross negligence, willful misconduct, fraud or any criminal act or omission of Manager, any of its Affiliates or any of their respective employees. Owner Parties agree to indemnify, defend and hold harmless Manager and their respective owners, shareholders, members, managers, Affiliates, employees, agents and representatives from and against any and all third party claims, liabilities, demands, damages, losses, penalties and charges that result, or are alleged to have resulted, from the gross negligence, willful misconduct, fraud or any criminal act or omission of Owner Parties, any of their Affiliates or any of their respective employees.

## ARTICLE X
## NOTICE

10.01 Any notice or other communication required, permitted or contemplated hereunder shall be in writing, and shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder:

To Manager:
Invenergy Transmission LLC
One South Wacker Drive, Suite 1800
Chicago, IL 60606
Attn: Legal Department
Email: GeneralCounsel@invenergyllc.com
Phone: 312-224-1400

To Owner Parties:
Grain Belt Express Holding LLC and
Grain Belt Express Clean Line LLC
c/o Clean Line Energy Partners LLC
1001 McKinney, Suite 700
Houston, TX 77002
Attn: Jayshree Desai
Telephone: (832) 319-6325
Email: JDesai@cleanlineenergy.com

*with a copy to:*

Akin Gump Strauss Hauer & Feld LLP
1999 Avenue of the Stars, Suite 600
Los Angeles, CA 90067-6022
Attention: Thomas Dupuis
E-mail: tdupuis@akingump.com
Telephone: (213) 254-1212

10.02 Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (i) if sent by first class, registered, or certified United States mail or overnight delivery service, return receipt requested, postage prepaid, upon receipt by the receiving Party, (ii) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or paid through an arrangement with such carrier, the next Business Day after the same is delivered by the sending Party to such carrier, (iii) if sent by electronic mail and if concurrently with the transmittal of such electronic mail the sending Party contacts the receiving Party at the phone number set forth above to indicate such electronic mail has been sent (which indication by phone may be done by leaving a voicemail for the receiving Party at such phone number), at the time such electronic mail is transmitted by the sending Party as shown by the electronic mail transmittal confirmation of the sending Party, or (iv) if delivered in person, upon receipt by the receiving Party.

## ARTICLE XI
## CONFIDENTIALITY

11.01 No Party shall disclose to any Person Confidential Information provided by one Party (the "***Disclosing Party***") to another Party (the "***Receiving Party***"). Confidential Information shall not be used for any purposes other than the purposes set forth in this Agreement and the MIPA, shall be held in strict confidence by the Receiving Party and shall not be disclosed without the prior consent of the Disclosing Party, except to such Party's Affiliates, Representatives or Governmental Authorities with a need to know the Confidential Information for the purposes of performing work or reviewing information related to this Agreement or the Project. The Receiving Party shall advise all such Persons receiving Confidential Information that such information is confidential and shall require such Persons to observe the confidentiality terms set forth in this Section 11.01. Notwithstanding anything in this Section 11.01 to the contrary, the Parties shall have no obligation with respect to any Confidential Information which (a) is proven to have been known by the Receiving Party prior to its disclosure by the Disclosing Party, (b) is, or becomes, publicly known through publications or otherwise without breach of this Agreement or any other obligation of confidentiality, (c) is received by the Receiving Party from a third party who rightfully discloses it without restriction on its subsequent disclosure and without breach of this Agreement; (d) is shown by an acceptable evidence to have been independently developed by the Receiving Party without access to, or use of, the Confidential Information, (e) is approved for release by authorization of the Disclosing Party, (f) is required to be disclosed by the Receiving Party pursuant to Applicable Law (e.g., SEC disclosure obligations), or (g) is disclosed to

Affiliates or Representatives of such Party directly involved in supporting Transaction and related due diligence, and to those involved in the creation of any Confidential Information exchanged pursuant to the Transaction and related due diligence, but only if such Affiliates or Representatives are advised of the confidential nature of such Confidential Information. Notwithstanding the foregoing, Manager shall be permitted to disclose Confidential Information related to the Project to any Person after the Closing. "***Confidential Information***" shall mean any and all information provided (i) either by Owner Parties or any of their Affiliates to Manager or by Manager or any of its Affiliates to Owner Parties or in writing and identified by the Disclosing Party as confidential and (ii) any and all information with respect to the Project, the Project Assets, or the Transaction.

## ARTICLE XII
## ADDITIONAL PROVISIONS

12.01 Independent Contractor. It is expressly understood and agreed by the Parties that Manager, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an employee of any Owner Party and nothing contained in this Agreement shall be construed to mean that Manager and any Owner Party are joint venturers or partners or to establish any contractual relationship between any Owner Party and any Subcontractors.

12.02 Performance of Work During the Pendency of Disputes. Unless the Parties expressly agree otherwise in writing, in the event that a dispute shall arise under this Agreement, Manager shall continue during the pendency of such dispute to perform the Work and shall perform all other undisputed obligations required to be performed by it under this Agreement as if no dispute shall have arisen.

12.03 Captions and Titles. Captions and titles of the different Articles and Sections of this Agreement are solely for the purpose of aiding and assisting in the location of different material in this Agreement and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

12.04 Severability. If any provision of this Agreement is invalid or unenforceable as against any person, party or under certain circumstances, the remainder of the Agreement and the applicability of such provision to other persons, parties or circumstances shall not be affected thereby. Each provision of the Agreement shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by law.

12.05 Entire Agreement. This Agreement, together with the MIPA and the other Ancillary Documents, represent the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral and written understandings and all contemporaneous oral negotiations, commitments and understandings between the Parties. This Agreement, together with the MIPA and the other Ancillary Documents, represents the result of negotiations between the Parties, each of which has been represented by counsel of its own choosing, and none of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, this Agreement shall be interpreted and construed in accordance with its

usual and customary meaning, and the Parties hereby waive the application, in connection with the interpretation and construction of this Agreement, of any Applicable Law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Agreement.

12.06 Amendments. No amendments, modifications or extensions of this Agreement shall be valid unless evidenced in writing and signed by all the Parties hereto.

12.07 No Waiver. Any delay, waiver or omission by a Party to exercise any right or power arising from any breach or default with respect to any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver by such Party of any subsequent breach or default of another Party of the same or other terms, provisions or covenants.

12.08 Not for the Benefit of Third Parties. This Agreement is entered into for the sole, exclusive benefit of the Parties, and except as specifically provided herein, no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

12.09 Counterparts/Electronic Signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. This Agreement and any amendments hereto, to the extent executed and delivered by means of a facsimile machine or e-mail of a PDF file containing a copy of an executed agreement (or signature page thereto), shall be treated in all respects and for all purposes as an original agreement or instrument and shall have the same binding legal effect as if it were the original signed version thereof.

12.10 Dispute Resolution, Governing Law and Consent to Jurisdiction.

(a) All disputes arising hereunder, unless resolved by mutual agreement of the Parties, shall be resolved by any of the state or federal courts having jurisdiction over this Agreement and located in New York, New York or the Southern District of New York, as applicable.

(b) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD APPLY ANY OTHER LAW. Manager hereby (i) irrevocably consents, for itself and its legal representatives, partners, successors and assigns, to the jurisdiction of any of the state or federal courts having jurisdiction over this Agreement and located in New York, New York or the Southern District of New York, as applicable, for all purposes in connection with any action or proceeding which arises from or relates to this Agreement; (ii) waives any right it may have to personal service of summons, complaint, or other process in connection therewith, and agrees that service may be made by registered or certified mail addressed to Manager at its last known principal place of business; and (iii) waives its right to a trial by jury.

[Signature page follows]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the day and year first above written.

**GRAIN BELT EXPRESS CLEAN LINE LLC,**
an Indiana limited liability company

By: _____
Name: Jayshree Desai
Title: Authorized Representative

**GRAIN BELT EXPRESS HOLDING LLC,**
a Delaware limited liability company

By: _____
Name: Jayshree Desai
Title: Authorized Representative

**INVENERGY TRANSMISSION LLC,**
a Delaware limited liability company

By: _____
Name:
Title:

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the day and year first above written.

**GRAIN BELT EXPRESS CLEAN LINE LLC,**
an Indiana limited liability company

By:_____
Name:
Title:

**GRAIN BELT EXPRESS HOLDING LLC,**
a Delaware limited liability company

By:_____
Name:
Title:

**INVENERGY TRANSMISSION LLC,**
a Delaware limited liability company


By: Kris Zadlo
Name: Kris Zadlo
Title: Vice President

*[Signature page to DMA]*

# EXHIBIT A

Scope of Work

[redacted]

# EXHIBIT B

Restricted Actions

[redacted]

[redacted]

Amended Testimony to denote a change in corporate status on March 14, 2013. On March 13, 2013, the parties filed a Settlement Agreement and supporting testimony.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record of this Cause by reference and placed in the official files of the Commission, a public hearing was held on March 27, 2013, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Petitioner and the OUCC appeared by counsel. The parties' evidence was admitted into evidence without objection. No members of the general public participated.

The Commission, based upon the applicable law and the evidence of record, now finds as follows:

1. **Notice and Jurisdiction.** Proper notice of the public hearing in this Cause was published as provided by law. Petitioner plans to engage in providing electric transmission service and facilities and to own, operate, manage and control plant and equipment within Indiana for the transmission of electricity at wholesale, and thus is a "public utility" under Ind. Code § 8-1-2-1. Therefore, Petitioner is subject to the jurisdiction of this Commission in the manner and to the extent provided by the Public Service Commission Act, as amended. The Commission has jurisdiction over Petitioner and the subject matter of this proceeding in the manner and to the extent provided by the law of the State of Indiana.

2. **Petitioner's Characteristics.** Petitioner is a limited liability company organized under the laws of the state of Indiana, with its principal office at 1001 McKinney St., Suite 700, Houston, Texas 77002. Petitioner is a wholly owned subsidiary of Grain Belt Express Holding LLC, a Delaware limited liability company, which in turn is a wholly owned subsidiary of Clean Line Energy Partners LLC ("Clean Line"), a Delaware limited liability company, with its principal office located at 1001 McKinney St., Suite 700, Houston, Texas 77002. Petitioner was initially incorporated in Delaware but was converted to an Indiana company as of February 6, 2013, in accordance with Ind. Code § 8-1-2-91.

3. **The Proposed Project.** The Grain Belt Express Clean Line project (the "Grain Belt Project" or the "Project") is an approximately 700-mile overhead, high voltage direct current ("HVDC") transmission line that is proposed to be built to deliver up to 3,500 megawatts ("MW") of wind power from western Kansas to communities in Missouri, Illinois, Indiana, and states farther east. Specifically, the Project as currently planned will originate in western Kansas (the "Resource Area"), will travel east to an interconnection with Ameren Missouri near the Palmyra Tap 345 kilovolt ("kV") substation, and will continue east to an interconnection with Indiana Michigan Power Company ("American Electric Power" or "AEP") at its Sullivan 765 kV substation near Sullivan, Indiana. At Sullivan, the line will interconnect with existing extra high voltage transmission lines for distribution to Indiana and customers served by utilities in the Midwest Independent Transmission System Operator, Inc. ("MISO"), and PJM Interconnection LLC ("PJM") markets. Petitioner will not provide retail services to customers within Indiana. Petitioner's wholesale transmission service is subject to regulatory oversight by the Federal Energy Regulatory Commission ("FERC").

4. **Relief Sought.** Petitioner requests that the Commission find, to the extent necessary, that: (1) Petitioner will be a transmission-only public utility; (2) Petitioner possesses sufficient technical, managerial, and financial capability and expertise to operate as a transmission utility in Indiana; (3) Petitioner should be granted authority to operate as a public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law; (4) Petitioner should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM or MISO; (5) the Commission should decline to exercise a limited portion of its jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial and financial capability) and certain public utility annual reporting requirements; (6) Petitioner should have the authority to maintain its books and records outside the State of Indiana; (7) the Commission should consent to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits or franchises as may be necessary for Petitioner to use county roads, highways or other property and public right-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23; (8) certain of the information submitted in support of this Cause constitutes confidential and proprietary trade secret information under Indiana law, and should be excepted from public disclosure; and (9) all other just and reasonable relief.

5. **Petitioner's Case-In-Chief.**

**A. Direct Testimony of Michael Skelly, President and Chief Executive Officer ("CEO") of Clean Line, and President and CEO of Petitioner.** Mr. Skelly testified his experience in the renewable energy business includes 20 years of diverse experience: first, developing thermal, hydroelectric, biomass and wind energy projects in Central America with Energia Global, and then subsequently, joining Horizon Wind Energy ("Horizon"), which he led from a two-person company to one of the leading wind energy companies in the United States. Mr. Skelly testified that Clean Line's objective is to develop, build, and operate HVDC transmission lines to facilitate the development of renewable energy resources, particularly wind generation resources, in the country's best wind regions, and facilitate the delivery of that energy to load and population centers.

Mr. Skelly stated that the Petitioner is developing the Grain Belt Project because there are cost-competitive wind resources available in the Resource Area, there is a demand for renewable wind energy in midwestern states including Indiana and eastern portions of the United States, and there is a lack of adequate transmission infrastructure by which to transport such renewable wind power to the areas of the country that have such demand. Mr. Skelly noted that the country needs long-haul transmission lines to move America's vast renewable energy resources to market. The transmission projects being developed by Clean Line will facilitate billions of dollars of investments in new renewable energy projects; create thousands of new construction and operations jobs; support jobs in manufacturing of wind turbines and components; spur rural economic development; increase property tax revenue for local communities and schools; and reduce carbon pollution by millions of tons. Mr. Skelly verified that Clean Line will sell transmission capacity to renewable energy generators and to the buyers of the power from these wind energy projects.

purchase renewable energy without being limited to buying from facilities located within their service territory.

Mr. Berry explained why RPS and RECs matter in Indiana. He noted that Indiana has an interest in other states having adequate resources available to meet their state RPS and goals because if there is a shortfall in other states in renewable energy resources to meet RPS requirements, it will increase REC prices throughout the region, and therefore increase the cost of meeting Indiana's voluntary goal for renewable energy purchases. Second, Indiana is a major player in the wind energy supply chain and Indiana businesses could benefit from manufacturing jobs driven by the construction of wind projects made possible by the Project. Third, environmental benefits are regional or global due to the public nature of clean air and the ability of emissions from fossil-fueled generation sources in one area to migrate to another area.

Mr. Berry further explained that new environmental standards will drive the demand for renewable energy with the retirement of coal plants, and wind has become a cost-effective resource. Because of technological innovations, such as taller towers and longer blades, some wind power purchase agreements ("PPA") are below $30 per MWh. The Project will enable delivery of 3,500 MW of new, low-cost renewable energy generation into the MISO and PJM markets. These generation resources should increase wholesale competition and reduce wholesale electricity prices.

Mr. Berry also testified about perceived impacts on rates. He explained that because Petitioner is only providing transmission services and participating in wholesale markets, it has not performed an analysis to determine the impact on Indiana's retail rates. However, Mr. Berry noted that because Petitioner does not intend to cost allocate the Project, and because it is privately funded, it will not increase retail rates. Rather, he noted that the Project will bring low-cost wind resources into the area, putting downward pressure on wholesale power prices and benefiting retail customers in Indiana and elsewhere.

Mr. Berry explained that Clean Line has equity investors, including National Grid USA, through its wholly owned subsidiary, GridAmerica Holdings Inc. National Grid USA is a wholly owned U.S. subsidiary of National Grid plc, a major multinational holding company whose principal activities are owning and operating regulated networks for the transmission and distribution of electricity and natural gas. Michael Zilkha is another equity investor, and ZAM Ventures is the majority owner of Clean Line, and is one of the principal investment vehicles for ZBI Ventures, L.L.C. ("ZBI Ventures"), which focuses on long-term investments in the energy sector.

Mr. Berry explained that the initial equity investors provide capital to enable Clean Line to undertake the initial development and permitting work for its transmission line projects, including the Grain Belt Project. The funding provided by the equity investors will enable Clean Line and its subsidiaries to bring the Project, and the other transmission line projects being developed by other subsidiaries of Clean Line, to a point of development at which long-term transmission service agreements can be signed with transmission customers and, on the basis of these agreements, project-specific financing arrangements can be entered into with lenders and with equity investors and/or other partners. The additional capital obtained through these

financing arrangements will allow Petitioner to construct the Project. Mr. Berry stated that he was confident that the project finance markets will support the construction of the Grain Belt Project, noting that the capital markets have a substantial history of supporting transmission projects, including merchant transmission projects, through debt and equity financings.

Mr. Berry explained that Petitioner plans on first obtaining the major regulatory approvals to proceed with the Project and to sell a majority of the capacity on the Project before obtaining construction financing. The transmission capacity contracts Petitioner will offer are long-term transmission capacity contracts, which will provide for a reservation charge, meaning the transmission customer will pay regardless of what percentage of the time the customer uses the reserved capacity.

