

Grain Belt Express Transmission Line
Environmental Impact Statement Scoping Process

Comments of Keryn Newman, 6 Ella Dr., Shepherdstown, WV 25443

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Introduction

Grain Belt Express as currently proposed will cause significant environmental impacts for hundreds of miles, stretching from southwestern Kansas to northern Indiana. There are no guarantees that Grain Belt will make the environment better, furthermore Grain Belt makes absolutely no concessions that could protect the environment from its most significant impacts to the environment and host landowners. Burying the transmission line along already disturbed linear infrastructure corridors (such as alongside highways or roadways) using innovative techniques is similar to fiber optic installation projects. Buried transmission can be installed inside conduits and protected from weather and sabotage, and does not require new rights of way across private property, nor environmental destruction. Modern systems can detect and locate faults quickly and repairs are made via regularly spaced concrete maintenance vaults. There are no additional environmental benefits to be had by installing transmission above ground, instead of burying it.

Environmental Justice

The EIS must identify and acknowledge environmental justice communities.

Environmental justice communities for a rural energy project are remarkably different from those for an urban energy project, although both share outsized impacts to front line communities without the resources to participate in the decision-making or adequately defend themselves.

Grain Belt Express primarily impacts rural farming communities. Farmland is often the first choice of transmission line routing experts because it is cleared, level, and free of homes, buildings or other obstructions. Transmission builders often look at farmland as “vacant land” ready to be used. In fact, farmland is already devoted to its highest and best use growing food to feed America. Transmission lines, or other linear infrastructure projects, are obstructions to production and because transmission line routers also like to site new transmission parallel to existing lines, the farmland is slowly chopped up until it becomes uneconomic, or simply impossible, to farm. Farms and farmers are hit again and again with linear energy projects. It would be unacceptable to continue to site new energy infrastructure in the same urban communities over and over and therefore farms already crossed by energy projects should be considered an environmental justice community to be avoided.

Farmers are an aging population with a very high percentage of senior citizens. Senior citizens may be challenged by lack of resources and information and may lack reliable Internet connections to get information and participate in decision-making. Public meetings that are held in the evenings and/or require long distance travel may also challenge Seniors. Seniors may also require help to navigate legal matters and may be unfairly targeted by unscrupulous land agents pushing them to sign legal agreements without the help of an attorney.

A different environmental justice community impacted by transmission lines like Grain Belt may be religious communities, such as Amish, Anabaptist, Brethren, Quaker, Mennonite, and others. Members of these groups are primarily engaged in agriculture and may be targeted by transmission builders because they rarely get involved in opposition to new transmission lines across their properties due to religious beliefs.

The EIS must determine what percentage of each of these groups (farmers, seniors, religious communities) is targeted by Grain Belt Express, and how those percentages compare to the average national population. If the percentage of these communities impacted by Grain Belt Express is higher

than the percentage of these communities in the general population, then they are environmental justice communities and must be considered as such in this review.

Public Participation Process

NEPA requires meaningful public comment. Although DOE must make diligent efforts to involve the public in preparing this EIS, a large portion of the most affected public seems to be barred from participating due to language in Grain Belt easement agreements they signed.

Landowners are concerned by this language common to easement agreements:

8. Cooperation. Landowner shall cooperate with Grain Belt (including signing in Landowner's name, if necessary), at no expense to Landowner, in applying for, complying with or obtaining any approvals and consents, environmental reviews, or any other permits, licenses, approvals or consents requested by Grain Belt for the financing, construction, installation, replacement, relocation, maintenance, repair, operation or removal of the Facilities and any other improvements made by Grain Belt and permitted in this Agreement. Landowner shall take no actions that would cause Grain Belt to fail to comply with permits, approvals, or consents of any governmental authority having jurisdiction over the Property once issued. To the extent permitted by law, Landowner hereby irrevocably waives enforcement of any applicable setback requirements respecting the location of Facilities.

To paraphrase: Landowner shall cooperate with Grain Belt in obtaining any environmental reviews requested by Grain Belt for the financing of the facilities.

What does this mean? Must landowners participate as directed by Grain Belt and are not permitted to independently raise issues or make comments that are not approved by Grain Belt?

When the landowners most affected by the project and most knowledgeable about its environmental effects on their properties are prohibited from participating due to legal agreements with the applicant (or simply intimidated by them) this creates an environmental justice issue and/or failure of public participation requirements. Are landowners an environmental justice community because they are barred from commenting?

Environmental justice is the fair treatment and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. DOE says they "treat people fairly and achieve early and meaningful involvement by our affected communities and broader stakeholder populations."

Therefore, DOE must fix this impediment to landowner participation or its EIS fails to include the participation of all members of the public. To support its remedy, the DOE must count the number of comments received from landowners who have signed easement agreements, and compare to the number of comments received from landowners who have been condemned, along with unsigned landowners or members of the public who are not legally barred from participating. A dearth of signed landowner comments means DOE has not remedied this impediment to participation.

Induced and Cumulative Impacts

Title XVII of the Energy Policy Act of 2005 (EPAAct) established a federal loan guarantee program for certain projects that employ innovative technologies. EPAAct authorizes the Secretary of Energy to make loan guarantees available for those projects. Specifically, Title XVII identifies the projects as those that "avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases;" **and** "employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued." DOE claims that GBE meets the requirements by reducing greenhouse gases, however I cannot find any evidence that Grain Belt is also employing new or

improved technologies. In fact, it appears that Grain Belt Express has not updated its design or engineering in at least a dozen years.

