



## PRAYER FOR LEAVE TO APPEAL

Pursuant to Illinois Supreme Court Rule 315, the Illinois Commerce Commission (“Commission”) petitions this Court for leave to appeal from the appellate court’s decision. The appellate court improperly reversed the Commission’s decision to grant Grain Belt Express LLC (“GBX”) a Certificate of Public Convenience and Necessity (“Certificate”) to construct a unique and specific \$4.95 billion electric transmission line (the “Project”).

This case presents a matter of general—and indeed vital—public importance because the General Assembly specifically encouraged construction of the Project as part of the Climate and Equitable Jobs Act (“CEJA”) (P.A. 102-0662); *see also* 20 ILCS 3855/1-5(10)–(10.6) (declaring Illinois “should encourage the development of interregional high voltage direct current (HVDC) transmission lines” such as the Project and describing the many benefits to Illinois ratepayers such as reliability and the reduction of prices). As an integral part of CEJA’s sweeping reforms designed to achieve, *inter alia*, the goal of 100% clean energy in Illinois, the legislature added subsection 8-406(b-5) to the Public Utilities Act (“PUA” or “Act”). 220 ILCS 5/8-406(b-5) (“subsection (b-5)”).

Subsection (b-5) reflects the General Assembly’s clean energy goals, and subject to compliance with its requirements, it authorized the construction of a specialized transmission line along a specified corridor to bring clean, renewable energy from the western Plains States to the regional grids serving Illinois. A010-11, 42-43.<sup>1</sup> The

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<sup>1</sup> This petition refers to and cites the Commission’s Order in this matter, Grain Belt Express LLC, ICC Docket No. 22-0499, 2023 ILL. PUC LEXIS 209 (Mar. 8, 2023), attached to the Appendix, as the “Final Order.” The appellate court’s decision,

transmission line planned by GBX will begin in Kansas, run through Missouri and Illinois and end in Indiana. The Commission's approval of the Project was the final regulatory approval GBX needed as it had previously obtained the necessary approvals from Kansas, Missouri, and Indiana. *Id.* at 11; EV11-1369.

This Court's review is needed because the appellate court committed two critical errors permanently prohibiting construction of the Project and thwarting realization of the General Assembly's goal of 100% clean energy and associated benefits to Illinois ratepayers. First, the court erred in its construction of subsection (b-5). Subsection (b-5) requires compliance with subsection 8-406.1(f)(3) of the PUA, 220 ILCS 5/8-406.1(f)(3), which requires: "That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers."

Contrary to this Court's precedent, the appellate court ignored the plain language of subsection 8-406.1(f)(3), read terms in isolation, imposed non-existent evidentiary requirements, and impliedly ascribed a meaning to the term "is capable" unsupported by the statute. *See, e.g., Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 75 ("This court will not depart from the plain language of the statute by reading into it exceptions, limitations or conditions that conflict with the legislative intent."). By failing to utilize a plain language analysis of subsection 8-406.1(f)(3) and erroneously reading out other parts of that provision, the appellate court defied settled principles of statutory interpretation. *See People ex rel. Madigan v. Illinois Commerce Comm'n*, 2015 IL

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*Concerned Citizens et al. v. Illinois Commerce Commission et al.*, 2024 IL App (5th) 230271-U, is also included in the attached Appendix. Further citations to record evidence refer to the record on appeal before the appellate court, which are formatted as "EV\_ - \_\_\_\_."

116005, ¶ 22 (finding that review of the Commission’s construction of the PUA under section 10-201 is “deferential by statute [and] also deferential by nature” because “we are judges, not utility regulators,” and although “we are free to disagree with the Commission on what the Act means . . . , we remain hesitant to disregard how the Commission applies it”).

The second error is related to the first, in that the appellate court utilized its erroneous construction of “is capable” to impermissibly reweigh the record evidence and reverse the Commission’s factual findings. *See, e.g., Commonwealth Edison Co. v. Property Tax Appeal Bd.*, 102 Ill. 2d 443, 467 (1984) (when reviewing the factual determinations of an administrative agency, courts should not reweigh the evidence). Contrary to the appellate court’s construction, the Commission correctly found that subsection 8-406.1(f)(3) “must be considered in its entirety: that the applicant ‘is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.’” A055. Based on testimony presented by GBX and Commission Staff, the Commission found GBX had proven both elements of subsection 8-406.1. *Id.*<sup>2</sup> The appellate court erred by substituting its judgment for the Commission’s in clear violation of this Court’s well-settled precedent.

Under the appellate court’s decision, the benefits the General Assembly intended when it added subsection (b-5) can no longer be realized because that provision requires a qualifying applicant to petition for a Certificate by the end of 2023. *See* 220 ILCS 5/8-

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<sup>2</sup> *See also* GBX witnesses Shashank Sane and Rolanda Shine testified as to the financial strength of GBX and Invenergy and the Commission was entitled to credit and rely on their un rebutted testimony. E3-E452-53, R-126-27, 137-38 (Sane); EV11-E1365-67, E1371, E1373-74, R-339 (Shine).