Mr. Berry also described why it is necessary and appropriate for Petitioner to be allowed to maintain its books and records at its office in Houston, Texas. Mr. Berry explained that the accounting, financial, and administrative management and staff of Clean Line perform and will continue to perform accounting, financial, treasury and other administrative services for Petitioner, including maintenance of Petitioner's accounting and financial books and records. The management and administrative staff of Clean Line performing these functions will be located at the principal offices in Houston. Petitioner, due to the nature of its business and operations, will be operating in, and potentially will be subject to the jurisdiction of regulators in at least four states, Kansas, Missouri, Illinois, and Indiana. For these reasons, it would be inefficient and unduly expensive, and could necessitate duplicative efforts, for Petitioner to maintain its books and records in Indiana, or at any location other than the principal office of Petitioner and its parent company in Houston, Texas. However, Mr. Berry noted in his testimony that Petitioner commits to produce in Indiana, upon reasonable notice, copies of those portions of its books and records necessary for the OUCC and the Commission to perform their statutory duties. In the event it is not possible for Petitioner to produce the necessary books and records in Indiana, Petitioner commits to reimburse the OUCC and Commission for all reasonable travel expenses, including travel fare, mileage, lodging and meals incurred while inspecting Petitioner's books and records outside of Indiana.

Mr. Berry testified that Petitioner is requesting that the Commission decline to exercise its jurisdiction with respect to: (1) financing approvals; (2) approvals over purchases and/or sales of facilities (except as necessary to ensure that any purchaser of Indiana facilities has the requisite financial, technical and managerial capability); and (3) certain of the public utility annual reporting requirements. Petitioner believes it is unnecessary for the Commission to exercise jurisdiction over these areas, since Petitioner is a wholesale transmission service provider that will sell transmission under negotiated rates regulated by FERC on an ongoing basis. Petitioner will not have retail customers, nor does it intend to utilize a cost of service model where its costs are directly passed through to retail customers. Accordingly, retail customers will not be impacted by Petitioner's financing activities. Also, as a transmission-only utility operating in multiple states, Petitioner will be regulated by the relevant state commission in each state in addition to FERC. Another traditional area of Commission concern is the reliability of retail service. Petitioner's transmission activities will not directly implicate the reliability of retail service or the distribution network owned by other Indiana utilities. The Grain Belt Project's deliveries to PJM and MISO will be strictly controllable due to the use of

HVDC technology, with the RTOs, FERC and NERC monitoring and regulating the reliability of the high voltage grid. Further regulation of these matters by the Commission would be unnecessary, wasteful of the Commission's resources, and burdensome for Petitioner.

Mr. Berry offered in his testimony that while development and construction are ongoing, Petitioner proposed to provide the Commission with annual updates on the Project, summarizing the Project construction and operational status and financing milestones, including: Identification of major construction vendors and contractors hired, identification of major operation and maintenance contractors retained, significant new debt and equity financings completed at the Petitioner level, significant changes in Clean Line or Petitioner senior management, and in-service/commercial operation date of the Project. Once the Project is completed and in service, in lieu of the annual report requirements required by Ind. Code §§ 8-1-2-16; 8-1-2-26; 8-1-2-49, Petitioner proposed to file annually with the Commission its FERC Form 1, which will cover all of Petitioner's assets and revenues. Petitioner also offered to commit to file annually with the Commission information about any affiliates that own or control electric generation resources in the MISO or PJM regions. Mr. Berry also noted that Petitioner will maintain its books and records of account in accordance with FERC's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, 18 C.F.R. Part 101, which should provide appropriate, useful, and sufficient accounting and financial information for this Commission's regulatory purposes.

**D. Direct Testimony of Dr. Anthony Wayne Galli, Vice President – Transmission and Technical Services, Clean Line.** Dr. Galli testified that he oversees and is responsible for the planning, engineering, design, construction, and other technical activities of Clean Line and its subsidiaries with respect to their transmission projects, and plays a role in Clean Line's long-term strategic planning. Explaining some of his technical and managerial capabilities, Dr. Galli noted that he is a Senior Member of the Institute of Electrical and Electronics Engineers, a member of the International Council on Large Electric Systems, and a registered Professional Engineer in the Commonwealth of Virginia. Dr. Galli explained that he has more than 15 years of experience in the electric transmission industry, in both technical and managerial roles, ranging from power system planning and operations to regulatory matters and project development. He served as Director of Transmission Development for NextEra Energy Resources (formerly FPL Group, Inc.), where he developed transmission projects under the Competitive Renewable Energy Zones ("CREZ") initiative in Texas, concentrating on the development of HVDC transmission solutions. He also worked at the Southwest Power Pool ("SPP") for six years, leading the implementation of several components of the SPP market, and grew the SPP Operations Engineering Group over fourfold to help ensure reliable operations of the SPP grid as it moved toward a market paradigm. He was also the Supervisor of Operations Engineering at SPP, responsible for the real-time and short-term engineering support of the SPP's RTO functions.

Dr. Galli noted that the purpose of his testimony was to describe the status of the interconnection processes underway for the Project, including Petitioner's interactions with PJM, SPP, and MISO to process the interconnection requests, and to obtain the interconnection agreements and other approvals necessary from these RTOs to proceed with the Project. Dr. Galli's testimony also described the reasons for and benefits of Petitioner's proposed use of

HVDC technology for the Project, and addressed Petitioner's managerial and technical capabilities to be certificated as a public utility providing transmission-only services and to construct, own, operate, and maintain the Project.

Dr. Galli explained that the Grain Belt Project will run from a point to be located in or around Ford County in western Kansas ("Resource Area") to the MISO (Ameren Missouri – "Ameren") 345 kV transmission system in Missouri and then on to the PJM (Indiana Michigan Power Company, American Electric Power – "AEP") 765 kV transmission system in Indiana. The Grain Belt Project will be an approximately 700 mile, +/-600 kV HVDC transmission line that will be capable of delivering up to 3,500 MW of power, or approximately 15 million megawatt-hours of energy per year, from its western end to its eastern end. The line will continue through Illinois and traverse less than two miles into Indiana to interconnect with the AEP 765 kV Sullivan substation in Sullivan County, Indiana.

Dr. Galli noted that in developing the specific route of the Project, Petitioner worked with land use and routing experts, landowners, local government officials, state and federal agencies, and other stakeholders to develop and refine potential routes for the transmission line. Further, Petitioner engaged with subject matter experts on topics such as threatened and endangered species, archaeology, and cultural resources to ensure all appropriate considerations are taken into account in the routing decisions.

Dr. Galli explained that facilities located within the state may consist of up to four 345 kV circuits or up to two 765 kV circuits, with the likely scenario being that three 345 kV circuits will be constructed. Other facilities to be constructed in Indiana may include substation equipment, such as transformers to aid in interconnection with the existing Sullivan substation. Precise interconnection requirements will be determined through the PJM interconnection studies that are currently underway in coordination with AEP; these studies will also ultimately determine the robustness and appropriateness of interconnecting at the Sullivan substation.

Dr. Galli noted that Petitioner intends to participate in all of the affected RTO regions, namely, SPP, PJM, and MISO. Petitioner intends to join at least one of these RTOs as a transmission-owning member, and turn over functional control of its facilities to that RTO. Petitioner will participate, as allowed, in SPP's, PJM's and MISO's regional planning and voting processes, and intends to provide only wholesale transmission service and will not participate in any generation-owning or load serving capacity in any RTO.

Dr. Galli explained that all generation and transmission projects that connect to or have an impact on a given RTO will eventually be incorporated into the regional plan. The Grain Belt Project, therefore, will be included in SPP's, MISO's, and PJM's regional transmission expansion plans at some point in the future. While the Project is not yet included in PJM's or MISO's current regional transmission expansion plans, the Project is currently undergoing interconnection studies through the PJM queue. MISO does not include interconnection queue projects in its regional transmission plan (the MISO Transmission Expansion Plan or "MTEP") until interconnection projects have entered the Definitive Planning Phase of the interconnection study process. With the interregional nature of the Project, definitive planning has been delayed until the PJM studies have been completed.

Dr. Galli testified Clean Line and Petitioner have established a management and technical team with significant experience in the relevant project development, technical, and regulatory arenas for projects such as the Grain Belt Project. Dr. Galli further noted that POWER Engineers, Inc. ("POWER") provided preliminary transmission line engineering support for the Project. POWER provides engineering/design, construction, asset management, and other services to the power generation and power delivery industries and other industries. POWER has developed preliminary design criteria for the Project and will provide structure designs and engineering support during the route development process; and Petitioner anticipates utilizing POWER for preliminary engineering on the 345 kV or 765 kV lines from the converter station to the Sullivan substation.

Dr. Galli testified that for operation of the Project, it is premature to determine exactly how and by whom the line will be physically controlled as part of the electric grid; however, there are three options by which Petitioner can effectuate physical control. First, Petitioner may develop an operations center to be manned 24/7 with NERC certified operators; second, Petitioner may, on a contractual basis, have the physical control performed by a local utility with sufficient personnel and computing and telecommunications infrastructure; and third, Petitioner may contract with an entity that specializes in performing such functions on a third party basis. Petitioner expects to turn over functional control of its facilities to an RTO – namely either PJM or MISO – as required by FERC as a condition for authorization to negotiate rates.

He noted that it is premature to determine details of maintenance and operations, but it is likely that Clean Line will contract with a firm or firms experienced in electric transmission maintenance and operations to provide maintenance services and also capital replacements and upgrades as necessary. Clean Line is most likely to employ full-time workers directly for the maintenance of the converter stations, although it is possible some or all of these workers could be employed by a contractor. It is also possible that Clean Line could contract with an interconnected utility for maintenance at interconnection switchyards.

Dr. Galli testified that Petitioner is prepared to comply with all applicable NERC reliability standards in operating the Grain Belt Project. He explained that Petitioner expects to be registered on the NERC Compliance Registry for the reliability functions of a "Transmission Owner," a "Transmission Operator," and a "Transmission Service Provider" (depending on the nature of its arrangements with a third party or parties to operate the Grain Belt Project, which could result in some or all of the Transmission Operator or Transmission Service Provider functions being assigned to the third party). Therefore, Petitioner will be subject to applicable requirements of one or more NERC reliability standards in several categories. Petitioner will be prepared to comply with the requirements of the reliability standards that are applicable to its activities.

Dr. Galli explained why Petitioner decided to utilize HVDC technology for the Project. He noted that HVDC is a more efficient technology for the long-haul transmission of large amounts of electric power because substantially more power can be transmitted with lower losses, narrower right-of-way, and fewer conductors than with an equivalent high voltage Alternating Current ("HVAC") system. The use of HVDC technology is a particularly

appropriate solution for the Grain Belt Project (and Clean Line's other current transmission projects), for moving large amounts of power from variable generation sources (such as wind farms) over long distances, primarily or exclusively in one direction.

Dr. Galli explained how DC technology differs from AC technology. In AC systems, the voltage and current periodically change directions. In most of North America, one cycle of positive to negative is completed in approximately 16.67 milliseconds (or 0.01667 seconds); said another way, in one second, 60 cycles are completed (which is defined at 60 Hertz ("Hz")). AC, of course, is the same type of electricity that is delivered to our houses, offices, commercial and industrial facilities. In DC systems, the voltage and current are not time-varying. That is, they hold a steady value over time. This is the type of electricity that is produced by, for example, a car battery. As stated above, high voltage DC systems are especially suited for moving large amounts of power over long distances. The HVDC technology that Petitioner plans to use for the Project is not an experimental or recently introduced technology. HVDC technology has been used and proven for several decades. In North America, there are over 30 HVDC installations, dating back as far as 1968. Of the 30-plus projects, there are 11 HVDC lines in North America that have a combined capacity of approximately 14,000 MW.

Dr. Galli lastly explained the structures that will be located within the state as a result of the Project. He noted that the two primary structure types have been identified are lattice structures and tubular steel "monopole" structures. Petitioner has not made a determination as to the final structure type. For the portion of the Project within Indiana, depending upon whether the lines are constructed at 765 kV or 345 kV, the structure types and spacing would be similar (designed to carry three phases as opposed to two poles) but would have different height and clearance requirements as dictated by the National Electric Safety Code and any applicable state or local codes; however, the assumed ruling span of 1,500 feet for lattice and 1,200 feet for tubular steel poles are reasonable assumptions at this time.

**E. Direct Testimony of Diana (Coggin) Rivera, Project Development Manager of the Grain Belt Project.** Ms. Rivera testified as to her education and expertise including obtaining a Bachelor of Science degree in Operations Research and Industrial Engineering from Cornell University, working for General Electric, where she obtained certification as a Lean Six Sigma Black Belt, and earning her Masters of Business Administration from Harvard Business School. Ms. Rivera noted that she is responsible for managing all aspects of the development of the Grain Belt Project, including public outreach, siting, regulatory and environmental permitting, and technical studies. Ms. Rivera testified about the need for the Project, the benefits of the Project, Petitioner's public outreach process, its routing process, and the other regulatory approvals and permits Petitioner needs in order to construct the Grain Belt Project.

Ms. Rivera stated that wind power is most cost effective in regions where average wind speeds are the highest. In the U.S., the highest onshore wind speeds are predominantly located in sparsely populated areas like the Great Plains, where the demand for electricity is relatively low and the existing electrical infrastructure is relatively weak. The lack of robust transmission lines to connect the windiest areas to load centers has limited the growth of wind power in the U.S. In 2011, wind generation supplied only 3.3% of the total electric power demand in the United

States. Other industrialized nations, such as Denmark (29%), Portugal (19%) and Spain (19%), obtain significantly higher percentages of their electricity demand from wind power. The U.S. has more than enough wind to supply even greater percentages of its electricity needs with wind power, but transmission lines are needed to carry that power to market.

Ms. Rivera noted that in many states, utilities are required to procure 15% to 25% of their energy from renewable resources. In the present environment, wind is the least cost option to meet these goals, but reaching the needed levels of wind penetration is not possible at a reasonable cost without a broad transmission build-out to connect the best resources to load centers. The Grain Belt Project can help to fulfill the demand for renewable energy in the MISO and PJM regions by delivering some of the lowest cost renewable energy available in the United States.

Ms. Rivera testified that while recent economic conditions have reduced demand for electricity in general, retirements of significant amounts of fossil-fueled generation capacity is expected over the next ten years in both MISO and PJM. As of October 2011, MISO had received 2,500 MW of retirement requests from coal-fired power plants and estimated that more than 12,000 MW of coal generation capacity are at risk for retirement. Due to Indiana's heavy reliance on coal, the rate impacts of environmental regulations are likely to be more pronounced in Indiana than in many other states. The Grain Belt Project can help Indiana and other PJM and MISO states meet growing demands for electricity with low-cost, clean, and reliable wind energy. The Project will allow thousands of MWs of new, competitively priced wind energy projects to be built to serve consumers in Indiana and throughout the Midwest and the eastern United States, which will help to offset increasing electricity costs from coal retirements and environmental regulations.

Ms. Rivera noted several benefits of the Project, including the fact that customers in the Midwest and states farther east will benefit from lower wholesale electricity prices as a result of increased market competition. The Grain Belt Project will give load serving entities access to abundant, low-cost, renewable energy sources in the Great Plains and facilitate construction of thousands of MW of new wind power generation capacity. Also, the Grain Belt Project will result in substantial economic benefits in Kansas, Missouri, Illinois, and Indiana, and throughout the region. Businesses, communities, and individuals across the Project area will benefit from the construction and operation of the Project and the resulting wind farms. The Project is estimated to create more than 5,000 jobs for the construction of the transmission line and resulting wind farms, and Petitioner intends to use qualified local vendors to construct the transmission line and to provide services like surveying, right-of-way clearing, grading, and many others. Ms. Rivera noted that most of the construction jobs will be located outside of Indiana, but there is a good possibility that components of the wind turbines or transmission line may be manufactured in Indiana. In addition to businesses, local governments across the Project area will also benefit from increased tax revenues from the transmission line during and after construction.

Ms. Rivera testified to the extensive community outreach that Petitioner has performed, including meeting with Kansas, Missouri, Illinois, and Indiana's governing administration, with legislators in every district within the Project study area, and others on energy or utilities

legislative committees. Ms. Rivera testified that the precise route of the Project has not been finalized, but the goal is to identify a route for the Project that minimizes impacts on natural resources, cultural resources, and current and future land uses in the Project area, while avoiding non-standard design requirements and unreasonable costs. Based on the proposed point of interconnection at the Sullivan substation, the land that the Project will traverse in Indiana is owned by Indiana Michigan Power Company, a subsidiary of AEP. Petitioner will require an easement from AEP in order to construct the Project in Indiana.

Ms. Rivera also noted several other approvals that Petitioner will need to secure. Petitioner expects to obtain several environmental approvals, permits, and licenses. The Project team has met with various agencies to introduce the Project and to identify relevant regulatory requirements. Petitioner must also get regulatory approval in all four states that it will traverse. Also, as an interstate transmission owner and operator, Petitioner will be regulated by the FERC and will file an application to FERC for authorization to sell transmission capacity at negotiated rates to interested generators and load serving entities.

**6. OUCC's Case-in-Chief Evidence.**

**A. Direct Testimony of Ronald Keen, Senior Analyst within the Resource Planning and Communications Division at the OUCC.** Mr. Keen testified that HVDC is a mature technology, and that the continued development of HVDC technology has led to the construction of an increasing number of point to point ("PTP") connections on almost every continent in the world. The logical next step would be to connect the lines to create a grid network, and then optimize the reliability of the network, enabling the balancing of loads and integration of intermittent renewable energy generation resources, which would lower transmission losses and facilitate energy trading across borders.