Grain Belt Express does not lower greenhouse gases. By itself, it is nothing more than an empty extension cord not plugged in to anything. Only if 5000 MW of new wind and solar generators are built in Ford County, Kansas, and then contracted with customers who replace current fossil fuel generation with this new wind and solar delivered by GBE, could GBE say that it was reducing greenhouse gases. Without GBE, would the new generators be built? Without the new generators being approved and built, what would GBE deliver? Are there other transmission or generation options? Without evidence of contracts with customers who would use the transmission line, there is not sufficient evidence that Grain Belt lowers emissions of greenhouse gases.

The new generators that GBE claims it will cause to be built in Kansas are an induced impact of GBE. As an induced impact, the building of new generators in Kansas must be studied as part of this EIS before the LPO could determine that Grain Belt is avoiding air pollutants or emissions of greenhouse gases. The DOE may not speculate that maybe these new generators would be built, and maybe utilities would replace fossil fuel with these new generators delivered by Grain Belt Express. The DOE must deal with facts.

There is no such thing as a “clean” electric transmission line. Electrons are all the same and cannot be separated by generation source. Determining that Grain Belt Express could help with climate change is nothing more than wishful thinking, or simply bureaucratic box checking that could not survive legal review.

Viable Alternatives

The EIS must study all viable alternatives, including construction and siting variables that may lessen the environmental and other impacts on affected communities. The cost of the alternatives cannot be considered as a factor for rejecting them from study.

The EIS must add one or more routing alternatives that involve burying the transmission lines on existing highway, road or rail rights of way or underneath linear bodies of water. Many innovative high voltage direct current transmission projects have been proposed that will use new technology to safely and economically bury the transmission lines on existing rights of way in order to avoid environmental impacts caused by old-fashioned overhead lines like Grain Belt Express.

Grain Belt’s parent company, Invenergy, is involved in just such a project in New York called Clean Path. That 175-mile underground HVDC transmission line has been “designed to avoid and minimize impacts to the surrounding ecosystem by utilizing existing transmission line and road rights-of-way and by avoiding sensitive habitats within the Hudson River.” Invenergy admits that buried projects are better for the environment. “Clean Path NY’s 1,300 MW HVDC transmission line, built entirely underground, utilizing existing rights-of-way, will be more resilient in the face of increasingly extreme weather events – ensuring more reliable power flow to communities and businesses while reducing costs for storm repairs. By using existing rights-of-way Clean Path mitigates the environmental and community impact of building new transmission.”

See also SOO Green HVDC link, a 350-mile transmission project that will be completely buried on existing rail and road rights of way (<https://soogreen.com/>). New transmission proposals that are buried on existing rights of way are numerous. The EIS should explore each one of them.

See also the recent work and reports by non-profit foundation “The Ray” (www.theray.org) which has extensively studied modern transmission solutions and concluded that transmission buried on existing rights of way is a technologically and economically viable way to build the new transmission we need for our changing energy needs. The purpose of DOE’s loan program is to help deploy innovative clean energy projects in the United States, therefore study of this alternative is imperative to meet program

goals and usher in a new wave of needed transmission projects that do not cause environmental impacts or utilize eminent domain to site dangerous obstructions across private property.

As originally proposed, Grain Belt Express was supposed to connect to the electric grid at an AC/DC converter station in Ralls County, Missouri. However, after Invenergy bought the project, it moved the Missouri connection to a different interconnection point in Callaway County, Missouri, that could accept a larger interconnection. Now, instead of starting near Dodge City, Kansas, and making its first connection in Ralls Co., the revised project starts near Dodge City, Kansas and makes its first connection in Callaway Co. However, instead of re-routing the line from Dodge City to Callaway Co., Grain Belt proposes using its original route and adding 40-miles of new right-of-way to the new connection in Callaway Co, known as Tiger Connector. It must be acknowledged that the Tiger Connector has not been approved by the Missouri Public Service Commission. Studying an unapproved route may be a waste of time and money at this point. What is Grain Belt's contingency plan in the event that the PSC does not approve the Tiger Connector? Will Grain Belt Express add additional line miles to make a connection somewhere else? Without the Tiger Connector's connection to a new 14-acre substation in Callaway County, as well as a connection to an existing substation, Grain Belt Express does not make a connection in Missouri. The EIS must compare the original route to a revised route that goes directly to Callaway Co. without a detour through northern Missouri counties that perhaps don't need to be impacted, and without the Tiger Connector spur. Are the environmental, economic and social impacts of the original route with the Tiger Connector addition added greater than or less than a more direct route from Dodge City to Callaway County? Re-routing the project on a more direct path in order to reduce the length of the line and the line miles of impact are an alternative that must be studied.

Environmental Impacts and Financial Considerations

In addition to its significant environmental impacts, Grain Belt Express has the potential for financial impacts to affected communities. In this project's public meeting webinar of January 25, 2023 (beginning at 1:09:30 of the posted video), an Invenergy representative who was asked whether Grain Belt Express is a merchant transmission project stated that Grain Belt's rate scheme is "not finalized." He further explained that Grain Belt is considering different ways to generate revenue. He purported that Invenergy may sell "non-divided interests" in the project.