406(b-5). As a result, without this Court’s intervention, Illinois residents will not see the benefits of clean, efficient, lower-cost, and more reliable electric service, as well as greater grid integration, at a time when severe weather and grid resilience are a significant issue in this State. Accordingly, this Court should grant leave to appeal, correct the appellate court’s flawed review of the Commission’s Final Order, and effectuate the intent of the General Assembly.

### **STATEMENT REGARDING JUDGMENT AND REHEARING**

On August 8, 2024, the appellate court issued its decision, reversing the Commission’s March 8, 2023, Final Order granting the Certificate to GBX. A148-150, ¶¶ 34-38. No party sought rehearing. This Court granted an extension of time to file this petition for leave to appeal to October 3, 2024.

### **POINTS RELIED ON FOR REVIEW**

The appellate court committed two errors, both of which require this Court’s review. First, the court misconstrued the plain language of subsection 8-406.1(f)(3) that requires an applicant to show it “is capable of financing the proposed construction without significant adverse financial consequences” in an unsupported manner. The court’s interpretation, that an applicant must have the cash or prove it can raise it immediately, is inconsistent with the ordinary meaning of the term “is capable.”

Even if, however, the phrase “is capable” is subject to more than one reasonable dictionary definition, and each would make sense in the statute, then the phrase is ambiguous. *See Home Star Bank & Financial Services v. Emergency Care & Health Organization, Ltd.*, 2014 IL 115526, ¶ 39 (“The existence of these different dictionary definitions, each which would make sense in the statute, indicates that the term is

ambiguous.”). If the phrase is ambiguous, the appellate court further erred by failing to defer to the Commission’s reasonable construction of subsection 8-406.1(f)(3)’s financing provision. *Illinois Power Co. v. Illinois Commerce Comm’n*, 111 Ill. 2d 505, 510-11 (1986) (Courts give “great weight and deference to the interpretation of an ambiguous statute by a public agency charged with the administration and enforcement of the statute,” because such interpretations, “while not binding on courts, are considered an informed source in ascertaining the legislative intent because of the agency's experience and expertise.”).

The Commission gave full effect to the subsection, noting this language must be “considered in its entirety,” that is, whether “the applicant ‘is capable of financing the proposed construction without significant adverse financial consequences.’” A055. The Commission further found and again the court ignored, that by agreeing to be bound by the Revised Financing Condition, GBX satisfied the second, “adverse consequences” portion of section 8-406.1(f)(3), which protects against any harm to GBX or Illinois residents should the project fail to be built. *Id.* The appellate court erred by misconstruing the plain language of the statute and failing to give full effect to its terms.

Second, the appellate court disregarded the Commission’s findings and improperly reweighed the evidence regarding GBX’s existing capitalization and experience in financing similar projects, stating it was “speculative” that the HVDC line would even be built. *See* A146-48, ¶¶ 30-34. The Commission properly weighed the extensive evidence showing GBX’s capacity to finance the Project, including GBX’s capitalization and the evidence that GBX has access to significant financing options for projects at sufficient stages of development and regulatory approval. *See* A047-52, 55.

Rather than crediting this evidence and the Commission’s assessment of it, the appellate court cherry-picked other evidence to fit its flawed construction of subsection 8-406.1(f)(3). *See* A145-150, ¶¶ 28-38.

In addition to these reversible errors, the appellate court declined to rule on the other constitutional and statutory issues briefed and argued by the parties. *See* A144, ¶ 25. The Commission asks this Court to address these issues as it addresses the appellate court’s errors.

## STATEMENT OF FACTS

### A. Statutory Background.

In CEJA, the General Assembly found as a matter of state policy, Illinois “should encourage the development of interregional high voltage direct current (HVDC) transmission lines that benefit Illinois,” given that all “ratepayers in the State served by the regional transmission organization where the HVDC converter station is interconnected benefit from the long-term price stability and market access provided by interregional HVDC transmission facilities.” 20 ILCS 3855/1-5(10.5).

The General Assembly enacted subsection (b-5) in response to *Illinois Landowners Alliance, NFP v. Illinois Commerce Comm’n*, 2017 IL 121302, ¶ 47, which held that only public utilities could apply for a Certificate under sections 8-406 and 8-406.1 of the PUA. In subsection (b-5), the legislature created a new type of applicant other than a legacy public utility (a “qualifying applicant”) that was eligible to secure a Certificate to construct an HVDC transmission line across specific counties in Illinois that would operate at particular voltage and megawatt requirements (a “qualifying project”). 220 ILCS 5/8-406(b-5) (listing nine counties across Central Illinois, beginning

at Pike County at the Missouri border and running roughly due east to Clark County at the Indiana border); A010-11 (describing the Project’s 207-mile approved route in Illinois, which conformed to the geographical and technical requirements for a “qualifying project”).