Mr. Keen further noted that there are advantages of an HVDC system over an HVAC transmission system. When comparing a bipolar HVDC transmission system to a double-circuit HVAC transmission system, investment costs for HVDC converter stations are higher than for an HVAC substation, but the operation and maintenance ("O&M") costs are lower for HVDC systems. Further, operators have more control over the direction and amount of power flowing through the HVDC system. The costs of infrastructure (overhead lines, cabling, etc.) and land acquisition/right-of-way costs are typically lower for HVDC transmission systems. Mr. Keen noted that the federal government GAO report has identified a number of advantages, including: (1) decreased congestion and improved reliability of the energy grid through the provision of access to additional energy generation assets and additional transmission paths; (2) lower costs to consumers at the end points where the HVDC system is integrated into the local distribution grids; (3) more effective utilization of existing generation assets and more competitive local wholesale energy markets; (4) facilitated development of new energy generation assets in locations outside population centers; and (5) facilitated development of renewable energy generation resources.

Mr. Keen also noted some disadvantages of HVDC over HVAC observed from that same GAO report, including diminished economic/aesthetic value of land when lines are built above ground, raised energy prices in areas from where energy is being taken, and reduced incentives

to identify alternatives that decrease demand for energy consumption. Mr. Keen further stated that when new infrastructure is added, consideration should be given to utilizing HVDC technology, depending on the parameters of the specific project.

Mr. Keen testified that the Grain Belt Project offers advantages to consumers. For example, the development and construction costs of the Project will be privately funded and reimbursed to the investors on a merchant-type basis, so that the ratepayer does not directly bear any of the cost, liability, or risk. Therefore, the ratepayer will not bear the brunt of a failed project. Mr. Keen further testified that the OUCC believes Petitioner has the technical and managerial capability to effectively and efficiently manage the Project. The Project's funding will depend on whether investors see the project as an attractive opportunity to realize an adequate return on their investment, while affording Petitioner the ability to provide energy to ratepayers at costs which are competitive.

Mr. Keen stated that the OUCC recommended Commission approval of Petitioner's request for declination of jurisdiction over Petitioner's construction, ownership and operation of, and other activities in connection with the Project. Additionally, the OUCC recommended the Commission require any reports filed with the Commission by Petitioner also be provided to the OUCC and other interested parties, and that Petitioner commit to the Commission and interested parties that it will not seek to recover costs of the construction and/or operation of the Project through the socialization of costs to transmission users in general, such as under an RTO tariff. Mr. Keen further stated that the OUCC believes that the reporting suggested by Petitioner will allow the Commission and the OUCC to effectively monitor the construction and operation of the Project because there is no need for extensive reporting requirements for a project with such a small physical footprint in the State.

7. **Settlement Agreement and Supporting Testimony.** The March 13, 2013 Settlement Agreement was entered into by all parties to this proceeding. The Settlement Agreement provides that it resolves all matters pending before the Commission in this Cause and is supported by substantial evidence.

A. **Petitioner.** Mr. Berry summarized the terms of the Settlement Agreement. He explained the Settlement Agreement states that Petitioner should obtain status as a transmission-only public utility in Indiana, which includes the right to exercise the power of eminent domain. The Settlement Agreement also states that Petitioner possesses sufficient technical, managerial, and financial capability and expertise to operate as a public utility in Indiana. The Settlement Agreement states that Commission should give its consent to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits, or franchises as may be necessary for Petitioner to occupy and use county roads, highways and other public rights-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23. The Settlement Agreement further provides that Petitioner should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM and/or MISO. The Settlement Agreement recommends that the Commission should decline to exercise a limited portion of its jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial,

and financial capability), and certain public utility annual reporting requirements, as described in more detail below. Additionally, the Settlement Agreement provides that Petitioner should be granted authority to locate its books and records outside the state of Indiana, at its principal office in Houston, Texas, with appropriate provisions for access thereto by the Commission and the OUCC.

Mr. Berry noted that, as demonstrated by OUCC witness Keen's testimony, the OUCC did not take issue with most of Petitioner's requested relief. However, Mr. Berry addressed Mr. Keen's recommendation in his case-in-chief testimony that requested Petitioner commit to the Commission and interested parties that Petitioner will not, at any point in the future, seek to recover costs of the construction or operation of the Project from transmission users in general. Mr. Berry testified that while Petitioner currently has no plans to seek cost recovery for this Project through regional cost allocation, Petitioner is not in a position to make an irrevocable commitment not to seek cost allocation. He stated that such a commitment would be premature and would potentially go against the public interest. If regulations change in the future, an irrevocable commitment not to recover costs in a certain manner may compromise the ability of Petitioner to complete the Project.

Mr. Berry explained the Settlement Agreement's provisions concerning regional cost allocation. The Settlement Agreement reflects the fact that Petitioner has no present intent of seeking regional cost allocation for the Project and provides that Petitioner may not seek regional cost allocation for the Project unless it complies with the following requirements: (1) Petitioner must file a notice with the Commission informing the Commission (and the OUCC) of Petitioner's decision to seek Project cost recovery via a PJM or MISO regional cost allocation process, and further it must notify the Commission and OUCC of the extent to which Indiana ratepayers would be affected by regional cost allocation; (2) Petitioner must submit to the Commission and OUCC evidence of benefits (and costs) to Indiana associated with its request for regional cost allocation, e.g., through a benefits study; (3) Petitioner must offer no objection to the participation of the Commission or the OUCC before the applicable RTO and the FERC with respect to regional cost allocation decisions relating to Indiana and the Project; and (4) Petitioner must file with the Commission in this Cause additional and updated information concerning the Project, including: (a) the current status of the Project (expected schedule, estimated cost, status of financing, status of contracts with vendors, developers, power purchasers); (b) Petitioner's continuing financial, technical and managerial capability to construct, own, operate, and manage the Project; (c) the status of the Project with the RTOs; and (d) other relevant information requested by the Commission. The Settlement Agreement provides that Petitioner will not object to a public hearing process on this issue. The Settlement Agreement goes on to explain that, although a Petitioner request for regional cost allocation from Indiana ratepayers for this Project would serve as part of the trigger for the above-described filing requirement, the settling parties' intended purpose of such a proceeding should not be to examine the reasonableness of regional cost allocation, as those decisions will be made in FERC and/or RTO forums; rather, the parties' intended purpose of the proceeding should be limited to examining Petitioner's continuing financial, technical, or managerial capability with respect to this Project in Indiana. Finally, the Settlement Agreement states the parties' belief that Petitioner's authority to operate in Indiana with respect to this Project should not be terminated

or modified without good cause, for example, a demonstration of inadequate financial, technical, or managerial capability.

Mr. Berry concluded that the Settlement Agreement is reasonable and in the public interest, and should be approved. Further, Petitioner has demonstrated, in its case-in-chief, that it has the technical, managerial, and financial capability to construct, own, and operate this Project.

**B. OUCC.** Mr. Keen noted that he still believes that the Project offers advantages to consumers. The Project, as presented to the Commission at this stage will not require ratepayers to directly bear any of the cost, liability, or risk for development and construction. These costs are to be privately funded and reimbursed to the investors on a merchant-type basis. However, there is a potential during either the MISO and/or the PJM planning process, either RTO could determine there are regional benefits as a result of the Project. Consequently, if all the qualifications for PJM or MISO regional cost sharing were met, costs associated with the Project could then be regionally allocated pursuant to a FERC-approved tariff through no action on the part of Petitioner.

Mr. Keen further noted that if Petitioner sought cost allocation through an RTO, and a Commission proceeding were initiated, the parties would only be looking for such a proceeding to reaffirm Petitioner's continued financial, technical, and/or managerial capability with respect to the specific project, and that the OUCC would not seek to examine the reasonableness of the cost allocation or the Project itself in such a proceeding. Mr. Keen concluded that the OUCC recommends the Commission approve the proposed Settlement between the parties without modification.

**8. Discussion and Findings.** Petitioner has requested that the Commission make the following findings: (1) that Petitioner will be a public utility in the State of Indiana; (2) that Petitioner possesses sufficient technical, managerial, and financial capability and expertise to operate as a transmission utility in Indiana; (3) that Petitioner should be granted authority to operate as a transmission-only public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law; (4) that Petitioner should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM or MISO; (5) that the Commission should decline to exercise a limited portion of its jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial and financial capability) and certain public utility annual reporting requirements outlined below; (6) that Petitioner should have the authority to maintain its books and records outside the State of Indiana; (7) that the Commission should consent to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits or franchises as may be necessary for Petitioner to use county roads, highways or other property and public right-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23; and (8) that certain of the information submitted in support of this Cause constitutes confidential and proprietary trade secret information under Indiana law, and should be excepted from public disclosure. With certain conditions, the Settlement Agreement recommends that such relief be granted. We discuss each of these requested findings below.

At the outset, however, we note that settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.,* 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition v. PSI Energy,* 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition,* 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order - including the approval of a settlement - must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum,* 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Pub. Serv. Co.,* 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2, and that such agreement serves the public interest.

A. **Public Utility Status.** Section 1 of the Public Service Commission Act defines "public utility" as:

> every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the: (1) conveyance of telegraph or telephone messages; (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

Ind. Code § 8-1-2-1.

The evidence establishes that Petitioner's ownership, development, financing, construction, and operation of the Project is for the purpose of transmitting wind power generated in western Kansas to public utilities, energy service providers, and power marketers within and outside of Indiana, via facilities to be owned both within and outside of Indiana. The Commission has found in prior cases that a business that transmits electricity to public utilities is itself a public utility. *See, e.g., AEP Indiana Michigan Transmission Co., Inc. and Indiana Michigan Power Co.,* Cause No. 44000 (IURC, Nov. 2, 2011). In *AEP Indiana Michigan Transmission Co.,* the Commission specifically found that it had jurisdiction over a transmission only entity that would own and operate facilities in Indiana. Consequently, for purposes of the ownership, development, financing, construction, and operation of the Project, we find that Petitioner is a public utility within the meaning of Ind. Code § 8-1-2-1.

B. **Technical, Managerial and Financial Capability.** Petitioner submitted extensive evidence of its technical, managerial, and financial capability to construct, own, and operate the Project. Specifically, Mr. Skelly and Dr. Galli testified in detail about the Petitioner

team's background, experience, and expertise in the energy sector, project development, electricity transmission, and financing. Mr. Berry also testified about Petitioner's and its parent company's financial expertise, backing and investors. Accordingly, we find that Petitioner has the necessary technical, managerial, and financial capability to construct, own, and operate the Project.

**C. Authority to Operate as a Public Utility in Indiana.** In light of our findings that the Petitioner will be a "public utility" within the meaning of the Indiana Public Service Commission Act, and that the Petitioner possesses the necessary technical, managerial, and financial capability to construct, own, and operate the Project, we also find that Petitioner should be authorized to operate as a transmission-only public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law.

**D. Transfer of Functional Control of Transmission Facilities to RTO.** Indiana Code § 8-1-2-83 provides that Commission approval is required for, among other things, contracts for the operation of any part of a public utility's works or system by another person. We have previously interpreted this provision as requiring Commission approval for a public utility to transfer functional control of its transmission system to a regional transmission organization, such as MISO or PJM. *See, e.g., Hoosier Energy Rural Elec. Coop. et al.*, Cause Nos. 42027 and 42032 (IURC, Dec. 17, 2001). We have also previously found that Indiana customers will benefit from Indiana public utilities' participation in either MISO or PJM, and that MISO and PJM both possess the capability to functionally operate regional transmission systems. Benefits of RTO participation include improved reliability and reduction in costs. *Id.; see also Indiana Michigan Power Company,* Cause Nos. 42350 and 42352. (IURC, Sep. 10, 2003). Accordingly, we find that the Petitioner should be authorized to transfer functional control of its Indiana transmission facilities to either MISO or PJM at the appropriate time.

**E. Declination of Certain Jurisdiction.** As noted above, Petitioner has requested, and the Settlement Agreement recommends, that the Commission should decline jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability), and certain public utility annual reporting requirements.

The Commission has concluded that the Petitioner will be a "public utility" as defined by the Public Service Commission Act. Indiana law also authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an "energy utility" if certain public interest conditions are satisfied. In particular, "the Commission may enter an order, after notice and hearing, that the public interest requires the Commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over . . . the energy utility. . . ." Ind. Code § 8-1-2.5-5(a). Indiana Code § 8-1-2.5-2 defines "energy utility" to mean, among other things, a public utility within the meaning of Ind. Code § 8-1-2-1. Because we determined the Petitioner to be a "public utility" under Ind. Code § 8-1-2-1, the Petitioner is an "energy utility."

In determining whether the public interest will be served by our declining to exercise some of our jurisdiction, as requested by Petitioner and the Settlement Agreement, Indiana Code

§ 8-1-2.5-5(b) states that the Commission shall consider the following:

(1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the Commission unnecessary or wasteful.
(2) Whether the Commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state.
(3) Whether the Commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
(4) Whether the exercise of Commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

The evidence in this Cause demonstrates that the Petitioner does not intend to, nor does it request authority to, engage in retail sales of electricity to the general public or to any retail customer. Instead, Petitioner will provide only wholesale-level transmission services to generators and wholesale purchasers. More specifically, Petitioner will offer transmission service on the Grain Belt Project through an OATT, which will be filed with, and subject to the jurisdiction of FERC under the Federal Power Act and FERC's regulations. Petitioner expects that its customers will consist principally of (1) wind energy producers located in the wind-rich Resource Area at the western end of the Grain Belt Project, and (2) buyers of electricity – particularly buyers seeking to purchase electricity generated from renewable resources – located in Indiana or connected to the eastern end of the Project through the existing, interconnected transmission grid. Buyers of electricity are expected to be principally wholesale buyers, such as utilities, competitive retail electricity suppliers, including certified alternative retail electricity suppliers, brokers, and marketers.

Further, the evidence indicates that the Project will provide benefits to the state of Indiana and the region. These benefits include the delivery of approximately 15 million MWh of renewable energy per year; cost effectively meeting growing demand for renewable energy; and increasing generator competition, which will exert downward pressure on wholesale energy prices in the MISO and PJM markets. The Project will also provide a substantial opportunity for economic development in the manufacturing, installation, and operation of the transmission line and associated wind turbines. The Project will also have a positive impact on the environment by reducing the need for energy from other sources that will therefore reduce emissions of carbon dioxide, $SO_2$, $NO_x$ and mercury. Additionally, the Project will also reduce water withdrawal and evaporation required for cooling thermal power plants. Finally, the Project will create geographical diversity in the wind projects that deliver into the MISO and PJM transmission systems, thereby reducing variability, facilitating wind integration, and improving reliability.

Pursuant to the provisions set forth in Ind. Code § 8-1-2.5-5, the Commission finds exercising limited jurisdiction over Petitioner and the Project, as requested, will facilitate the development of the proposed Project and will facilitate the transmission and delivery of wind energy from the west to the MISO and PJM regions. This should be beneficial for public utilities

and other purchasers in these regions, including the State of Indiana and will support energy utility efficiency. Petitioner has shown that it will be regulated by the FERC in many respects, and that full state regulation of the Project would thus be unnecessary. Petitioner has also shown that the wholesale market for electricity in Indiana will likely benefit from the ability of the Petitioner to transmit cost effective wind energy to the MISO and PJM regions. Accordingly, we conclude that the Commission's decision to decline some of the exercise of its jurisdiction over Petitioner meets the conditions outlined in Ind. Code § 8-1-2.5-5.

The Commission thus finds that a partial declination of jurisdiction over Petitioner as an energy utility, as requested, is in the public interest. Accordingly, we will decline to exercise a portion of our jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability),[1] and certain public utility annual reporting requirements, as described in more detail below. However, if the Commission determines that the Petitioner either has failed to commence construction of the Project under this Order or is no longer diligently pursuing the commencement of construction of the Project, or otherwise determines that the public interest is served by a declination of full jurisdiction, then the Commission may, following notice to the Petitioner, proceed to issue an Order terminating the declination of jurisdiction set forth herein.

**F. Reporting Requirements.** Consistent with the terms of the Settlement Agreement, it shall be a condition of this Order and our continued declination of jurisdiction over the Petitioner to do the following:

1. Provide the Commission with annual updates on the Project while development and construction are ongoing. These updates should summarize the Project construction and operational status and financing milestones, including:

    a. identification of major construction vendors and contractors hired;
    b. identification of major operation and maintenance contractors retained;
    c. significant new debt and equity financings completed at the Petitioner level; and
    d. significant changes in Clean Line's or Petitioner's senior management.

[1] Specifically, Petitioner shall not be required to seek prior approval of any transfers of ownership of Project assets or ownership interests in the Petitioner involving: (1) the grant of a security interest to a bank or other lender or collateral agent, administrative agent, or other security representative, or a trustee on behalf of bondholders in connection with any financing or refinancing (including any lease financing); (2) a debtor in possession; or (3) a foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner or ownership interests in Petitioner. Additionally, a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility; and (2) the successor satisfies the same or similar terms and conditions imposed on Petitioner as set forth in this Order.

2. File annually with the Commission its FERC Form 1, which will describe Petitioner's assets and revenues (in lieu of the annual report requirements required by Ind. Code §§ 8-1-2-16; 8-1-2-26; 8-1-2-49), once the Project is completed and in service.

3. File annually with the Commission information about any affiliates that own or control electric generation resources in the MISO or PJM regions (which the Petitioner does not anticipate having).

4. Maintain the Petitioner's books and records of account in accordance with FERC's Uniform System of Accounts at 18 C.F.R. Part 101, which should provide appropriate, useful, and sufficient accounting and financial information for this Commission's regulatory purposes.