A sale of project ownership is not a recognized utility rate method. It simply pushes the establishment of rates down the line to new owners of the project. All transmission projects that are public utilities must have a set method by which approved rates are charged to customers.

There are two distinctly different rate methods for electric transmission projects. The first, and most common, is a regulated, cost-based rate charged to all captive electric consumers in a region as allocated by a regional transmission operator or independent system operator. When these planners determine that a new transmission line is needed for reliability, economic, or public policy purposes, they study, approve, and order a new project, and then allocate the costs of the project fairly to all captive users of the system. Grain Belt Express is not this kind of project and has not been approved or ordered by any RTO/ISO (do not confuse this with interconnection agreements).

The second, less common, rate method for transmission is what is known as a merchant transmission project. When a private entity proposes a transmission line between two points for the sole purpose of making money by charging fees to use the line, it is a merchant transmission project. A merchant transmission project must pay for 100% of its cost to construct the line. No captive ratepayers may be allocated a portion of the project's costs because independent grid planners have not found the line to be needed and have not approved and ordered the line. A transmission merchant must apply for and receive authorization from the Federal Energy Regulatory Commission to sell transmission capacity at negotiated rates to voluntary customers. Once granted, this becomes the merchant's rate method.

Grain Belt Express has been calling itself a merchant transmission project until just recently. In 2014, Grain Belt Express Clean Line (under a different owner) was granted Negotiated Rate Authority by FERC. The FERC order requires Grain Belt Express to engage in an open solicitation process to broadly solicit

interest from potential customers. Customers must be ranked and selected according to specific criteria set forth in FERC's Order (copy attached).

In the Order, FERC reiterated its policy on merchant transmission rates: *"To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable. To do so, the Commission must determine that the merchant transmission owner has assumed the full market risk for the cost of constructing its proposed transmission project."* It goes without saying that Grain Belt Express is not assuming full market risk for its project if it is relying on a guaranteed loan from the Federal government to pay for its project.

The current owner of Grain Belt Express has not notified FERC of the ownership change, nor updated its Negotiated Rate Authority. Grain Belt Express is not currently soliciting customers in accordance with the requirements set forth by FERC. There is no open solicitation process as required. Instead, Grain Belt purports that it is privately selling capacity and undivided interests in the project to other entities and claims to have several Memorandums of Understanding with these entities that are so sensitive that they cannot be disclosed in the Missouri regulatory proceeding (Docket No. EA-2023-0017). The secretive sale of capacity or undivided interests in the project does not comply with Grain Belt's existing FERC Negotiated Rate Authority. Therefore that rate cannot survive any future compliance filings. Instead, each entity that buys an interest in Grain Belt Express would have to apply for and receive regulatory authorization to include the cost of Grain Belt Express in its own rates.

Selling undivided interests in a transmission project does not create a rate by which any DOE loan may be repaid. If Grain Belt does not have a rate approved by the jurisdictional regulator that creates revenue, and its future owners don't have an approved rate, what will create the revenue that Grain Belt Express needs repay the federal government? Will Grain Belt default on the loan, or will it seek to have project costs involuntarily allocated to captive ratepayers across Kansas, Missouri, Illinois and other states? Or will Grain Belt apply for a federal capacity contract to generate revenue, which would require the federal government to repay itself for the money it gave to Grain Belt Express?

DOE must protect the taxpayers whose money it is awarding to loan applicants like GBE. DOE's LPO is for the purpose of helping new, unproven technology get financed. However, Grain Belt Express could be seeking a government loan because it cannot privately finance its project because it lacks contracted customers who will pay rates sufficient to service the debt. Grain Belt may be turning to LPO because it does not have enough customers to generate sufficient revenue to meet private loan requirements. The purpose of the LPO is not to make risky loans to companies without sufficient revenue to be privately financed. That's how Solyndra happened.

Conclusion

If the purpose of the statute is for DOE's Loan Program Office to provide a federal loan guarantee for certain projects that employ innovative technologies, then DOE should ensure that any project it funds actually employs innovative technologies, such as buried HVDC on existing linear rights of way for public use, such as highways. Overhead HVDC is not innovative; it's a leftover from the era of Thomas Edison. The DOE could actually accomplish something beneficial to the nation if its LPO ushers in a new era of buried electric transmission that does not require the taking of private property using eminent domain and the destruction of our environment. It's simply not true that we have to destroy our environment to save it. Buried transmission on existing rights of way can be built much faster, and time is money if we are facing a looming climate crisis.

147 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Grain Belt Express Clean Line LLC

Docket No. ER14-409-000

ORDER CONDITIONALLY AUTHORIZING PROPOSAL AND GRANTING
WAIVERS

(Issued May 8, 2014)

1. In this order, the Commission conditionally authorizes Grain Belt Express Clean Line LLC (Grain Belt Express) to charge negotiated rates for transmission rights on a proposed high-voltage direct current (HVDC) merchant transmission project (Project) and grants Grain Belt Express' request for waiver of certain Commission requirements.¹

I. Background

A. Applicant

2. Grain Belt Express states that it is a wholly-owned subsidiary of Grain Belt Express Holding LLC (Grain Belt Holding), a Delaware limited liability company, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC (Clean Line). The primary owners of Clean Line are ZAM Ventures, L.P., the principal investment vehicle for ZBI Ventures, L.L.C., and GridAmerica Holdings Inc. (GridAmerica). ZBI Ventures, L.L.C. is described as focused on long-term investments in the energy sector and is a subsidiary of Ziff Brothers Investments, L.L.C. GridAmerica is a subsidiary of National Grid USA, which is a subsidiary of National Grid plc. In addition to the Project, Clean

¹ Commission precedent distinguishes merchant transmission projects from traditional public utilities in that the developers of merchant projects assume all of the market risk of a project and have no captive customers from which to recover the cost of the project. *See, e.g., Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104 (2011) (*Hudson Transmission*); *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010) (*Champlain Hudson*); *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*).