A responsible officer of the Petitioner shall verify all reports. The Petitioner shall provide two (2) paper copies and one (1) electronic copy of all such reports under this Cause, and to the OUCC, on an annual basis.

**G. Cost Recovery.** The Settlement Agreement, entered into between the Petitioner and the OUCC (collectively the "Parties"), is premised in part upon Petitioner's representation that it does not currently intend to seek recovery of any of the Project costs ("Project" being defined as the approximately 700-mile high voltage transmission line from western Kansas to Sullivan, Indiana) from Indiana retail ratepayers via a PJM or MISO regional cost allocation process, and will not seek recovery of Project costs from Indiana retail ratepayers through such a regional cost allocation process unless it abides with certain specific requirements. However, the parties have agreed that such requirements will not apply if Project costs are recovered through a process by which the applicable Indiana state governmental entity approves of the allocation of such costs; nor will such requirements be applicable in the case of a regional transmission organization's cost recovery from Indiana retail ratepayers and elsewhere, as a potential transmission operator.

The specific requirements and commitments specified in the Settlement Agreement are as follows:

If in the future Petitioner seeks recovery of Project costs from Indiana retail ratepayers through a PJM or MISO regional cost allocation process by submitting the Project into the applicable regional transmission expansion plan for purposes of cost allocation, then prior to exercising its rights under the Indiana Commission's authorization by commencing construction of the Project, Petitioner commits to do the following:

1. File a notice with the Indiana Utility Regulatory Commission informing the Commission (and the OUCC) of Petitioner's decision to seek Project cost recovery via a PJM or MISO regional cost allocation process, and notify the Commission and OUCC of the extent to which Indiana ratepayers would be affected by regional cost allocation;

2. Submit to the Commission and OUCC evidence of benefits (and costs) to Indiana associated with its request for regional cost allocation, e.g., through a benefits study;

3. Offer no objection to the participation of the Commission or the OUCC before the applicable RTO and the FERC with respect to regional cost allocation decisions relating to Indiana and the Project; and

4. File with the Commission in this Cause No. 44264 additional and updated information concerning the Project, including: (1) the current status of the Project (expected schedule, estimated cost, status of financing, status of contracts with vendors, developers, power purchasers); (2) Petitioner's continuing financial, technical, and managerial capability to construct, own, operate, and manage the Project; (3) the status of the Project with the RTO(s); (4) other relevant information requested by the Commission. If requested by the OUCC or directed by the Commission, Petitioner will not object to an examination of this filing through a public hearing process.

The parties agree that, although a Petitioner request for regional cost allocation from Indiana ratepayers for this Project would serve as part of the trigger for this filing requirement, the parties' intended purpose of such a proceeding should not be to examine the reasonableness of regional cost allocation, as those decisions will be made, with Commission input as desired, in FERC and/or RTO forums; rather, the parties' intended purpose of the proceeding should be limited to examining Petitioner's continuing financial, technical, or managerial capability with respect to this Project and Indiana. The parties further agree that Petitioner's authority to operate in Indiana with respect to this Project should not be terminated or modified without good cause, for example, based upon demonstrated inadequate financial, technical, or managerial capability.

The parties acknowledge that during the PJM and/or MISO planning processes, the RTO(s) may determine that there are regional benefits to aspects of Petitioner's Project, and that costs associated with such Project could be regionally allocated pursuant to a FERC-approved tariff through no action on the part of Petitioner.

The parties also acknowledge that nothing in this settlement agreement or in the Commission order to be issued in this proceeding shall constitute a waiver by the Commission or OUCC of any rights they may have to select or provide input for the selection of a transmission provider for any RTO-approved transmission project, including this Project. Further, if Petitioner proposes to construct, own or operate any other transmission facilities in Indiana in addition to those associated with the Grain Belt Project, it shall provide the Commission and the OUCC thirty days written notice of the project before seeking RTO or FERC approval. This requirement is consistent with our Order in *Pioneer Transmission*, Cause No. 44135, at 7 (Apr. 17, 2013).

In our view, these requirements strike a reasonable balance between the OUCC's concerns with regional cost allocation for this Project on the one hand, and the Petitioner's need to be able to compete with other providers of functionally similar energy services, on the other.

Indeed, we note that Indiana Code § 8-1-2.5-5(b) specifically directs us to consider "whether the exercise of Commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment." Accordingly, we find that these provisions are reasonable and should be approved.

**H. Location of Books and Records.** Petitioner proposed, and the Settlement Agreement provides, that Petitioner should be granted authority to locate its books and records outside the state of Indiana, at its principal office in Houston, Texas, with appropriate provisions for access thereto by the Commission and the OUCC. We grant Petitioner the authority to locate its books and records outside Indiana. Upon reasonable notice, Petitioner shall produce in Indiana copies of those portions of its books and records necessary for the OUCC and the Commission to perform their statutory duties. In the event it is not possible, for any reason, for Petitioner to produce the necessary books and records in Indiana, Petitioner must reimburse the OUCC and Commission for all reasonable travel expenses, including travel fare, mileage, lodging and meals incurred while inspecting Petitioner's books and records outside of Indiana.

**I. Consent to Boards of County Commissioners.** The Commission will also give its consent to Boards of County Commissioners of all Indiana counties to grant the Petitioner such licenses, permits, or franchises as may be necessary for Petitioner to occupy and use county roads, highways, and other public rights-of-way for the provision of its services and facilities, pursuant to Indiana Code § 36-2-2-23. This is consistent with our order in *AEP Indiana Michigan Transmission Co., Inc. and Indiana Michigan Power Co.,* Cause No. 44000, (IURC, Nov. 2, 2011).

**J. Confidentiality.** On December 19, 2012, the Petitioner filed a Motion for Protection of Confidential and Proprietary Information ("Motion"), supported by the affidavit of David Berry. The affidavit indicates that such confidential information ("Confidential Information") constitutes a trade secret and that the Petitioner has taken all reasonable steps to protect the confidential information from disclosure. On January 10, 2013, the Presiding Officers issued Docket Entries granting confidential treatment to the Confidential Information on a preliminary basis.

Based on the foregoing, pursuant to Ind. Code § 5-14-3-4(a)(4), we find that the financial information concerning the Petitioner's private equity investors presented in this proceeding constitute "trade secrets" and should be afforded confidential treatment. Accordingly, this information is exempted from public disclosure and will be held as confidential by the Commission.

**K. Approval of the Settlement Agreement.** Based on the evidence presented and our findings above, we find the Settlement Agreement is a reasonable, balanced, and comprehensive resolution of the issues in this Cause. While an independent transmission company is a significant departure from the traditional regulatory construct in Indiana, the Commission finds it to be acceptable in this instance, in which the Project will provide many public interest benefits both economically and environmentally. In addition, the Settlement Agreement gives further assurance and provides that Petitioner's operations should be transparent, accountable, and compliant with the Commission's regulations and should not

adversely affect Indiana consumers. The Settlement Agreement also provides for ongoing communication among the parties and the filing and sharing of information related to certain aspects of Petitioner's operations. Taken together, the terms of the Settlement Agreement serve the public interest and satisfy the important public policy of fostering settlement over litigation. Therefore, the Commission finds that the Settlement Agreement is reasonable, in the public interest, and should be approved.

Finally, the parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, (IURC, March 19, 1997).

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The Settlement Agreement shall be and hereby is approved.

2. The terms and conditions of the Settlement Agreement shall be and hereby are incorporated herein as a part of this Order, and the parties shall abide by the terms of the Settlement Agreement and this Order.

3. Petitioner is hereby determined to be a "public utility" within the meaning of Ind. Code § 8-1-2-1, and an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2.

4. Petitioner shall be authorized to operate as a transmission-only public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law.

5. Petitioner shall be authorized to transfer functional control of its Indiana transmission facilities to MISO or PJM.

6. The Commission declines to exercise a portion of its jurisdiction over Petitioner and its construction, operation, and financing of the Project, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability), and certain public utility annual reporting requirements, as delineated in this Order.

7. Petitioner shall have the authority to maintain its books and records outside the State of Indiana, subject to the conditions outlined in this Order.

8. The Commission consents to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits, or franchises, as may be necessary for Petitioner to use county roads, highways, or other property and public rights-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23.

9. Petitioner shall comply fully with the terms of this Order and submit to the

SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

| | |
|---|---|
| PETITION OF GRAIN BELT EXPRESS CLEAN LINE LLC FOR: (1) A DETERMINATION OF ITS STATUS AS A "PUBLIC UTILITY" UNDER INDIANA LAW; (2) A DETERMINATION THAT IT HAS THE TECHNICAL, MANAGERIAL, AND FINANCIAL CAPABILITY TO OPERATE AS A PUBLIC UTILITY IN INDIANA; (3) AUTHORITY TO OPERATE AS A PUBLIC UTILITY IN INDIANA, INCLUDING AUTHORITY TO EXERCISE ALL RIGHTS AND PRIVILEGES OF A PUBLIC UTILITY ACCORDED BY INDIANA LAW; (4) AUTHORITY TO TRANSFER FUNCTIONAL CONTROL OF OPERATION OF ITS TRANSMISSION FACILITIES TO BE CONSTRUCTED IN INDIANA TO A FULLY-FUNCTIONING REGIONAL TRANSMISSION ORGANIZATION; (5) A DETERMINATION THAT THE COMMISSION SHOULD DECLINE TO EXERCISE CERTAIN ASPECTS OF ITS JURISDICTION OVER GRAIN BELT EXPRESS CLEAN LINE LLC; (6) AUTHORITY TO LOCATE ITS BOOKS AND RECORDS OUTSIDE THE STATE OF INDIANA; (7) CONSENT BY THE COMMISSION TO BOARDS OF COUNTY COMMISSIONERS FOR GRAIN BELT EXPRESS CLEAN LINE LLC TO OCCUPY PUBLIC RIGHTS OF WAY, TO THE EXTENT IT MAY BE NECESSARY; AND (8) ALL OTHER APPROPRIATE RELIEF | CAUSE NO. 44264 |

## STIPULATION AND SETTLEMENT AGREEMENT

**THIS AGREEMENT** is made and entered into by and among Grain Belt Express Clean Line LLC ("Grain Belt Express") and the Indiana Office of Utility Consumer Counselor ("OUCC") (collectively the "Parties" and individually "Party"). The Parties having been duly advised by their respective staff, experts and counsel, and solely for purposes of compromise and settlement, stipulate and agree that the terms and conditions set forth below represent a fair, just and reasonable resolution of the matters in this proceeding pending before the Indiana Utility Regulatory Commission ("Commission"), subject to their incorporation into a final, non-

appealable order ("Final Order") of the Commission without modification or further condition that may be unacceptable to any Party. If the Commission does not approve this Stipulation and Settlement Agreement ("Settlement"), in its entirety, the entire Settlement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties.

**WITNESSETH:**

**WHEREAS**, Grain Belt Express petitioned the Commission for approval, to the extent necessary for status as a "public utility" and for related regulatory relief as set forth in the Petition in this Cause dated November 2, 2012, and has supported such request with prepared testimony and exhibits filed in this proceeding;

**WHEREAS**, the OUCC has analyzed the Petitioner's filing, conducted discovery and otherwise given consideration to the relief sought by Petitioner in this Cause;

**WHEREAS**, Grain Belt Express and the OUCC agree that the OUCC and the Commission should have necessary information available on a forward going basis to understand and assess Grain Belt Express' construction and operations;

**WHEREAS**, Grain Belt Express and the OUCC agree that the Petitioner's operations should be transparent, accountable and compliant with the Commission's regulations and should not adversely affect Indiana consumers;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the Parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

## A. SUBSTANTIVE TERMS AND CONDITIONS

appealable order ("Final Order") of the Commission without modification or further condition that may be unacceptable to any Party. If the Commission does not approve this Stipulation and Settlement Agreement ("Settlement"), in its entirety, the entire Settlement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties.

**WITNESSETH:**

**WHEREAS**, Grain Belt Express petitioned the Commission for approval, to the extent necessary for status as a "public utility" and for related regulatory relief as set forth in the Petition in this Cause dated November 2, 2012, and has supported such request with prepared testimony and exhibits filed in this proceeding;

**WHEREAS**, the OUCC has analyzed the Petitioner's filing, conducted discovery and otherwise given consideration to the relief sought by Petitioner in this Cause;

**WHEREAS**, Grain Belt Express and the OUCC agree that the OUCC and the Commission should have necessary information available on a forward going basis to understand and assess Grain Belt Express' construction and operations;

**WHEREAS**, Grain Belt Express and the OUCC agree that the Petitioner's operations should be transparent, accountable and compliant with the Commission's regulations and should not adversely affect Indiana consumers;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the Parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

## A. SUBSTANTIVE TERMS AND CONDITIONS

**SETTLING PARTIES' EXHIBIT 1**
**SETTLEMENT AGREEMENT**

1. **Public Utility Status.** The Parties agree that the Commission should approve Grain Belt Express' status as a public utility in Indiana. This status includes exercising all rights and privileges of public utilities under Indiana law, including the right to exercise the power of eminent domain. The Commission will also give its consent to Boards of County Commissioners of all Indiana counties to grant Grain Belt Express such licenses, permits or franchises as may be necessary for Grain Belt Express to occupy and use county roads, highways and other public rights-of-way for the provision of its services and facilities pursuant to IC 36-2-2-23.

2. **Technical, Managerial, and Financial Capability.** The Parties agree that Grain Belt Express possesses sufficient technical, managerial, and financial capability and expertise to operate as a public utility in Indiana.

3. **Transferring Functional Control.** The Parties agree that Grain Belt Express should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM Interconnection, LLC ("PJM") and/or Midwest Independent Transmission System Operator, Inc. ("MISO").

4. **Partial Declination of Commission Jurisdiction.** The Parties agree that the Commission should decline to exercise a limited portion of its jurisdiction over Grain Belt Express, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability), and certain public utility annual reporting requirements, as described in more detail below.

5. **Grain Belt Express' Books and Records.** The accounting, financial and administrative management and staff of Clean Line perform and will continue to perform accounting, financial, treasury and other administrative services for Grain Belt Express (along with the other subsidiaries of Clean Line), including maintenance of Grain Belt Express' accounting and financial books and records. The management and administrative staff of Clean Line performing these functions will be located at the principal offices in Houston. Due to the

nature of its business and operations, Grain Belt Express will be operating in, and potentially will be subject to the jurisdiction of regulators in, at least four states, Kansas, Missouri, Illinois, and Indiana. For these reasons, it would be inefficient and unduly expensive, and could necessitate duplicative efforts, for Grain Belt Express to maintain its books and records in Indiana, or at any location other than the principal office of Grain Belt Express and its parent company in Houston, Texas.

Therefore, the Parties agree that Grain Belt Express should be granted authority to locate its books and records outside the state of Indiana, at its principal office in Houston, Texas, with appropriate provisions for access thereto by the Commission and the OUCC. Grain Belt Express commits to produce in Indiana, upon reasonable notice, copies of those portions of its books and records necessary for the Office of Utility Consumer Counselor ("OUCC") and the Commission to perform their statutory duties. In the event it is not possible, for any reason, for Grain Belt Express to produce the necessary books and records in Indiana, Grain Belt Express commits to reimburse the OUCC and Commission for all reasonable travel expenses, including travel fare, mileage, lodging and meals incurred while inspecting Grain Belt Express' books and records outside of Indiana.

6. **Cost Recovery.** This Settlement is premised in part upon Grain Belt Express' representation that it does not currently intend to seek recovery of any of the Project costs ("Project" being defined as the approximately 700-mile high voltage transmission line from western Kansas to Sullivan, Indiana) from Indiana retail ratepayers via a PJM or MISO regional cost allocation process, and will not seek recovery of Project costs from Indiana retail ratepayers through such a regional cost allocation process unless it abides with the requirements of a., b., c., and d. of this Section 6, below. Provided, however, the following requirements will not apply if Project costs are recovered through a process by which the applicable Indiana state governmental entity approves of the allocation of such costs. Provided further, that the following requirements are not applicable to a regional transmission organization's ("RTO") cost recovery from Indiana retail ratepayers and elsewhere, as a potential transmission operator.

reasonableness of regional cost allocation, as those decisions will be made, with IURC input as desired, in FERC and/or RTO forums; rather, the Parties' intended purpose of the proceeding should be limited to examining Grain Belt Express' continuing financial, technical, or managerial capability with respect to this Project and Indiana. The Parties further agree that Grain Belt Express' authority to operate in Indiana with respect to this Project should not be terminated or modified without good cause, for example, based upon demonstrated inadequate financial, technical, or managerial capability.

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The Parties acknowledge that during the PJM and/or MISO planning processes, the RTO(s) may determine that there are regional benefits to aspects of Grain Belt Express' Project, and that costs associated with such Project could be regionally allocated pursuant to a FERC-approved tariff through no action on the part of Grain Belt Express.

The Parties also acknowledge that nothing in this settlement agreement or in the IURC order to be issued in this proceeding shall constitute a waiver by the IURC or OUCC of any rights they may have to select or provide input for the selection of a transmission provider for any RTO-approved transmission project, including this Project.

7. **Reporting Requirements.** In lieu of Commission jurisdiction over certain aspects of the Project, Grain Belt Express will commit to do the following:

a. Provide the Commission with annual updates on the Project while development and construction are ongoing. These updates will summarize the Project construction and operational status and financing milestones, including:
   i. identification of major construction vendors and contractors hired,
   ii. identification of major operation and maintenance contractors retained,
   iii. significant new debt and equity financings completed at the Grain Belt Express level, and
   iv. significant changes in Clean Line Energy Partners LLC or Grain Belt Express senior management.

b. File annually with the Commission its FERC Form 1, which will describe all of Grain Belt Express' assets and revenues (in lieu of the annual report requirements

required by Ind. Code §§ 8-1-2-16; 8-1-2-26; 8-1-2-49), once the Project is completed and in service,

c. File annually with the Commission information about any affiliates that own or control electric generation resources in the MISO or PJM regions (which Petitioner does not anticipate having).

d. Maintain Petitioner's books and records of account in accordance with FERC's Uniform System of Accounts at 18 C.F.R. Part 101, which should provide appropriate, useful, and sufficient accounting and financial information for this Commission's regulatory purposes.

## B. PRESENTATION OF THE SETTLEMENT TO THE COMMISSION

1. The Parties shall support this Settlement before the Commission and request that the Commission expeditiously accept and approve the Settlement. This Settlement is not severable and should be accepted or rejected in its entirety without modification or further condition(s) that may be unacceptable to any Party.

2. The Parties shall jointly move for leave to file this Settlement and supporting evidence. Such evidence will be offered into evidence without objection and the Parties hereby waive cross-examination. The Parties propose to submit this Settlement and evidence conditionally, and that, if the Commission fails to approve this Settlement in its entirety without any change or with condition(s) unacceptable to any Party, the Settlement and supporting evidence shall be withdrawn and the Commission will continue to hear Cause No. 44264 with the proceedings resuming at the point they were suspended by the filing of this Settlement.

3. A Final Order approving this Settlement shall be effective immediately, and the agreements contained herein shall be unconditional, effective and binding on all Parties as an Order of the Commission.

## C. EFFECT AND USE OF SETTLEMENT

1. It is understood that this Settlement is reflective of a negotiated settlement and neither the making of this Settlement nor any of its provisions shall constitute an admission by any Party to this Settlement in this or any other litigation or proceeding. It is also understood that each and every term of this Settlement is in consideration and support of each and every other term.

2. This Settlement shall not constitute and shall not be used as precedent by any person in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce the terms of this Settlement.

3. This Settlement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

4. The Parties agree that the evidence filed in this proceeding constitutes substantial evidence sufficient to support this Settlement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement, as filed. The Parties shall prepare and file an agreed proposed order with the Commission as soon as reasonably possible.

5. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of any Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

6. The undersigned Parties have represented and agreed that they are fully authorized to execute the Settlement on behalf of their designated clients, and their successors

and assigns, who will be bound thereby.

7. The Parties shall not appeal or seek rehearing, reconsideration or a stay of the Final Order approving this Settlement in its entirety and without change or condition(s) unacceptable to any Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement). The Parties shall support or not oppose this Settlement in the event of any appeal or a request for a stay by a person not a party to this Settlement or if this Settlement is the subject matter of any other state or federal proceeding (except as allowed for within the terms of the Settlement).

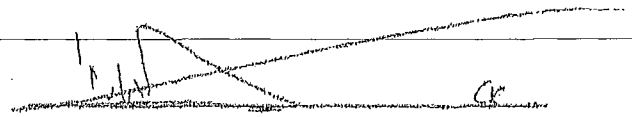
8. The provisions of this Settlement shall be enforceable by any Party before the Commission and thereafter in any state court of competent jurisdiction as necessary.

9. This Settlement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT

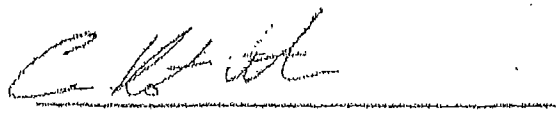
ACCEPTED and AGREED to, as of this 13th day of MARCH, 2013.

GRAIN BELT EXPRESS CLEAN LINE LLC



Michael Skelly

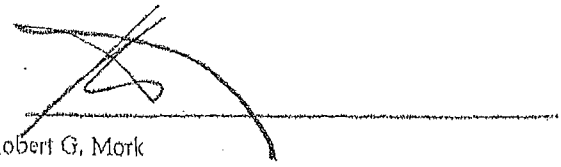
President



Cary Kottler

Secretary

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



Robert G. Mork

Deputy Consumer Counselor for Federal Affairs, Indiana Office of Utility Consumer Counselor

# DIRECT TESTIMONY OF KRIS ZADLO

## SENIOR VICE PRESIDENT, INVENERGY LLC

## ON BEHALF OF JOINT PETITIONERS

## IURC CAUSE NO. 45294

**JOINT PETITIONERS' EXHIBIT 2**



**September 20, 2019**

## TABLE OF CONTENTS

## I. INTRODUCTION AND PURPOSE OF TESTIMONY

**Q. Please state your name and business address.**

A. My name is Kris Zadlo and I am the Senior Vice President, Commercial Analytics, Regulatory Affairs and Transmission for Invenergy LLC. My business address is One South Wacker Drive, Suite 1800, Chicago, IL 60606.

**Q. Please explain the relationship of Invenergy LLC to Invenergy Transmission LLC.**

A. Invenergy LLC is an affiliate of Invenergy Transmission LLC ("Invenergy Transmission"), the proposed purchaser of Grain Belt Express Clean Line LLC ("Grain Belt Express"). Invenergy LLC and Invenergy Transmission have a common parent company, Invenergy Investment Company LLC ("Invenergy Investment"). Invenergy Transmission is a special purpose entity formed for the purpose of acquiring Grain Belt Express, that currently relies on the personnel of Invenergy LLC and the financial resources of Invenergy Investment. I will refer to all three entities collectively as "Invenergy."

**Q. Please discuss your educational background and work experience.**

A. I received a Master of Science in Electrical Engineering from Purdue University in 1990 and a Bachelor of Science from Rose-Hulman Institute of Technology in 1989. I am a licensed professional engineer in the State of Illinois (license number 062-049149). I am employed by Invenergy and am responsible for managing services provided to all Invenergy projects with respect to their commercial activities pertaining to transmission assets. These responsibilities include managing technical and regulatory issues, as well as supporting filings before the Federal Energy Regulatory Commission ("FERC"). Previously, I was employed with Calpine Corporation ("Calpine") as Vice President of

Transmission. I worked for Calpine for 8 years. Prior to Calpine I worked for Commonwealth Edison Company of Chicago ("Commonwealth Edison" or "ComEd") as Technical Studies Director. I worked for 10 years at Commonwealth Edison, holding various positions in transmission planning, generation planning, operations, and strategic analysis. My C.V. is attached hereto as **Attachment KZ-1**.

**Q. Please describe your utility experience.**

A. I started my career at Commonwealth Edison in Chicago where I worked for 10 years in various positions in Transmission Planning and Strategic Analysis. As Technical Studies Director, I was responsible for transmission engineers that performed stability and voltage studies and maintained the equipment rating data base for the entire transmission system. I personally wrote Commonwealth Edison's "Guidelines for Interconnection of Generation" and "Guidelines for Dynamic Scheduling." I also wrote ComEd's first "Interconnection for Photovoltaic Power System."

Over my career at ComEd, Calpine and Invenergy I have overseen the interconnection of over 13,800 megawatts ("MWs") of utility scale generation of various technologies. In 2001-2002, I was part of a small group of industry experts that crafted FERC's Large Generator Interconnection Procedures which were issued in 2003.

**Q. Please describe your experience in implementing new technologies.**

A. I founded Invenergy's energy storage business in 2012. In 2015 Invenergy's Grand Ridge Energy Center received two prestigious industry awards, Power Engineering's Renewable Energy Project of the Year and Energy Storage North America Innovation Award. Since 2012 our storage program has grown to thirteen facilities totaling 260 MW/653 MWh of built or contracted projects.

Earlier in my career, I worked with General Electric ("GE") to develop a Trailer Mounted Combustion Turbine (TM2500) to help meet a critical energy need in the City of Chicago in 2000. The project was developed in 10 months, was the first deployment of its kind, and was the beginning of a new product line for GE. In both cases I was able to create or implement new utility scale technologies for safe and useful deployment.

**Q. Have you previously testified before the regulatory commission of any state or the Federal Energy Regulatory Commission?**

A. Yes. I have previously testified before the Wisconsin Public Service Commission, the Missouri Public Service Commission ("MPSC"), the Kansas Corporation Commission ("KCC"), and FERC. My most recent testimony at FERC was at the April 3-4, 2018 technical conference concerning the coordination of affected systems in the generator interconnection process. As it pertains to Grain Belt Express, I provided written and oral testimony to the MPSC in Case Nos. EA-2016-0358 and EM-2019-0150 to support the issuance of a Certificate of Public Convenience and Necessity to Grain Belt Express and to support Invenergy's acquisition of Grain Belt Express, and provided written and oral testimony to the KCC in Docket No. 19-GBEE-253-ACQ to support Invenergy's acquisition of Grain Belt Express. A complete list of proceedings in which I have testified is attached hereto as **Attachment KZ-2**.

**Q. What is the purpose of your testimony in this proceeding?**

A. I will provide an introduction to Invenergy, including its history, organization, business model, and electric asset ownership and operating philosophy. In addition, I will describe Invenergy Transmission's pending acquisition of Grain Belt Express (the "Transaction"). Grain Belt Express is currently owned by Grain Belt Express Holding LLC ("Grain Belt

Express Holding"), which is a wholly-owned subsidiary of Clean Line Energy Partners LLC. Grain Belt Express is developing the Grain Belt Express Clean Line Project ("Grain Belt Express Project" or "Project"), an approximately 780-mile, overhead, multi-terminal ±600 kilovolt ("kV") high voltage direct current ("HVDC") transmission line and associated facilities that will connect over 4,000 MW of low-cost, renewable power in western Kansas. I will discuss the operational and managerial qualifications of Invenergy to acquire, own, and operate the Project. I will also discuss how the public interest will be promoted by the Commission's approval of the Transaction.

**Q. What relief are Joint Petitioners Grain Belt Express and Invenergy requesting in this proceeding?**

A. Joint Petitioners respectfully request that the Commission find that Invenergy Transmission has the necessary technical, managerial, and financial capabilities to acquire, own, and operate Grain Belt Express and the Grain Belt Express Project. Further, to the extent required, Joint Petitioners respectfully request that the Commission approve Invenergy Transmission's acquisition, ownership, and operation of Grain Belt Express and the Grain Belt Express Project and find that the acquisition is consistent with the public interest. Additionally, Joint Petitioners request that the Commission: (1) accept Invenergy Transmission's commitment to operate in Indiana pursuant to the terms and conditions contained in the settlement agreement and Order in Cause No. 44264, with some minor exceptions as I discuss later in my testimony; (2) confirm that Grain Belt should continue to be granted authority to operate as a public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law; (3) confirm that it will continue to decline to exercise certain aspects of its jurisdiction over Grain Belt, as

set out in the Commission's Order in Cause No. 44264; (4) approve Grain Belt's participation in either the PJM, MISO, or SPP regional transmission organization; and (5) confirm that Grain Belt should continue to be granted authority to locate its books and records outside the state of Indiana, as provided in the Order in Cause No. 44264. Finally, Joint Petitioners respectfully request that the Commission except from public disclosure certain confidential and proprietary information to be filed in this case, consistent with Indiana law.

**Q. Does Invenergy accept the commitments and conditions contained in the settlement agreement and Order in Cause No. 44264 and agree to abide by those commitments and conditions?**

A Yes, with a couple of minor exceptions. First, with regard to the issue of transferring functional control to a regional transmission organization (RTO), we would also like the flexibility to transfer this control to SPP, should SPP prove to be a better fit for our facilities and plans than PJM or MISO. Second, as a technical matter, the 44264 settlement agreement authorizes Grain Belt to locate its books and records in Houston, Texas; Invenergy would like approval to locate its books and records in Chicago, Illinois, where Invenergy is headquartered. Finally, with regard to reporting requirements, we would like to streamline the reporting by limiting the reporting requirements to (1) the filing of annual development and construction status reports, consistent with the 2013 settlement and order, and (2) the annual filing of FERC Form 1 reports, once the project is in-service, also consistent with the 2013 settlement and order.

**Q. Please describe Invenergy's pending acquisition of Grain Belt Express.**

A. On November 9, 2018 Invenergy Transmission entered into a Membership Interest Purchase Agreement ("MIPA") with Grain Belt Express Holding under which Invenergy Transmission would acquire Grain Belt Express, which is the owner of all of the assets comprising the Grain Belt Express Project. The parties also entered into a related Development Management Agreement ("DMA") that allows for Invenergy Transmission to provide managerial oversight and development funding through the projected closing date of the MIPA.

**Q. Please explain the difference between the MIPA and the DMA.**

A. The MIPA goes into effect only after certain conditions precedent are met, including regulatory approvals of the Transaction. The DMA is currently the governing document that covers ongoing Grain Belt Express Project development and will terminate once the Transaction closes pursuant to the terms of the MIPA.

## II. OVERVIEW OF INVENERGY

**Q. Please provide an overview of Invenergy.**

A. The Invenergy family of companies is headquartered in Chicago, Illinois. It was founded in 2001 and is North America's largest privately held company that develops, owns, and operates large-scale renewable and other clean energy generation, energy storage facilities, and electric transmission facilities across North America, Latin America, Japan and Europe. Invenergy's expertise includes a complete range of fully integrated in-house capabilities, including: Project Development, Permitting, Transmission, Interconnection, Energy Marketing, Finance, Engineering, Project Construction, Operations and

Maintenance. To date, the Company has developed more than 22,600 MW of large-scale wind, solar, natural gas, and energy storage facilities.

**Q. Please provide an overview of Invenergy's leadership and business philosophy.**

A. Invenergy's senior executives—each with more than 25 years in the energy generation industry—have worked together for more than two decades. Invenergy's founder, President and CEO Michael Polsky, is a recognized and respected industry leader and is the majority owner of Invenergy and its affiliated companies. Profiles of Invenergy's Senior Management and Project Management teams are attached as **Attachment KZ-3**.

Invenergy values integrity, commitment to business partners and host communities, and environmental responsibility. Invenergy is also committed to U.S. military veterans, who make up approximately 11% of Invenergy's 1,000 employees. Invenergy is also committed to an inclusive workplace and to being a responsible community partner. The Invenergy Impact Program builds ongoing, permanent relationships to connect with host communities and strengthen Invenergy's local presence. Invenergy engages with local organizations, providing volunteers, resources, and donations to a variety of causes including education, emergency medical services, veteran services and environmental stewardship. In 2018 Invenergy corporate and Invenergy's individual energy centers in the United States and Canada donated more than $1 million to local schools and charitable organizations.

**Q. Please provide an overview of Invenergy's financial abilities.**

A. Invenergy has extensive experience and success in raising capital for large scale energy projects. The financial abilities of Invenergy are discussed in more detail in the Direct Testimony of Andrea Hoffman, Senior Vice President of Financial Operations.

**Q. Does Invenergy own and operate generation in the MISO or PJM regions?**

A. Yes.

**Q. Please describe the generating facilities that Invenergy has a majority ownership interest in and operates in the MISO or PJM regions.**

A. The following table describes such facilities:

| Region | Project | Technology | Capacity (MW) |
|---|---|---|---|
| MISO | Gratiot County Wind | Wind | 110.40 |
| MISO | Cannon Falls Energy Center | Natural Gas | 357.00 |
| PJM | Grand Ridge IV Wind Energy Center | Wind | 10.50 |
| PJM | Grand Ridge III Wind Energy Center | Wind | 49.50 |
| PJM | Grand Ridge II Wind Energy Center | Wind | 51.00 |
| PJM | Grand Ridge Wind Energy Center | Wind | 99.00 |
| PJM | Beech Ridge Wind Energy Center | Wind | 100.50 |
| PJM | Grand Ridge Solar Energy Center | Solar | 20.00 |
| PJM | Nelson Energy Center | Natural Gas | 584.00 |
| PJM | Grand Ridge IV Battery | Storage | 1.50 |
| PJM | Grand Ridge Storage Expansion | Storage | 3.00 |
| PJM | Grand Ridge Energy Storage | Storage | 31.50 |
| PJM | Beech Ridge Energy Storage | Storage | 31.50 |
| | | **Total** | **1,449.4** |

**Q. Does Invenergy provide retail electric service to customers in Indiana?**

A. No.

**Q. Does Invenergy provide retail electric service to customers in other states?**

A. No.

## III. TECHNICAL AND MANAGERIAL QUALIFICATIONS OF INVENERGY TO OWN AND OPERATE THE PROJECT

**Q. Please briefly describe Invenergy's qualifications to efficiently manage and supervise the construction process for the Grain Belt Express Project.**

A. Invenergy routinely develops projects with a view toward long-term ownership, performance, profitability and operations. Invenergy has built its core competencies around power plant operations and maintenance ("O&M"). Invenergy operates its power plant fleet through Invenergy Services LLC ("Invenergy Services"), a wholly owned subsidiary of Invenergy Investment. Invenergy Services is staffed with experienced industry personnel and currently operates 9,663 MW of natural gas, storage, and renewable generating capacity in North America. Combining asset management, operations, maintenance, and commercial execution functions allows Invenergy Services to provide a single, comprehensive solution to overall management of the asset.