Line, through its wholly-owned direct and indirect subsidiaries, has five high voltage transmission line projects under development in different regions of the United States.

B. Description of the Project

3. Grain Belt Express' Project is a 750-mile HVDC transmission system which will be capable of delivering up to 3,500 MW of power, originating near the Spearville 345-kV substation in Ford County, Kansas and terminating near the Sullivan 765-kV substation in Sullivan County, Indiana. The Project will include an intermediate converter station near the Maywood 345-kV substation in Missouri. The Project will traverse parts of Midcontinent Independent System Operator, Inc. (MISO), PJM Interconnection, L.L.C. (PJM), and the Southwest Power Pool, Inc. (SPP), but Grain Belt Express states that it is still in the process of determining the specific route.² Grain Belt Express estimates that the Project will cost approximately \$2.2 billion, of which it has already spent \$6.5 million in development activities. Grain Belt Express states that it expects to commence construction on the Project as early as 2016 and place the Project into service as early as 2018.³ Grain Belt Express is currently conducting studies with SPP, MISO, and PJM to ensure that the Project will safely and reliably interconnect to the existing transmission grid. Grain Belt Express states that, once the Project is completed, it will turn over operational control of the Project to a Regional Transmission Organization (RTO), which will operate the line pursuant to a FERC-approved non-discriminatory rate schedule filed under the RTO's Open Access Transmission Tariff (OATT).⁴

4. Grain Belt Express states that the Project is designed to facilitate the development and export of wind resources from western Kansas to load and population centers in MISO and PJM, and that development of the wind-rich region of western Kansas currently is constrained by transmission limits. Connecting Kansas' abundant supply of wind with load centers will, according to Grain Belt Express, enable the development of thousands of megawatts of high capacity factor wind resources.⁵

5. Grain Belt Express contends that, to the extent that a new HVDC transmission line reduces the amount of energy that would otherwise flow on the existing grid, the result would be improved reliability, reduced losses, and reduced congestion on the grid. In

² Application at 7.

³ *Id.* at 5-6.

⁴ *Id.* at 13.

⁵ *Id.* at 5-6.

addition, Grain Belt Express states that the Project will provide added stability and reliability to the SPP, MISO, and PJM systems.⁶

C. Application

6. On November 15, 2013, Grain Belt Express filed a request for authorization to sell transmission rights at negotiated rates on the Project and for waiver of certain Commission regulations. It seeks authority to charge negotiated rates for the sale of transmission rights on the Project and requests Commission approval of its proposed open solicitation and capacity allocation process, subject to its commitment to demonstrate in one or more post-allocation compliance filings that its selection of customers is consistent with the Commission-approved process. Grain Belt Express contends that it meets the four-factor analysis as outlined in *Chinook* for approval of negotiated rate authority.⁷ Grain Belt Express also proposes to allocate up to 100 percent of the Project's initial capacity to one or more transmission customers through an open and transparent solicitation and capacity allocation process intended to be in compliance with the Commission's January 17, 2013 Policy Statement addressing the allocation of capacity for new merchant transmission projects and participant-funded transmission projects.⁸

II. Notice, Intervention, and Responsive Pleadings

7. Notice of Grain Belt Express' filing was published in the *Federal Register*, 78 Fed. Reg. 70,298 (2013), with interventions and protests due December 6, 2013. The Kansas Corporation Commission (Kansas Commission) and the Missouri Public Service Commission (Missouri Commission) filed out-of-time motions to intervene on December 13, 2013 and March 6, 2014, respectively. The Missouri Landowners Alliance (Landowners) filed a protest out of time on March 19, 2014.⁹

⁶ *Id.* at 6.

⁷ *Id.* at 11 (citing *Chinook*, 126 FERC ¶ 61,134 at P 37).

⁸ *Id.* at 9 (citing *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038 (2013) (Policy Statement)).

⁹ We note that Landowners' protest does not serve to make them a party to this proceeding. See 18 C.F.R. § 385.211(a)(2) (2013).

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant Kansas Commission's and Missouri Commission's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Negotiated Rate Authority

9. In addressing requests for negotiated rate authority from merchant transmission providers, the Commission is committed to fostering the development of such projects, but requires reasonable and meaningful protections to be in place to preserve open access principles and to ensure that the resulting rates for transmission service are just and reasonable.¹⁰ The Commission's analysis for evaluating negotiated rate applications focuses on four areas of concern: (1) the justness and reasonableness of the rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements.¹¹

1. Policy Statement

10. On January 17, 2013, the Commission issued the Policy Statement to clarify and refine its policies governing the allocation of capacity for new merchant transmission projects and new nonincumbent, cost-based, participant-funded transmission projects.¹² The Commission allows the developer of a new merchant transmission project to select a subset of customers, based on not unduly discriminatory or preferential criteria, and

¹⁰ See, e.g., *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230, at 61,838-39 (2000) (accepting a request to charge negotiated rates on a merchant transmission project, subject to conditions addressing, among other things, the merchant's open season proposal); *Mountain States Transmission Intertie, LLC*, 127 FERC ¶ 61,270, at PP 57, 59 (2009) (denying a request to charge negotiated rates on a merchant transmission project because, among other things, sufficient protections did not exist to ensure that rates for service would be just and reasonable); *Hudson Transmission*, 135 FERC ¶ 61,104 at Ordering Paragraph (A) (authorizing Hudson Transmission to charge negotiated rates for transmission service).