**Q. Does Invenergy have experience developing and maintaining transmission projects?**

A. Yes. Because the core of Invenergy's business model is project development and long-term ownership and operations, the Company takes great care to ensure the longevity, reliability and cost-effectiveness of its assets, especially transmission and interconnection infrastructure for its projects. Since 2001, Invenergy has built all required transmission and distribution lines, generator step-up transformers ("GSUs"), and substations for its facilities in numerous regions, including within the regions managed by Southwest Power Pool, Inc. ("SPP"), Midcontinent Independent System Operator, Inc. ("MISO") and PJM Interconnection, LLC ("PJM"). Invenergy developed, permitted and constructed this infrastructure across various terrains, state and local jurisdictions, and in vastly differing environmental and regulatory conditions. This experience adds to over 414 miles of high-voltage transmission lines, over 2,306 miles of distribution lines, 74 substations and 86 GSUs of which several have been built for utilities.

**Q. Does Invenergy have experience working with landowners to get necessary land rights?**

A. Invenergy excels at building infrastructure by working diligently with landowners to build trustworthy relationships, ensuring that the landowners' interests are protected, and their concerns are taken into account. Invenergy has negotiated leases with over 13,000 landowners, constituting over 10 million acres.

**Q. Who are the individuals at Invenergy that will manage and direct the construction and operation of the Project and what are their specific duties and qualifications?**

A. Chris Carter is Director, Renewable Project Management for Invenergy and has 16 years of experience in right-of-way issues, material procurement, contract negotiation, and construction of electrical transmission and substations. He will be supported by Bryan Schueler, the Executive Vice President and Chief Development Officer for Invenergy and a 25-year veteran of the power industry. The team will also include Art Fletcher, Senior Vice President, Renewable Engineering and Project Management for Invenergy, who brings 29 years of experience in managing heavy civil and power construction projects domestically and abroad. Profiles of the foregoing individuals are provided in **Attachment KZ-3**.

**Q. Please describe Invenergy's approach to project management and construction, including the hiring of an engineering, procurement and construction ("EPC") contractor.**

A. Invenergy has contracted for construction work on its renewable energy projects in a variety of manners ranging from executing full EPC contracts to executing individual specialty contracts with engineering, construction, and supply firms. Each project is

assessed on a basis of risk and economics with the chosen means of execution based upon the most favorable overall result for the project. For renewable projects, Invenergy typically executes separate major component procurement contracts, electrical engineering contracts, balance of plant type construction contracts, and high-voltage substation and transmission line contracts. These contracts are executed and managed by Invenergy project management teams based in Chicago and Invenergy site management teams based in the field. Art Fletcher will oversee all project engineering and construction activities, including the management of a top tier construction firm contracted to build the facility.

**Q. Please describe Invenergy's experience with transmission interconnection issues.**

A. Invenergy has extensive experience with the SPP, MISO and PJM interconnection queues. As of the date on which this testimony is filed, Invenergy has developed 10 projects totaling approximately 1,670 MWs in the SPP footprint and currently has over 125 active requests in the SPP queue. Invenergy has also developed 23 projects totaling approximately 4,762 MWs in the MISO footprint. Invenergy is an active participant in MISO's Interconnection Process Working Group and currently has over 117 active requests in the queue. Finally, Invenergy has developed 15 projects totaling approximately 3,786 MWs in the PJM footprint and currently has over 81 active requests in the PJM queue.

## IV. THE PUBLIC INTEREST

**Q. Please describe the effect of the Transaction on consumers generally.**

A. The proposed Transaction will benefit consumers by improving the ability of Grain Belt Express to complete the Project. In granting Grain Belt Express public utility status in

Indiana in 2013, the Commission found that completion of the Project would be in the public interest. The Project will allow for expanded development of renewable resources, while limiting the cost of transmission that is recoverable from Indiana ratepayers.

**Q. Please describe specifically 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, and how this affects consumers.**

A. The proposed Transaction is an acquisition of Grain Belt Express by Invenergy Transmission, and not a merger. Therefore, there is no newly created entity resulting from the proposed Transaction. However, the financial condition of Grain Belt Express and the Project will significantly improve as a result of the Transaction. As discussed in the Direct Testimony of Andrea Hoffman, Invenergy is a financially sound company with a proven track record of financing large energy projects. Grain Belt Express will benefit from Invenergy's financial stability and financing capabilities.

**Q. Please describe the reasonableness of the purchase price.**

A. The purchase price was reached through an arm's length negotiation between two sophisticated parties who determined it to be in their best interest to enter into the Transaction. Further, Invenergy will not be recovering any of the costs of the Transaction through rates paid by Indiana ratepayers, therefore there should not be any concerns regarding the purchase price.

**Q. Please describe the ratepayer benefits resulting from the proposed Transaction that can be quantified.**

A. Grain Belt Express does not have retail ratepayers. Instead, Grain Belt Express only has wholesale customers and FERC will retain exclusive jurisdiction over the rates Grain Belt

Express may charge for use of the Project. More specifically, Grain Belt Express will offer wholesale transmission service on the Project to generators, load serving entities, utilities, or large commercial and industrial customers to deliver low-cost renewable resources from western Kansas to those potential off-takers in Missouri, Illinois, Indiana, and states further east utilizing a "shipper pays" or participant-funded model. Initially, Grain Belt Express anticipates it will enter into long-term transmission service or capacity contracts with its off-takers that require the transmission customer to pay a negotiated reservation charge. Once the Project is operational the terms of service and conditions associated with service will be subject to a FERC approved Open Access Transmission Tariff ("OATT"). The rates will be governed by the negotiated rate contracts which are subject to FERC approval and will be service agreements under the relevant OATT.

**Q. Please describe the effect of the proposed Transaction on the existing competition, and how this affects consumers.**

A. Indirectly, the improved ability of Grain Belt Express 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 energy prices in wholesale energy markets such as MISO and PJM.

**Q. Please describe the effect of the proposed Transaction on the environment.**

A. Indirectly, the improved ability of Grain Belt Express to complete the Project is a benefit to the environment, as the Project will enable more of Kansas' abundant renewable resources to be harvested and moved efficiently to load centers, resulting in more generation produced from renewable sources.

**Q. Please describe 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.**

A. The Project will be beneficial on an overall basis for numerous reasons. First, it provides the infrastructure to sell low-cost Great Plains renewable energy to the surrounding states and regions. Second, the Project is anticipated to create thousands of jobs to construct the transmission line and generating facilities and hundreds of permanent jobs to maintain and operate the generating facilities and the transmission line. Third, the construction and operation of the Project is expected to result in sales and use tax revenue, ongoing property tax, and ongoing payments to local landowners through lease payments. Finally, the Project will open up opportunities in areas with currently untapped resources due to transmission constraints from which future generation can be harvested and sold.

**Q. Please describe how the transaction maximizes the use of Kansas energy resources.**

A. The HVDC technology employed by the Project is the most cost-effective and efficient way to move large amounts of renewable energy over a long distance. High capacity factor wind energy sourced from western Kansas is the cheapest form of renewable energy in the Great Plains and Midwest. Consequently, the Project's delivered energy cost to neighboring states and regions, including the cost 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 renewable energy resources.

## V. INDIANA-SPECIFIC COMMITMENTS AND CONDITIONS

**Q. Does Invenergy Transmission, as the anticipated new owner of Grain Belt Express, seek to succeed to the commitments, conditions, and authorizations contained in the settlement agreement and Order in Cause No. 44264?**

A. Yes, with the minor exceptions and changes I discussed earlier in my testimony.

**Q. Does Grain Belt Express, when under the ownership of Invenergy Transmission, desire to continue to operate as a public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law?**

A. Yes.

**Q. Does Grain Belt Express, when under the ownership of Invenergy Transmission, desire that the Commission continue to decline to exercise certain aspects of its jurisdiction over Grain Belt Express, as set out in the Order in Cause No. 44264?**

A. Yes.

**Q. Will Grain Belt Express, when under the ownership of Invenergy Transmission, continue to locate its books and records outside the State of Indiana?**

A. Yes, although as mentioned previously, they will be located in Chicago, Illinois rather than Houston, Texas.

**Q. Will Grain Belt Express, when under the ownership of Invenergy Transmission, transfer functional control of its Indiana transmission facilities to an RTO?**

A. Yes – to MISO, PJM, or SPP.

**Q. Does Grain Belt Express, when under the ownership of Invenergy Transmission, still desire that the Commission's consent to the Boards of County Commissioners of all Indiana counties remain in effect?**

A. Yes.

## VI. CONCLUSION

**Q. In your opinion, is approval of the proposed Transaction in the public interest?**

**A.** Absolutely. This Commission has already found that the Grain Belt Express Project is in the public interest and the proposed Transaction brings the Grain Belt Express Project closer to reality. The proposed Transaction does not substantially alter any of the previously approved aspects of the Project. Meanwhile, Invenergy has an established record of developing, financing, constructing, and operating large-scale energy projects and will bring that experience to bear on the Grain Belt Express Project.

**Q. Does this conclude your direct testimony?**

Yes.

**VERIFICATION**

I, Kris Zadlo, affirm under penalties for perjury that the foregoing representations are true and correct to the best of my knowledge, information, and belief.

Date: 9/18/19

Kris Zadlo

Kris Zadlo

# KRIS ZADLO, PE

1 South Wacker, Suite 1800, Chicago, IL 60606

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**Senior Energy Executive with Business Development, Strategic Planning and Regulatory Affairs expertise.** Well versed in the development and design of both classic and renewable utility scale projects. Experienced in all phases of project development, from initial feasibility analysis and conceptual design, through financing and construction. Effective at building teams that generate excellent business results within both large corporate environments and small entrepreneurial fast-growing companies.

**Core qualifications include:**

- Strategic Analysis and Development
- Joint Venture Partnerships
- Energy Sales and Marketing
- Business Development
- Market Analytics
- Energy Storage Development
- Transmission Analysis and Planning
- Project Financing
- Regulatory Affairs
- Providing Written & Oral Testimony

**Masters of Science** • Electrical Engineering • Purdue University • West Lafayette, IN
**Bachelor of Science** (Cum Laude) • Electrical Engineering • Rose-Hulman • Terre Haute, IN

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## Professional Experience

**Invenergy,** Chicago, IL (2008 to Present)

**Senior Vice-President** (2008 – Present) responsible for **Commercial Analytics, Regulatory and Government Affairs, Storage Development and Transmission Planning**

Responsible for the interconnection of 9,136MW of utility scale projects (6,674 MW of wind and solar generation, 2,394MW of natural gas generation, 68MW of battery storage) throughout the U.S. Created an Energy Storage Department that was responsible for the development and construction of award-winning battery projects. Responsible for creating a Commercial Analytics team that performs market analysis and strategic plans. Created and responsible for Regulatory and Government Affairs.

- Responsible for starting Invenergy's storage development program
- Created a strategic joint venture partnership with key battery vendors
- Won 2015 Energy Storage project of the year
- Provide market assessments and assist in the Sales and Marketing, Financing and Construction of new projects.
- Responsible for Market Analytics
- Created and currently direct a Regulatory and Government Affairs Group which advocates on behalf of Invenergy's development and operating projects in North America and Latin America.
- Recruited and hired high quality regulatory and government affairs personnel to Invenergy.

**Kris Zadlo**

- Created a technical process to review and asses the interconnection capability for new development opportunities. Provide strategic direction on where to develop and site new projects.
- Responsible for Invenergy joining both national and regional trade associations and maximize and leverage the membership to company's benefit.
- Provide regulatory testimony and advocated on behalf of the company.
- Served as Vice Chairman of AWEA's Transmission Committee.

**Calpine Corporation and SkyGen,** Houston, TX & Chicago, IL (2000-2008)

**Vice-President, Transmission Operations** (2006-2008)

Promoted as a part of a new management team charged with brining Calpine out of bankruptcy. Responsible for creating a new transmission department which successfully supported over 21,000MWs of operating assets as well as the trading organization.

- Directly responsible for creating $60M in realized and planned revenue.
- Responsible for developing company's post-bankruptcy strategic electrical transport plan.
- Provided oversight of the company's pre-petition electrical firm transport contracts.
- Provided testimony & appeared as a witness in Bankruptcy Court.

**Director, Transmission Management** (2000-2006)

Responsible for the interconnection of 4,550MW of natural gas generating facilities while creating new revenue streams and eliminating transmission constraints.

- Directly responsible for creating over $112M in realized and planned revenue (20022011).
- Actively involved in development, marketing and divestiture of over thirty generation assets.
- Directed technical and commercial assessments of new & existing generation assets.
- Directed filings of required tariffs and protests at state commissions & FERC.
- Provided testimony & appeared as witness in both state commissions & FERC proceedings.
- Developed procurement strategies for transmission service & rights in all major US markets.
- Negotiated and financially optimized new electrical interconnection agreements.
- Acted as IPP sector representative on MISO Advisory Committee for 2003-2006.

**Commonwealth Edison,** Chicago, IL (1990 to 2000)

**Technical Studies Director** (2000)

Responsible for leading or directing various technical assessments.

- Responsible for developing company's voltage & stability procedures and compliance for its 80 connected generating units.
- Responsible for evaluating all new technologies promoted for system enhancement.
- Responsible for the equipment rating database.

**Kris Zadlo Testimony History**

| # | Jurisdiction | Case or Docket Number | Entity Initiating Proceeding | Subject Matter |
|---|---|---|---|---|
| 1 | FERC | ER01-176 | Broad River Energy Center | Generator Interconnection |
| 2 | FERC | ER03-624 | Ontelaunee Energy Center | Ancillary Service Rate |
| 3 | FERC | ER03-1015 | Pine Bluff Energy Center | Ancillary Service Rate |
| 4 | FERC | ER03-1114 | Carville Energy Center | Ancillary Service Rate |
| 5 | Wisconsin Public Utility Commission | 05-AE-118 | Wisconsin Electric Power Corporation | Generation Construction Certification |
| 6 | FERC | ER04-889 | Parlin Energy Center | Ancillary Service Rate |
| 7 | FERC | ER04-978 | Newark Energy Center | Ancillary Service Rate |
| 8 | FERC | ER04-1055 | Riverside Energy Center | Ancillary Service Rate |
| 9 | FERC | ER04-1059 | RockGen Energy Center | Ancillary Service Rate |
| 10 | FERC | ER05-677 | Osprey Energy Center | Ancillary Service Rate |
| 11 | FERC | ER05-912 | Sutter Energy Center | Ancillary Service Rate |
| 12 | FERC | ER05-1093 | Hermiston Energy Center | Ancillary Service Rate |
| 13 | FERC | ER05-1102 | Goldendale Energy Center | Ancillary Service Rate |
| 14 | FERC | ER05-1361 | Fox Energy Center | Ancillary Service Rate |
| 15 | FERC | Er03-765 | Oneta Energy Center | Ancillary Service Rate |
| 16 | FERC | ER06-1128 | Mankato Energy Center | Ancillary Service Rate |
| 17 | NY Bankruptcy Court | 05-60200 (BRL)<br>06-01683 (BRL | Nevada Power | Lawsuit |
| 18 | Missouri Public Service Commission | EA-2016-0358 | Grain Belt Express Clean Line LLC | Certificate of Convenience and Necessity |
| 19 | Missouri Public Service Commission | EM-2019-0150 | Invenergy Transmission LLC<br>Invenergy Investment Company LLC<br>Grain Belt Express Clean Line LLC<br>and Grain Belt Express Holding LLC | Acquisition |
| 20 | Kansas Corporation Commission | 19-GBEE-253-ACQ | Invenergy Transmission LLC<br>Invenergy Investment Company LLC<br>Grain Belt Express Clean Line LLC<br>and Grain Belt Express Holding LLC | Acquisition |

# Invenergy

## Qualifications and Experience
## Of Invenergy LLC's Management Team

### Senior Management

**Michael Polsky, Founder and Chief Executive Officer:** With more than 30 years of experience in the energy industry, Michael Polsky is widely recognized as a pioneer and industry leader in the cogeneration and independent power industry in North America. Polsky founded Invenergy, a leading clean energy company, 15 years ago. Previously, in 1991, Polsky founded SkyGen Energy – a developer, owner, and operator of natural gas-fueled generating plants – which was purchased by Calpine Corporation in 2001. Before forming SkyGen, Polsky co-founded and was President of Indeck Energy Services Inc. Polsky holds an MSME Degree from Kiev Polytechnic Institute and an MBA from the University of Chicago. In 2002, Polsky endowed a center for Entrepreneurship at the University of Chicago Graduate School of Business which is named after him.

**Jim Murphy, Invenergy President and Chief Operating Officer:** Jim Murphy has more than 30 years of financial and management experience in the energy industry. He has managed the negotiation and execution of more than $15 billion in private equity and debt investments, power plant acquisitions and sales, and project debt and equity financing. He is a founding member of Invenergy LLC and responsible for the general management of the company, corporate and project finance, risk management, and asset optimization. Murphy is currently a member of the Board of Directors of the American Wind Energy Association ("AWEA"). Prior to the formation of Invenergy, he was Chief Financial Officer at SkyGen Energy LLC, a Vice President with financial advisory and investment firm The Deerpath Group, Inc. and a manager with Arthur Andersen. He earned a BS from the University of Illinois, magna cum laude, and is a Certified Public Accountant.