¹¹ *Chinook*, 126 FERC ¶ 61,134 at P 37.

¹² Policy Statement, 142 FERC ¶ 61,038.

negotiate directly with those customers to reach agreement for procuring up to 100 percent of transmission capacity when the developer: (1) broadly solicits interest in the project from potential customers; and (2) demonstrates to the Commission that the developer has satisfied the solicitation, selection and negotiation process set forth in the Policy Statement.¹³ To the extent the developer complies with these requirements, the Commission will find that the developer has satisfied the second (undue discrimination) and third (undue preference) factors of the four-factor analysis.¹⁴

11. Under the Policy Statement, once a developer has identified a subset of customers through the open solicitation process, the Commission will allow the developer to engage in bilateral negotiations with each potential customer. In these negotiations, the Commission will allow for distinctions among prospective customers based on transparent and not unduly discriminatory or preferential criteria, with the potential result that a single customer, including an affiliate, may be awarded up to 100 percent of the transmission capacity.¹⁵

2. Four-Factor Analysis

a. Factor One: Just and Reasonable Rates

12. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.¹⁶ To do so, the Commission must determine that the merchant transmission owner has assumed the full market risk for the cost of constructing its proposed transmission project. Additionally, the Commission must determine whether the project is being built within the footprint of the merchant transmission owner's (or an affiliate's) traditionally regulated transmission system; if so, the Commission must determine that there are no captive customers who would be required to pay the costs of the project. The Commission also considers whether the merchant transmission owner or an affiliate already owns transmission facilities in the particular region where the project is to be located, what alternatives customers have, whether the merchant transmission owner is capable of erecting any barriers to entry among competitors, and whether the merchant transmission owner would have any incentive to withhold capacity.

¹³ *Id.* P 16.

¹⁴ *Id.* P 15.

¹⁵ *Id.* P 28.

¹⁶ *See Champlain Hudson*, 132 FERC ¶ 61,006 at P 17.

i. Grain Belt Express' Proposal

13. Grain Belt Express states that it will assume all market risks with the development and construction of the Project and that there will be no captive customers.¹⁷ Grain Belt Express asserts that it is a new market entrant that does not own or control facilities in SPP, MISO, or PJM, and that no affiliate owns or controls facilities in the same area served by the Project. Grain Belt Express notes that an affiliate is developing a merchant transmission facility that will interconnect with PJM, but contends that that line is in a different area from the Project and does not raise any market power issues.¹⁸ Grain Belt Express also states that, when the transmission line is completed, it will turn over operational control of the line to an RTO, which will operate the line under its OATT, thus preventing Grain Belt Express from acquiring market power or controlling barriers to entry in the relevant markets.

14. Grain Belt Express states that potential customers can pursue alternative transmission service from incumbent transmission owners operating where the Project will be built, which are obligated to provide service at cost-of-service rates (capped at the incumbent utility's cost of expansion). Therefore, argues Grain Belt Express, customers will purchase transmission service from Grain Belt Express only to the extent that it is cost-effective to do so. Grain Belt Express states that the Commission has found that the negotiated rate that merchant transmission customers are willing to pay is effectively capped by the difference in the market price for power at either end of the line.¹⁹

ii. Commission Determination

15. We conclude that Grain Belt Express' request for authority to charge negotiated rates for service on the Project meets the first of the *Chinook* factors, that is, its rates will be just and reasonable. Grain Belt Express is assuming full financial risk for the project, has no captive customers, and neither Grain Belt Express nor any affiliate owns or operates transmission facilities in the same area served by the Project. Additionally, no

¹⁷ Application at 12.

¹⁸ Grain Belt Express states that this affiliated project is Rock Island Clean Line, an HVDC line that will terminate in Illinois. Grain Belt Express contends that transmission service rates on both the Project and Rock Island Clean Line will be subject to the Commission's jurisdiction and open access requirements. Grain Belt Express also contends that its affiliation with National Grid USA does not raise market power issues because National Grid USA's utility operations are located in remote markets. *Id.* at n.12.

¹⁹ *Id.* at 13 (citing *Chinook*, 126 FERC ¶ 61,134 at n.26).

entity is required to purchase transmission service from Grain Belt Express, and customers have the alternative of purchasing transmission from incumbent owners in the area. Further, Grain Belt Express and its affiliates do not own or control any barriers to market entry or have any incentive to withhold capacity on the Project. Accordingly, these circumstances lead us to conclude that the requested negotiated rate authority will result in just and reasonable rates for service on the Project.

b. Factor Two: Undue Discrimination

16. Pursuant to the Policy Statement, a developer may demonstrate no undue discrimination or preference by conducting an open solicitation that broadly solicits interest in the project from potential customers and, after the solicitation process, demonstrate to the Commission that it has satisfied the solicitation, selection, and negotiation process criteria set forth in the Policy Statement.²⁰

17. Under the Policy Statement, applicants must issue broad notice of the project in a manner that ensures that all potential and interested customers are informed of the proposed project, such as by placing notice in trade magazines or regional energy publications.²¹ Such notice should include developer points of contact, pertinent project dates, and sufficient technical specifications and contract information to inform interested customers of the nature of the project, including: (1) project size/capacity; (2) end points of the line; (3) projected construction and/or in-service dates; (4) type of line; (5) precedent agreement (if developed); and (6) other capacity allocation arrangements (including how the developer will address potential oversubscription of capacity).²² The developer should also specify in the notice the criteria it plans to use to select transmission customers. In addition, the developer may also adopt a specific set of objective criteria it will use to rank prospective customers, provided it can justify why such criteria are appropriate. Finally, the Commission expects the developer to update its notice if there are any material changes to the nature of the project or the status of the capacity allocation process, in particular to ensure that interested entities are informed of any remaining available capacity.²³

18. In the Policy Statement, the Commission stated that merchant developers must disclose the results of their capacity allocation process for approval under section 205 of

²⁰ Policy Statement, 142 FERC ¶ 61,038 at P 16.

²¹ *Id.* P 23.

²² *Id.* P 20.

²³ *Id.* PP 24-27.

the Federal Power Act.²⁴ Developers must demonstrate that the processes that led to the identification of transmission customers and the execution of the relevant contractual arrangements are consistent with the Policy Statement and the Commission's open access principles. Specifically, the developer should describe the criteria that were used to select customers, any price terms, and any risk-sharing terms and conditions that served as the basis for identifying transmission customers selected versus those that were not, as well as provide certain information listed in the Policy Statement in order to provide transparency to the Commission and interested parties.²⁵ The Commission emphasized that the information in the post-selection demonstration is an essential part of a merchant developer's request for approval of a capacity allocation process, and that the developer will have the burden to demonstrate that its process was in fact not unduly discriminatory or preferential, and resulted in rates, terms, and conditions that are just and reasonable.²⁶ The Commission allows developers discretion in the timing of requests for approval of capacity allocation processes. For example, a developer can seek approval of its capacity allocation approach after having completed the process of selecting customers in accordance with Commission policies. Alternatively, a developer can first seek approval of its capacity allocation approach, and then demonstrate in a compliance filing to the Commission order approving that approach that the developer's selection of customers was consistent with the approved selection process.

i. Grain Belt Express' Proposal

19. Grain Belt Express states that it will conduct an open solicitation process consistent with the Policy Statement.²⁷ Grain Belt Express states that it has already spent over three years engaged in public outreach efforts to raise awareness of the Project, and will commence the open solicitation process by posting a detailed notice on its website and widely distributing notice through relevant trade publications.²⁸ The notice will detail the technical aspects of the project, the size and capacity rating, the end points of the line, the location of the intermediate converter station, the associated AC collector system, and the HVDC technology. The notice will also include all applicable dates for project construction and completion. Grain Belt Express further states that it will post on the Project's website information specific to the open solicitation process that includes

²⁴ 16 U.S.C. § 824d (2012).

²⁵ Policy Statement, 142 FERC ¶ 61,038 at P 30.

²⁶ *Id.* P 32.

²⁷ Application at 14.

²⁸ *Id.* at 14-15.

project details and selection criteria and it will provide broad notice to be circulated to energy trade publications, news outlets within the applicable regions, a list of potential transmission customers, and regional planning and reliability groups in SPP, MISO, and PJM. Grain Belt Express states that any subsequent changes from the information set forth in the initial notice will be prominently posted on the Project's website and distributed promptly through the Project's email listserv.

20. Grain Belt proposes to initially screen customers according to the following selection criteria: (1) first mover status, i.e., a potential customer's commitment to pursue a customer agreement within Grain Belt's designated negotiation windows; (2) investment grade credit rating or other standards of creditworthiness to be specified in the open solicitation notice; (3) commitment to pay a non-refundable deposit upon execution of a customer agreement; (4) firm transmission service reservation for at least five years; and (5) firm transmission service reservation for at least 50 MW of capacity. Grain Belt then proposes to rank potential customers for the initial and any subsequent phases of bilateral negotiations based on the following criteria: (1) level of creditworthiness; (2) early commitment in the Project's development cycle; (3) project risk-sharing through phased non-refundable deposits or similar financial commitments during the Project's development cycle; (4) ability of the customer to assist with the Project's development needs, including obtaining necessary siting approvals and governmental authorizations; (5) longer term or service; (6) larger capacity reservation; (7) ability to access Project converter stations to deliver or receive power; (8) completion of generation development milestones or evidence of need for Project capacity (as appropriate); (9) commercial operation date for generation or timing of transmission service commencement date (as appropriate); and (10) the material price terms contained in initial offers. Grain Belt explains that not all ranking criteria will be weighted the same, depending on the needs of the Project, but that the criteria will be applied in a non-discriminatory manner – i.e., that customers with an identical ranking characteristic will be afforded the same weight for that particular characteristic.