**Jim Shield, Executive Vice President and Chief Commercial Officer:** With more than 25 years of experience in all aspects of the power generation industry, Jim Shield is responsible for the development, marketing, engineering, and construction of Invenergy's wind, solar, and thermal energy projects worldwide. During his career, Shield has developed over 10,000 MW of power projects and negotiated over 3,000 MW of long-term energy off-take agreements. Prior to joining Invenergy, Shield held various positions, including Senior Vice President-East Region with Calpine Corporation. Prior to that role, he was a key contributor in building SkyGen Energy from a start-up company and a project manager at Indeck Energy Services. Shield has a BS in Mechanical Engineering from the University of Michigan and an MBA from DePaul University. He is a Registered Professional Engineer in the State of Illinois.

**Bryan Schueler, Executive Vice President and Chief Development Officer:** A 25-year veteran of the power industry, Bryan Schueler is responsible for project development at Invenergy. He has experience in plant operations and engineering, as well as the development, permitting, and construction of biomass, wind, landfill gas, and natural gas projects. Over the course of two decades, Schueler has successfully managed the development and construction of more than 20 wind farms and more than 2,500 MW of natural gas-fired facilities. Before joining Invenergy, Schueler was a project director at Calpine, fulfilling the same role he held earlier at SkyGen. Previously, he was a performance engineer at a 1,000 MW coal station for Commonwealth Edison. Schueler has a BS in Mechanical Engineering from Purdue University and an MBA from the University of Illinois.

**Project Management Team**

**Art Fletcher, Senior Vice President, Renewable Engineering and Project Management:** Art Fletcher is responsible for leading the engineering and project management groups through development and construction of Invenergy's wind, solar, and energy storage projects. He has 30 years of experience in managing heavy civil and power construction projects domestically and abroad. During his ten years with Invenergy, he has overseen the construction of over 6,000 MW wind, solar, storage and natural gas-fueled energy generation projects. A registered Professional Engineer in the state of Illinois, Fletcher graduated from the University of Illinois at Urbana-Champaign with a BS in Aeronautical and Aerospace Engineering and holds a Masters Degree in Geoenvironmental Engineering from the Illinois Institute of Technology.

**Christopher M. Carter, Director, Renewable Project Management:** Chris Carter is responsible for directing project management teams for Invenergy's renewable energy projects. He has 16 years of experience in contract negotiation, material procurement, right-of-way issues, utility interconnections, and construction of electrical transmission and substations. Carter is a licensed Professional Engineer, with a BS in Civil Engineering from Texas A&M University and a Masters Degree in Project Management from Northwestern University.

# DIRECT TESTIMONY OF ANDREA HOFFMAN

## SENIOR VICE PRESIDENT, INVENERGY LLC

## ON BEHALF OF JOINT PETITIONERS

## IURC CAUSE NO. 45294



## JOINT PETITIONER'S EXHIBIT 3

**September 20, 2019**

## TABLE OF CONTENTS

## I. INTRODUCTION AND PURPOSE OF TESTIMONY

**Q. Please state your name and business address.**

A. My name is Andrea Hoffman and I am the Senior Vice President, Financial Operations for Invenergy LLC. My business address is One South Wacker Drive, Suite 1800, Chicago, IL 60606.

**Q. Please explain the relationship of Invenergy LLC to Invenergy Transmission LLC.**

A. Invenergy LLC is an affiliate of Invenergy Transmission LLC ("Invenergy Transmission"), the proposed purchaser of Grain Belt Express Clean Line LLC ("Grain Belt Express"). Invenergy LLC and Invenergy Transmission have a common parent company: Invenergy Investment Company LLC ("Invenergy Investment"). Invenergy Transmission is a special purpose entity specifically created for the purchase of Grain Belt Express, that currently relies on the personnel of Invenergy LLC and the financial resources of Invenergy Investment. I will refer to all three entities collectively as "Invenergy."

**Q. Please discuss your educational background and work experience.**

A. I am responsible for managing Invenergy's Accounting, Tax, Treasury, Financial Planning, Risk, and International Financial Operations. I have over 25 years of experience in finance and engineering in the energy, transportation, and petrochemicals industries. I have a Bachelor of Science in Chemical Engineering from The University of Iowa and an MBA in Finance from The University of Chicago. My C.V. is attached as **Attachment AH-1**.

**Q. Have you previously testified before the regulatory commission of any state or the Federal Energy Regulatory Commission?**

A. Yes. On November 12, 2018, I provided written and oral testimony to the Missouri PSC in Case Nos. EA-2016-0358 and EM-2019-0150 to support the issuance of a Certificate of Public Convenience and Necessity to Grain Belt Express and to support Invenergy's acquisition of the project and written testimony to the KCC to support Invenergy's acquisition of the project in Kansas.

**Q. What is the purpose of your testimony in this proceeding?**

A. I will provide an explanation of Invenergy's financial abilities to provide service in connection with Invenergy Transmission's pending acquisition of Grain Belt Express (the "Transaction"). Grain Belt Express is currently owned by Grain Belt Express Holding LLC ("Grain Belt Express Holding"), which is a wholly-owned subsidiary of Clean Line Energy Partners LLC. Grain Belt Express is developing the Grain Belt Express Clean Line Project ("Grain Belt Express Project" or "Project"), an approximately 780-mile, overhead, multi-terminal ±600 kilovolt ("kV") high voltage direct current ("HVDC") transmission line and associated facilities that will connect over 4,000 megawatts ("MW") of low-cost, renewable power in western Kansas. First, I will provide an overview of Invenergy's extensive experience and success in financing large energy projects. Second, I will provide a description of the financial considerations particular to the Grain Belt Express Project. The Direct Testimony of Kris Zadlo, filed simultaneously herewith, describes Invenergy's managerial and technical qualifications and discusses how the proposed Transaction satisfies the public interest.

## II. OVERVIEW OF INVENERGY'S FINANCIAL ABILITY

**Q. Who is Invenergy?**

**A.** The Invenergy family of companies is headquartered in Chicago, Illinois. It was founded in 2001 and is North America's largest privately held company that develops, owns, and operates large-scale renewable and other clean energy generation, energy storage facilities, and electric transmission facilities across North America, Latin America, Japan and Europe. A more complete overview of Invenergy is provided in the Direct Testimony of Kris Zadlo.

**Q. What is the financial profile of Invenergy?**

**A.** Invenergy is a privately held company and does not publicly release financial statements. As discussed below, Invenergy and its affiliates have approximately $9 billion in total assets and $3 billion in total equity on a consolidated basis (as of December 31, 2018). In addition, as discussed below, Invenergy has raised more than $30 billion to support more than 22,600 MW of generation project development since 2001. Invenergy maintains strong relationships with a variety of investment partners and has been awarded Project Finance Borrower of the Year by Power Finance & Risk on multiple occasions.

**Q. Please provide an overview of Invenergy's project financing experience.**

**A.** Invenergy is highly experienced in raising corporate and project level financing in support of developing, constructing and operating its energy projects. Over the last 18 years, Invenergy has raised more than $30 billion of financing in connection with the successful development of more than 22,600 MW in projects in the United States, Canada, Europe, Latin America, and Japan. Invenergy maintains strong relationships with more than 60 financial institutions worldwide, including international and domestic banks, multilateral development banks, export credit agencies and pension funds. In the U.S. alone, Invenergy has financed and executed on projects in 24 states, including over

414 miles of high-voltage transmission lines, over 2,306 miles of distribution lines, 74 substations and 86 generator step-up transformers. Invenergy's financing relationships include such institutions as Wells Fargo, Mitsubishi Financial Group, CoBank, GE Capital, JP Morgan, Santander, Morgan Stanley, Natixis, Bank of America, and Rabobank. To further illustrate Invenergy's financial capability, the company was able to raise over $6 billion in debt and equity financings in 2016 and 2017 spanning across technologies and geographies.

Invenergy's financing capabilities have been recognized by many within the industry. Invenergy was awarded the Structured Power Finance 2005 Deal of the Year for its financing of Invenergy Wind Finance Company, a portfolio of 260 MW of wind facilities; the North America Public Power 2007 Deal of the year for its financing of the St. Clair 584 MW combined cycle natural-gas fired facility in Ontario, Canada; and Power, Finance and Risk magazine's 2012, 2013, and 2016 Project Finance Borrower of the Year for the breadth, diversity and volume of deals brought to market and successfully financed by Invenergy.

**Q. How does Invenergy typically finance large scale energy projects?**

**A.** Invenergy continually maintains an active dialogue with key providers of debt and equity in order to keep them informed regarding our projects and to generate interest. During the late stages of project development, Invenergy typically approaches target lenders to seek proposals for construction financing. The construction loan combined with Invenergy's equity, and potentially equity from additional investors, will provide sufficient capital for the entire construction costs of the project. Construction financing for a project is typically structured so that the security and collateral package held by the

financing parties consists of a pledge of the equity in the project company, a pledge of all project assets, and collateral assignments of certain material project agreements. On or shortly after the commercial operation date, the construction financing is replaced by more permanent financing, such as a senior secured term loan. The security and collateral package during the term loan period depends on the type of permanent financing that is put in place.

## III. FINANCIAL CONSIDERATIONS PARTICULAR TO THE GRAIN BELT EXPRESS PROJECT

**Q. Please describe Invenergy's plan to finance the purchase of Grain Belt Express.**

A. Invenergy Transmission plans to purchase Grain Belt Express using cash available from its parent, Invenergy Investment.

**Q. Please describe Invenergy's plan to fund the development and construction of the Grain Belt Express Project.**

A. Consistent with its prior experience, Invenergy plans to use a combination of debt and equity to finance the Project. Specifically, Invenergy expects to engage a lender or group of lenders approximately six to nine months prior to commencement of construction to provide a construction loan for the Project. The construction loan and equity capital provided by Invenergy, and potentially other investors, is expected to be sufficient for the entire construction cost of the Project.

**Q. Please describe how transmission service will be sold from the Project and discuss whether they are necessary to support the financing of the Project.**

A. Transmission service will be sold from the Project as described in the Direct Testimony of Kris Zadlo.

In addition to obtaining regulatory commission approvals and other permits, key project agreements, and construction contracts, it is necessary for Invenergy to enter into long-term transmission service or capacity contracts via a FERC approved open solicitation process with its transmission customers prior to securing financial commitments for the Project. Grain Belt Express's transmission services agreement with the Missouri Joint Municipal Electric Utility Commission is an example of such a contract. The required percentage of contracted capacity will depend on the price, counterparty creditworthiness, contract term, and other commercial terms within the transmission contracts. As stated previously, Invenergy will provide equity capital and plans to obtain a construction loan, and potentially equity from additional investors, to finance the development and construction activities and to reach commercial operation of the Project. Following achievement of commercial operations, the more permanent financing, such as term debt and equity financing, will rely on the contracted cash flow from the Project for repayment, and the debt will also be secured by the Project's assets and contracts.

**Q. Is it your opinion that Invenergy has the financial ability to provide the proposed service offered by the Grain Belt Express Project?**

**A.** Yes. Invenergy has the financial ability to provide the proposed service. As described earlier in my testimony, Invenergy has a strong financial profile and a proven track record of successfully financing large energy projects.

**Q. Does that conclude your direct testimony?**

**A.** Yes.

## VERIFICATION

I, Andrea Hoffman, Senior Vice President, Financial Operations for Invenergy LLC, affirm under penalties for perjury that the foregoing representations are true and correct to the best of my knowledge, information, and belief.

Date: 9/20/19

Andrea Hoffman

# ANDREA L. HOFFMAN

Chicago, IL • +1 312 582 1513 • ahoffman@invenergyllc.com
https://www.linkedin.com/in/andrea-h-5b66511

## EXECUTIVE SUMMARY

Performance focused leader with proven track record in project finance, equity, and lease transactions in the energy, aircraft, water, and oil & gas industries. Strong relationships with financing parties and cross-functional teams throughout transaction life, including construction, operations, refinancing, and sale. Key competencies:

- Project Finance
- Valuations
- Equity Purchase/Sale
- Power/Renewables Industry
- Debt/Equity Management
- Asset Management
- Term Conversions
- Refinancing
- Project Management

## PROFESSIONAL EXPERIENCE

### INVENERGY LLC. CHICAGO, IL

**Senior Vice President – Financial Operations.** **September 2018 to Present**

Manage a team of over 75 professionals covering Accounting, Tax, Treasury, Financial Planning, Risk, Insurance, and International Finance Operations. Activities are primarily directed toward management of financial operations that support over 22,600 MW of clean energy assets in operation, construction, and development in North America, South America, Europe, and Asia. Member of Management Committee, Risk Committee, Operating Committee, and participate in Investment Committee. Officer of over 445 limited liability companies.

**Vice President / Director – Portfolio Finance.** **September 2008 to August 2018**

Managed an $11B portfolio of project and corporate financings for commercial power projects employing wind, thermal, solar, and battery storage technology. Portfolio includes 68 projects (9,600 MW) in operation or construction with financings from over 50 financial institutions. Deals vary by offtake arrangement (PPA, hedge, merchant), capital structure, and location (ERCOT, PJM, SPP, MISO, NYISO, IESO). Accomplishments include:

- Developed Portfolio Finance team of 11 professionals as portfolio capacity (MW) tripled over 10 years.
  - Officer of over 100 limited liability companies with wire approval and signing authority.
- Term converted, tax/cash equity funded, or transferred over $7.0B in approx. 35 project financings.
  - Led cross-functional teams through construction borrowings and ECCA and LLCA obligations.
  - Managed partnership flip, credit facility repayment, DSCRs, distributions, and covenant compliance.
  - Negotiated Co-Tenancy Agreements and wake payments for 10 (500MW) expansion projects.
- Completed $2.3B (1,250MW) wind/solar build-transfers to Southern, Duke, Berkshire, NextEra, NRG.
  - Completed CPs to transfer and construction loan repayment following substantial completion.
- Closed $762MM in wind and thermal refinancings, providing approx. $112MM in excess proceeds.
  - Negotiated debt sizings, term sheets, financing documents, swaps, and due diligence requirements.
- Closed $124MM in tax equity buy-outs on 5 transactions involving 7 wind farms totaling 910MW.
  - Performed valuations and negotiated purchase agreement and assignment documents.
- Led lender/tax equity consents for sale to TerraForm of $1B (914MW) portfolio of 5 wind projects.
  - Negotiated transaction documents and $348MM in loan prepayments and swap terminations.

### GE – ENERGY FINANCIAL SERVICES (EFS). STAMFORD, CT

**Vice President – Portfolio Management.** **June 2006 to August 2008**

Managed $500MM portfolio of debt, equity, and lease transactions in the energy, water, and oil & gas industries, including 7 transactions in North and South America. Accomplishments include:

- Managed equity interest in $20MM wastewater treatment facility in US, utilizing GE Zenon membranes.
- Managed $130MM equity interest in gas processing facility in Trinidad. Alternate director on board.

- Managed $240MM in lease equity and debt in combined cycle power plants in the US and Mexico.
- Managed transfer of $200MM in lease equity on exploration & production equipment in Mexico.
- Managed equity interest in $300MM drilling rig in Brazil. Worked with managing member and operator to ensure compliance with $235MM debt obligation. Monitored rig performance and deal economics.

**GE – AVIATION SERVICES (GECAS). SHANNON, IRELAND AND STAMFORD, CT**

**Vice President / Assistant Vice President – Risk Management.** **February 2003 to May 2006**

Managed 31 airline accounts involving 110 aircraft across Europe, the Middle East, Africa, and North America with exposures exceeding $3B. Risk lead in aircraft lease underwriting, account management, and restructuring activities. Responsible for airline credit analysis and KYC review as well as risk analysis of jurisdiction, deal structure, and deal execution. Accomplishments include:

- Led underwriting and account management of 83 aircraft operating leases involving 38 airlines (including 5 aircraft to the former Nigerian start-up Virgin Nigeria). Exposure exceeded $1.3B.
- Supported Regional Risk Manager on $3.6B in new aircraft operating leases with Emirates Airlines (14) Boeing 777s and Qatar Airways (2) Airbus 330s.
- Supported acquisition of the Finova leveraged lease portfolio (33 aircraft with $515MM exposure).
- Managed contracts and funding for the purchase of 34 Airbus 319/320s, Boeing 737s, and CRJ aircraft.
- Risk lead in the acquisition integration of 89 aircraft leases, loans, and JVs from Heller portfolio.
- Co-led work-out and repossession of 6 aircraft and a spare engine from Volare Airlines of Italy ($11MM delinquency). Led restructuring analysis of $20MM settlement (received over $15MM prior to default).
- Pitched credit rating comparison (SURE vs. KMV) to over 200 of GE's Chief Risk Managers.

## ADDITIONAL EXPERIENCE

- GE Risk Management Leadership Program (GECAS, Structured Finance). Stamford, CT. 1999 to 2003
  - GE Certified Six Sigma Black Belt.
- BP/Amoco Pipeline Company – Financial Analyst and Project Coordinator. Chicago, IL. 1995 to 1997
  - Performed financial analysis for joint ventures and acquisitions necessary to develop new business for the 15,000-mile domestic crude oil, natural gas, and products pipeline system.
- BP/Amoco Chemical Company – Project Engineer. Chicago, IL. 1990 to 1995
  - Managed projects to improve and/or expand the purified terephthalic acid, paraxylene, poly alpha-olefins and fine acid facilities. Constructed 5 projects located in 3 states.