21. Grain Belt Express commits to make a filing with the Commission upon completion of the open solicitation process, to disclose the results of the capacity allocation process and to demonstrate that the process was consistent with the Policy Statement and the Commission's open access policies, including providing the post-selection demonstrations that it has satisfied the solicitation, selection, and negotiation process criteria specified in the Policy Statement.²⁹

22. Grain Belt Express further states that it commits to maintaining books and records for the Project that will comply with the Commission's Uniform System of Accounts in Part 101 of the Commission's regulations and will be subject to examination as required

²⁹ *Id.* at 22.

in Part 41 of the regulations, file financial statements and reports in accordance with Part 141.14 and 141.15 of the Commission's regulations, and employ an independent auditor to audit its books and records.³⁰

ii. Commission Determination

23. We find Grain Belt Express' description of how it plans to broadly solicit interest from potential customers satisfactory. In addition to committing to engage in an open solicitation process, Grain Belt Express states that it will file one or more detailed post-allocation reports with the Commission pursuant to section 205 disclosing the results of the capacity allocation process, and describing the process in sufficient detail to demonstrate its capacity allocation was consistent with its Commission-approved process and the Policy Statement. As described above, a developer has discretion as to the timing of requests for approval of the selection process. In this case, Grain Belt Express has proposed a detailed process it intends to use to select customers and allocate capacity. We find that the proposed criteria will allow Grain Belt Express to distinguish among potential customers in a not unduly discriminatory or preferential manner, and we will allow Grain Belt Express to select and rank its customers according to these criteria, subject to Grain Belt Express complying with the commitments it has made. We note that Grain Belt Express must make a subsequent compliance filing providing the details necessary to provide full transparency as to how Grain Belt Express applied its screening and ranking factors, and the weight applied to each factor, to determine whether Grain Belt Express has followed the process approved herein. Further, Grain Belt Express must file, through eTariff, a rate schedule for service under the applicable OATT prior to commencement of service.

24. We acknowledge Grain Belt Express' commitment that, consistent with *Chinook*, once the Project has commenced operation, it will ensure: (1) it maintains books and records for the Project that comply with the Uniform System of Accounts found in Part 101 of the Commission's regulations,³¹ subject to examination as required in Part 41 of the regulations;³² and (2) its books and records are audited by an independent auditor.³³ These commitments will assist the Commission in carrying out its oversight role.

³⁰ *Id.* at 24.

³¹ 18 C.F.R. pt. 101 (2013).

³² 18 C.F.R. pt. 41 (2013).

³³ *Chinook*, 126 FERC ¶ 61,134 at P 62; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 48; *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 90 (2010) (*Tres Amigas*).

iii. **Landowners' Protest**

25. Landowners argue that Grain Belt Express is unduly discriminating against all non-wind resources by aiming its open solicitation and initial capacity allocation process solely at wind generators.³⁴ Landowners allege that Grain Belt Express' solicitations of potential customers to date only targeted wind generators, and cite to several documents on Grain Belt Express' website, including a Request for Information seeking information about proposed wind development in western Kansas.³⁵ Landowners suggest that there is no evidence that Grain Belt Express has solicited interest from generators other than wind resources, and that other types of generators might want to use the line. They further allege that Grain Belt Express' website materials indicate that Grain Belt Express will use its ranking criteria to limit the line to wind generators.

26. We find that Landowners' concerns are based on speculation as to Grain Belt Express' solicitation efforts, which Grain Belt Express has not fully implemented. Grain Belt Express has not proposed in its application, and we do not approve, selection or ranking criteria based upon the type of generation that a potential transmission customer might seek to interconnect. That Grain Belt Express has posted an inquiry about potential wind development in Kansas does not prove that Grain Belt Express intends to exclude other resources, and it is premature to judge now the totality of its solicitation efforts. As Landowners have recognized, the Commission has previously disapproved of a proposal that would include a preference for renewable resources as part of a transmission owner's open season criteria where the transmission owner did not justify such preference.³⁶ As discussed elsewhere in this order, Grain Belt Express is required to make a filing after the conclusion of its solicitation process that demonstrates compliance with the commitments made in its application, and any concerns that Grain Belt Express has unduly discriminated against non-wind resources can be addressed in that proceeding.

c. **Factor Three: Undue Preference and Affiliate Concerns**

27. In the context of merchant transmission, Commission concerns regarding the potential for affiliate abuse arise when the merchant transmission owner is affiliated with either the anchor customer, participants in the open season or solicitation, and/or customers that subsequently take service on the merchant transmission line. The Commission expects an affirmative showing that the affiliate is not afforded an undue preference, and the developer bears a high burden to demonstrate that the assignment of

³⁴ Landowners Protest at 2.

³⁵ *Id.* at 4.

³⁶ *See Rock Island Clean Line LLC*, 139 FERC ¶ 61,142, at P 31 (2012).

capacity to its affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly preferential or discriminatory.³⁷

i. Grain Belt Express' Proposal

28. Grain Belt Express states that it does not have any affiliates that currently plan to secure transmission service rights on the project.³⁸ To the extent that an affiliate is allocated capacity, Grain Belt Express states that it commits to reporting so in its post-allocation compliance filing and that separate books and records will be maintained for any affiliate that does take service on the project. Grain Belt Express further states that it will turn over operational control of the project to an RTO and that all transactions will occur subject to the project's Commission-approved rate schedule under the OATT of the RTO that maintains operational control. Grain Belt Express also commits to file electric quarterly reports of its transactions as required of transmission providers, comply with any applicable affiliate rules, and abide by the Commission's Standards of Conduct to the extent any affiliate takes transmission service on the Project.³⁹

ii. Commission Determination

29. We acknowledge Grain Belt Express' commitment to engage in an open solicitation process and make a future filing with the Commission disclosing the results of the capacity allocation process and making an affirmative showing in sufficient detail to demonstrate that no affiliate has been afforded undue preference. In addition, we acknowledge Grain Belt Express' commitment to turn over operational control of its facilities to an RTO, file electric quarterly reports of its transactions as required of transmission providers, comply with any applicable affiliate rules, and abide by the Commission's Standards of Conduct to the extent any affiliate takes transmission service on the Project. We accept these commitments as addressing our affiliate preference concerns, subject to the Commission's approval of Grain Belt Express' subsequent compliance filing demonstrating that the assignment of capacity to any affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly preferential or discriminatory.

³⁷ Policy Statement, 142 FERC ¶ 61,038 at P 34.

³⁸ Application at 24.

³⁹ *Id.* at 24-25.

d. **Factor Four: Regional Reliability and Operational Efficiency**

30. As noted above, in order to ensure regional reliability and operational efficiency, the Commission expects that any merchant transmission projects connected to an RTO or ISO turn over operational control to the RTO/ISO.⁴⁰ Further, merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements.⁴¹ Merchant transmission developers are required to comport with all applicable requirements of the North American Electric Reliability Corporation and any regional reliability council in which they are located.

i. **Grain Belt Express' Proposal**

31. Grain Belt Express commits to turn over operational control of the Project to an RTO and to comply with all mandatory reliability requirements.⁴² Additionally, Grain Belt Express states that it plans to participate in the reliability planning process of the applicable RTO.

ii. **Commission Determination**

32. We acknowledge Grain Belt Express' commitment to turn over operational control of the Project to an RTO and comply with all applicable reliability requirements. We also acknowledge Grain Belt Express' assertion that it has filed interconnection requests with MISO, PJM, and SPP.⁴³ Accordingly, we find that Grain Belt Express has met the regional reliability and operational efficiency requirement, subject to Grain Belt Express' continued participation in the necessary regional planning processes.

⁴⁰ *Chinook*, 126 FERC ¶ 61,134 at P 52.

⁴¹ *See, e.g., Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁴² Application at 25.

⁴³ *Id.* at 6-7.

C. Waiver Requests

1. Grain Belt Express' Proposal

33. Grain Belt Express requests waiver of: (1) the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) the Form No. 1, Annual Report of Major Electric Utilities, Licenses and Others (Form No. 1) filing requirement; and (3) Part 141 relating to forms and reports, except sections 141.14 and 141.15. Grain Belt Express states that it will not sell transmission service at cost-based rates and does not have captive customers. Grain Belt Express states that the Commission has granted similar waiver requests to other merchant transmission owners seeking negotiated rate authority.⁴⁴ Grain Belt Express also requests waiver of any other part of the Commission's regulations as necessary to grant the authorizations requested therein.

2. Commission Determination

34. Because Grain Belt Express is proposing to charge negotiated rates, the regulations requiring the filing of cost-based data are not applicable. Accordingly, consistent with our prior orders, we will grant waiver of the filing requirements of Subparts B and C of Part 35 of the Commission's regulations except for sections 35.12(a), 35.13(b), 35.15, and 35.16.⁴⁵

35. The Commission will also grant Grain Belt Express' request for waiver of the Form No. 1 filing requirement and Part 141 relating to forms and reports, except sections 141.14 and 141.15. The Commission has previously granted waiver of the Form No. 1 filing requirement to other merchant transmission owners.⁴⁶

⁴⁴ *Id.* at 27 (citing *Lake Erie CleanPower Connector*, 144 FERC ¶ 61,203 (2013); *Chinook*, 126 FERC ¶ 61,134 at PP 68, 69).

⁴⁵ *Hudson Transmission*, 135 FERC ¶ 61,104 at P 42; *Tres Amigas*, 130 FERC ¶ 61,207 at P 103; *Wyoming Colorado Intertie, LLC*, 127 FERC ¶ 61,125, at P 62 (2009) (*Wyoming*); *Linden VFT, LLC*, 119 FERC ¶ 61,066, at P 42 (2007) (*Linden*).

⁴⁶ *Neptune Regional Transmission System, LLC*, 139 FERC ¶ 61,110, at P 12 (2012); *Wyoming*, 127 FERC ¶ 61,125 at P 65; *Linden*, 119 FERC ¶ 61,066 at P 44; *Montana Alberta Tie Ltd.*, 116 FERC ¶ 61,071, at P 66 (2006).

The Commission orders:

(A) Grain Belt Express is hereby granted authority to sell transmission rights on its proposed merchant transmission project at negotiated rates, subject to the Commission's acceptance of the compliance filing and rate schedule directed in Ordering Paragraphs (B) and (C) below, as discussed in the body of this order.

(B) Grain Belt Express is hereby directed to make a filing disclosing the results of the capacity allocation process within 30 days after the close of the open solicitation process, as discussed in the body of this order.

(C) Grain Belt Express is hereby directed to file, upon completion of the Project, a rate schedule for service under the OATT for the RTO to which it hands over operational control, as discussed in the body of this order.

(D) Grain Belt Express' request for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, of the Form No.1 filing requirement, and of Part 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.