## EDUCATION AND TRAINING

- MBA Finance and Marketing. The University of Chicago Booth School of Business. March 1995
  - MBA Enterprise Corps (Bulgarian American Enterprise Fund–Investment Advisor). Sofia, Bulgaria.
- BS Chemical Engineering. The University of Iowa. May 1990

## ADDITIONAL INFORMATION

- Member of Women of Renewable Industries and Sustainable Energy, Society of Women Engineers, and Chicago Booth Alumni Network.
- Founding member of Invenergy's Women's Network since 2015.
- Traveled extensively in Europe, North and South America, Middle East, Africa, Australia, and SE Asia.
- Enjoy downhill skiing, hiking, and scuba diving.

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

| | |
|---|---|
| VERIFIED JOINT PETITION OF GRAIN BELT EXPRESS CLEAN LINE LLC AND INVENERGY TRANSMISSION LLC FOR: (1) A DETERMINATION THAT INVENERGY TRANSMISSION LLC HAS THE REQUISITE TECHNICAL, FINANCIAL, AND MANAGERIAL CAPABILITY TO ACQUIRE, OWN, AND OPERATE GRAIN BELT EXPRESS CLEAN LINE LLC; (2) APPROVAL, TO THE EXTENT REQUIRED, OF THE ACQUISITION, OWNERSHIP AND OPERATION OF GRAIN BELT EXPRESS CLEAN LINE LLC BY INVENERGY TRANSMISSION LLC; (3) A DETERMINATION THAT THE COMMISSION SHOULD CONTINUE TO DECLINE TO EXERCISE CERTAIN ASPECTS OF ITS JURISDICTION OVER GRAIN BELT EXPRESS CLEAN LINE LLC, AND SHOULD CONTINUE TO TREAT GRAIN BELT EXPRESS CLEAN LINE LLC AS AN INDIANA PUBLIC UTILITY; (4) AUTHORITY TO TRANSFER FUNCTIONAL CONTROL TO AN RTO; AND (5) ACCEPTANCE BY THE COMMISSION OF INVENERGY TRANSMISSION LLC'S INVENERGY TRANSMISSION LLC'S COMMITMENT, WITH MINOR EXCEPTIONS,TO THE TERMS AND CONDITIONS IMPOSED ON GRAIN BELT EXPRESS CLEAN LINE LLC IN THE COMMISSION'S MAY 22, 2013 ORDER IN CAUSE NO. 44264. | ) |

IURC
JOINT PETITIONERS'
EXHIBIT NO. 4
11-26-19 AT
DATE REPORTER

CAUSE NO. 45294

**VERIFIED JOINT PETITION OF GRAIN BELT EXPRESS CLEAN LINE LLC AND INVENERGY TRANSMISSION LLC**

**TO THE INDIANA UTILITY REGULATORY COMMISSION:**

Grain Belt Express Clean Line LLC ("Grain Belt") and Invenergy Transmission LLC ("Invenergy Transmission" or "Invenergy") (collectively "Joint Petitioners") respectfully request and show the Indiana Utility Regulatory Commission ("Commission") that:

1. Joint Petitioners' Corporate and Regulated Status. Joint Petitioner Grain Belt is an independent, transmission-only limited liability company organized under Indiana law. Grain

Belt was formed by Clean Line Energy Partners, LLC for the purpose of the development and construction of the Grain Belt Express Project. Grain Belt is a wholly-owned direct subsidiary of Grain Belt Express Holding LLC which, in turn, is a wholly-owned direct subsidiary of Clean Line Energy Partners, LLC. Clean Line Energy Partners, LLC is a Delaware limited liability company with its principal office in Houston, Texas. Clean Line Energy Partners, LLC currently owns and operates Grain Belt Express Holding and Grain Belt.

Grain Belt is the owner of all of the current assets and rights of the Grain Belt Express Clean Line Project ("Grain Belt Express Project" or "Project"). The Grain Belt Express Project is a proposed approximately 780-mile, overhead, multi-terminal ±600 kilovolt ("kV") high voltage direct current ("HVDC") transmission line and associated facilities that is expected to connect low-cost, renewable generation in western Kansas. The Project is designed to facilitate the development and export of this low-cost renewable generation to load and population centers in Missouri, Illinois, Indiana, and states farther east. Grain Belt is a public utility under Indiana law, pursuant to the Commission's May 22, 2013 Order in Cause No. 44264.

The Invenergy family of companies is U.S.-based, was founded in 2001, and is the largest privately held company in North America that develops, owns and operates large-scale renewable and other clean energy generation, transmission and storage facilities. Invenergy operates across North America, Latin America, Japan and Europe. The company's expertise includes project development, permitting, transmission, interconnection, energy marketing, finance, engineering, project construction, operations and maintenance, all through its fully integrated in-house capabilities. Invenergy routinely develops projects with a view toward long-term ownership, performance, profitability and operations.

Joint Petitioner Invenergy Transmission is a Delaware limited liability company. Invenergy Transmission is a special purpose entity that was formed for the purpose of acquiring Grain Belt (the "Transaction"). Upon consummation of the Transaction, Grain Belt will continue to exist and will be a direct and wholly-owned subsidiary of Invenergy Transmission. Invenergy Transmission is a direct subsidiary of Invenergy Investment Company LLC ("Invenergy Investment"); Invenergy Investment is a Delaware limited liability company with its principal offices in Chicago, Illinois. Invenergy Investment is the direct and sole owner of both

Invenergy Transmission and Invenergy LLC, the latter of which houses the employees that will be involved in the development of the Grain Belt Express Project.

As previously noted, the Invenergy family of companies was founded in 2001 and is North America's largest privately held company that develops, owns and operates large-scale renewable and other clean energy generation, energy storage facilities, and electric transmission facilities across North America, Latin America, Japan and Europe. Invenergy is privately held and does not publicly release its financial statements. However, Invenergy and its affiliates have in excess of $9 billion in total assets and $3 billion in total equity on a consolidated basis (as of December 31, 2018). Not only does Invenergy have adequate assets with which to continue to advance the Grain Belt Express Project, Invenergy has raised more than $30 billion to support more than 20,000 MW of generation since 2001 and maintains strong relationships with a variety of investment partners, including Wells Fargo, Mitsubishi UFJ Financial Group, GE Capital, JP Morgan, Santander, Morgan Stanley, Natixis, Bank of America, CoBank, and Rabobank, and has been awarded *Project Finance Borrower of the Year* by *Power Finance & Risk* on multiple occasions. Grain Belt will benefit from the support and broad experience of Invenergy in accessing capital and assisting Grain Belt to efficiently and cost effectively finance, develop, and operate the Grain Belt Express Project.

After the Project is constructed, the Federal Energy Regulatory Commission ("FERC") will retain exclusive jurisdiction over the rates Grain Belt may charge for use of its transmission system by approving and overseeing Grain Belt's negotiated rate authority and Open Access Transmission Tariff ("OATT"). At this time, Grain Belt does not plan to seek rate recovery from any regional transmission organizations ("RTOs") for the cost of the Project and the current expectation is that Indiana ratepayers will not pay for the cost of the Project through regional cost-sharing.

2. Relief Requested in this Proceeding. Joint Petitioners respectfully request that the Commission find that Invenergy Transmission has the necessary technical, managerial, and financial capabilities to acquire, own, and operate Grain Belt and the Grain Belt Express Project. Further, to the extent required, Joint Petitioners respectfully request that the Commission approve Invenergy Transmission's acquisition, ownership, and operation of Grain Belt and the Grain Belt Express Project and find that such approval is consistent with the public interest.

Additionally, Joint Petitioners request that the Commission: approve the transfer of functional control of the Project to an RTO — either MISO, PJM, or SPP; accept Invenergy Transmission's commitment to operate in Indiana pursuant to the terms and conditions contained in the settlement agreement and Order in Cause No. 44264 (with minor exceptions); confirm that Grain Belt should continue to be granted authority to operate as a public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law; confirm that it will continue to decline to exercise certain aspects of its jurisdiction over Grain Belt, as set out in the Commission's Order in Cause No. 44264; and confirm that Grain Belt should continue to be granted authority to locate its books and records outside the state of Indiana (albeit in Illinois rather than Texas), as provided in the Order in Cause No. 44264. Finally, Joint Petitioners respectfully request that the Commission except from public disclosure certain confidential and proprietary information to be filed in this case, consistent with Indiana law.

3. Order in Cause No. 44264. In its May 22, 2013 Order in Cause No. 44264, the Commission approved a settlement agreement between Grain Belt and the Office of Utility Consumer Counselor ("OUCC"). In so doing, the Commission: granted Grain Belt public utility status in Indiana; found that Grain Belt had the necessary technical, managerial, and financial capability to construct, own, and operate the Project; authorized Grain Belt to operate as a transmission-only public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law; authorized Grain Belt to transfer functional control of its Indiana transmission facilities to either MISO or PJM at the appropriate time; declined to exercise certain aspects of its jurisdiction over Grain Belt – specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability), and certain public utility annual reporting requirements. The Commission also imposed certain reporting requirements on Grain Belt; approved settlement agreement provisions relating to cost recovery via RTO regional cost allocation processes; granted Grain Belt authority to locate its books and records outside the state of Indiana; consented to Boards of County Commissioners of all Indiana counties to grant Grain Belt such licenses, permits, or franchises as may be necessary for Grain Belt to occupy and use county roads, highways, and other public rights-of-way; and granted confidential treatment for certain trade secret information.

4. The Proposed Transaction. Subject to regulatory approvals and the satisfaction of certain customary obligations of the parties, Invenergy Transmission will acquire Grain Belt. After consummation of the Transaction, Grain Belt will become a direct and wholly-owned subsidiary of Invenergy Transmission.

Invenergy Transmission plans to purchase Grain Belt using cash available from its parent, Invenergy Investment. Consistent with prior experience, Invenergy plans to use a combination of debt and equity to finance the construction and operation of the Project. Invenergy expects to engage a lender or group of lenders approximately six to nine months prior to commencing construction of the Project to provide a construction loan for the Project. The construction loan and equity capital provided by Invenergy Investment, and potentially other investors, is expected to be sufficient for the entire construction cost of the Project. On or shortly after the commercial operation date, the construction financing is expected to be replaced by more permanent financing, such as a senior secured term loan.

Additionally, during the current pendency of the Transaction, and pursuant to a Development Management Agreement by and among Grain Belt, Grain Belt Express Holding and Invenergy Transmission, Invenergy Transmission also manages the business and affairs of the Project, and all activities incidental thereto, in addition to performing all services related to the development, ownership and maintenance of the Project.

5. Joint Petitioner Invenergy Transmission LLC's Technical, Managerial, and Financial Capabilities. As described above, not only does Invenergy have significant assets and equity (in excess of $9 billion in assets and $3 billion in equity), it has the ability to raise significant capital whenever necessary based on both reputation and status as a leading developer in the industry, as is evidenced by the strength of its investment partners and its experience in raising more than $30 billion since 2001 to finance projects. Further, as discussed below, Invenergy is a larger and more diverse entity than Clean Line Energy Partners, LLC, which provides a much broader financial backing for Grain Belt, thereby improving the ability to successfully develop, construct and eventually operate the Project. The financial qualifications of Invenergy are discussed further in the Direct Testimony of Andrea Hoffman, Senior Vice President, Financial Operations for Invenergy LLC.

Invenergy routinely develops projects with a view toward long-term ownership, performance, profitability and operations. Invenergy operates its power plant fleet through its wholly owned subsidiary, Invenergy Services. Invenergy Services is staffed with experienced industry personnel and currently operates approximately 9,663 MW of natural gas and renewable generating capacity in North America. Combining asset management, operations, maintenance, and commercial execution functions allows Invenergy Services to provide a single, comprehensive solution to overall management of the asset.

Since 2001, Invenergy has built the required transmission and distribution lines, generator step-up transformers ("GSUs"), and substations for its facilities in numerous regions, including within the regions managed by Southwest Power Pool, Inc. ("SPP"), Midcontinent Independent System Operator, Inc. ("MISO") and PJM Interconnection, LLC ("PJM"). Invenergy developed, permitted and constructed this infrastructure across various terrains, state and local jurisdictions, and in vastly differing environmental and regulatory conditions. This experience equates to over 414 miles of high-voltage transmission lines, over 2,306 miles of distribution lines, 74 substations and 86 GSUs of which several have been built for utilities. The technical and managerial capabilities of Invenergy are discussed further in the Direct Testimony of Kris Zadlo, Senior Vice President, Commercial Analytics, Regulatory Affairs and Transmission for Invenergy LLC.

6. Joint Petitioners' Case-in-Chief Testimony. In support of this Verified Joint Petition, Joint Petitioners will provide additional information to the Commission in the form or prefiled testimony, summarized as follows:

- Kris Zadlo, Senior Vice President, Commercial Analytics, Regulatory Affairs and Transmission for Invenergy LLC; Mr. Zadlo will discuss the history of Invenergy, the Invenergy business model, and Invenergy's qualifications to own and operate the project.
- Andrea Hoffman, Senior Vice President, Financial Operations for Invenergy LLC; Ms. Hoffman will provide a financial overview of Invenergy and specific considerations particular to the Grain Belt Express Project.
- Hans Detweiler, Lead Developer of the Grain Belt Express Project; Mr. Detweiler will introduce the witnesses filing testimony in this matter, provide a brief

background of Grain Belt, a high-level overview of the proposed Transaction, and a status update on the Grain Belt Express Project.

7. Applicable Law. Joint Petitioners consider the following provisions of the Public Service Commission Act, as amended, to be relevant to this Petition: Ind. Code §§ 8-1-2-1, -12, -14, -15, -23, -29, -83 and -86; Ind. Code § 5-14-3-4 *et seq.*, Ind. Code § 36-2-2-23, Ind. Code ch. 8-1-2.5, as well as 170 IAC 1-1.1-4 and 170 IAC 4-1-3.

8. Request for Confidential Treatment. Petitioner requests that the Commission grant confidential treatment, pursuant to Ind. Code §§ 8-1-2-29 and 5-14-3-4, for certain information to be filed in support of its requests for relief. In particular, the prefiled testimony and exhibits to be filed in support of this Verified Joint Petition will contain financial and business information that Joint Petitioners consider to be proprietary and confidential. Concurrently with the filing of its case-in-chief testimony, Joint Petitioners will file a motion and supporting affidavit(s) detailing the confidential treatment requested and the reasons therefor.

9. Joint Petitioners' Counsel. The following are counsel for Joint Petitioners in this matter and are duly authorized to accept service of papers in this Cause on behalf of Joint Petitioners:

Kay E. Pashos, Attorney No. 11644-49 (Indiana)
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10. Request for Prehearing Conference. Pursuant to 170 IAC 1-1.1-15(b), Petitioner requests that the Commission promptly conduct a prehearing conference to establish a procedural schedule in this Cause.

WHEREFORE, Joint Petitioners Grain Belt Express Clean Line LLC and Invenergy Transmission LLC respectfully request that the Commission investigate this matter and, after a public hearing if necessary, find as follows:

(1) Invenergy Transmission LLC has the technical, managerial, and financial capabilities to acquire, own, and operate a transmission utility, namely, Grain Belt Express Clean Line LLC, and such acquisition, ownership, and operation is consistent with the public interest;

(2) The Commission should authorize Invenergy Transmission LLC to acquire, own, and operate Grain Belt Express Clean Line LLC;

(3) Invenergy Transmission LLC's commitment to operate in Indiana pursuant to the terms and conditions contained in the settlement agreement and Order in Cause No. 44264 should be accepted, with certain minor exceptions and changes discussed in the testimony of Kris Zadlo;

(4) Grain Belt Express Clean Line LLC should continue to be granted authority to operate as a public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law;

(5) The Commission should continue to decline to exercise certain aspects of its jurisdiction over Grain Belt Express Clean Line LLC consistent with the Commission's Order in Cause No. 44264;

(6) Grain Belt Express Clean Line LLC should continue to be granted authority to locate its books and records outside the state of Indiana, under the terms and conditions set out in the Order in Cause No. 44264;

(7) Certain of the information that will be submitted in support of this Joint Petition contains confidential and proprietary trade secret information under Indiana law, and should be excepted from public disclosure; and

(8) For all other just and reasonable relief.

Dated this 18th day of September, 2019.

Respectfully submitted,

Hans Detweiler, Lead Developer and Authorized Agent, on behalf of Joint Petitioner Grain Belt Express Clean Line LLC

Kris Zadlo, Senior Vice President, Commercial Analytics, Regulatory Affairs and Transmission for Invenergy LLC, on behalf of Joint Petitioner Invenergy Transmission LLC

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**VERIFICATION**

I, Hans Detweiler, Lead Developer and Authorized Agent for Grain Belt Express Clean Line LLC, affirm under penalties for perjury that the foregoing representations are true and correct to the best of my knowledge, information, and belief.

Date: 9-18-19

Hans Detweiler

**VERIFICATION**

I, Kris Zadlo, Senior Vice President, Commercial Analytics, Regulatory Affairs and Transmission for Invenergy LLC, affirm under penalties for perjury that the foregoing representations are true and correct to the best of my knowledge, information, and belief.

Date: 9/18/19

Kris Zadlo

Kris Zadlo

## CERTIFICATE OF SERVICE

The undersigned counsel for Joint Petitioners certifies that on the 20th day of September, 2019, she caused a copy of the foregoing to be served, by e-mail, on the following counsel:

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