Section 8-406.1 is one of two statutory bases available in subsection (b-5) to secure a Certificate, and GBX elected to petition for a Certificate under this provision. 220 ILCS 5/8-406.1.

**B. Proceedings at the Commission.**

GBX applied for a Certificate to construct the Project on July 26, 2022. A007. The Project will, if constructed, bring abundant and inexpensive wind power from southwestern Kansas across that state, through Missouri, into and across Illinois, and to a converter station near Illinois’s border with Indiana. A010, 64. Once converted, the Project will cross the Illinois border and terminate at a substation in Sullivan County, Indiana. *Id.*

GBX presented the Commission with ample, unrebutted evidence of the numerous and varied benefits of the Project. *Id.* at 36-37. Based on this evidence, the Commission found that “the Project is necessary to provide adequate, reliable, and efficient service, will promote the development [of an] effectively competitive electricity market, and is the least cost means to satisfy Section 8-406.1(f)(1).” *Id.*

Before the Commission, GBX established that it would utilize the Project Financing method for this HVDC line. A051-52; EV11-1367. Through this method, GBX is relying on its capacity to finance the Project based on “the experience and relationships of the management team for [GBX] and the financial backing of its affiliated company [Invenergy Transmission LLC and Invenergy LLC].” A048.



Specifically, GBX presented uncontroverted evidence that it and its affiliate companies have “access to the necessary financial resources to carry out the necessary development work for the Project prior to engaging in project-specific financings for the construction of the Project,” including access to sufficient capital resources “to undertake the initial development and permitting work for the Project.” EV11-1367. GBX’s evidence, which was not rebutted, showed that it and its Invenenergy-related affiliates have collectively “developed and financed over 4,000 miles of transmission and collection lines, 88 substations, 96 generator step-up transformers and over 5,000 pad mount transformers over the past 20 years.” *Id.*

Furthermore, GBX presented evidence that the anticipated total costs for the Project, including the Kansas, Missouri, Illinois, and Indiana segments, would be approximately \$4.95 billion, of which the Illinois portion would be approximately \$1.43 billion. EV11-1368-69. And, the evidence showed, Kansas, Missouri, and Indiana had granted regulatory approval for the Project; Illinois was the last leg of the relay. *Id.* GBX intended to “obtain construction financing once [it had] obtained [all] major regulatory approvals necessary to proceed with the Project.” *Id.* GBX would finance the Illinois-based construction of the Project with proceeds from long-term capacity contracts with customers who would draw from the proposed HVDC transmission line, which GBX and its affiliates had significant experience securing. *Id.*

Staff of the Commission testified that GBX would utilize this common Project Financing approach, in that “after carrying out preliminary development and permitting activities, Grain Belt Express will enter into contracts with customers for transmission capacity on the Project.” EV18-3157-58. “Using those contracts as security, Grain Belt

Express will then enter project-specific financing arrangements with investors to procure the capital needed to complete the development and construction of the Project and place it into operation.” *Id.* This is an approach familiar to the Commission, Staff testified, and GBX’s evidence—provided it agreed to be bound by the “Revised Financing Condition”—showed the company is capable of financing the project without adverse consequences. *Id.* at 3162.

The evidence showed that GBX agreed to the Revised Financing Condition recommended by the Commission’s Staff. EV18-3158 (Staff’s recommendation); EV11-1401-1402 (GBX’s agreement to be bound by this condition); *see also* A134 (Appendix B, Revised Financing Condition). This condition, which was adopted by the Commission, prohibits GBX from “install[ing] transmission facilities for Phase II [including the Illinois infrastructure] of the Project on easement property until such time as [GBX] has obtained commitments for funds in a total amount sufficient to finance the anticipated total project cost.” A134.

The Commission found that between GBX’s existing capitalization, experience in project financing, and its willingness to be bound by the Revised Financing Condition, GBX had satisfied the requirement of subsection 8-406.1(f)(3) that “the applicant ‘is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.’” A055 (quoting 220 ILCS 5/8-406.1(f)(3)). About the Revised Financing Condition, specifically, the Commission found:

The Commission points out that this type of financing condition has been approved by the Commission in the past. The Revised Financing Condition prevents adverse financial consequences, specifically, that Grain Belt Express would commence construction but be unable to

complete it due to insufficient funding. If Grain Belt Express were unable to satisfy the Revised Financing Condition and therefore fails to construct the Project, the only parties experiencing adverse financial consequences would be Grain Belt Express investors. The Commission notes Grain Belt Express' commitment that if the Project is terminated, all easements that have been acquired will be released.

*Id.*

On this and other bases, the Commission approved a Certificate for GBX. But the appellate court reversed the Commission's Final Order based on a different construction of subsection 8-406.1(f)(3) and related conclusion that "GBX failed to provide *any* evidence" to show it is capable of financing the project. A150, ¶¶ 28, 38-39, 42 (emphasis added).

The Commission now seeks leave to appeal.

## ARGUMENT

### **A. This Court Should Review the Appellate Court Decision Because It is Inconsistent with the Plain Language and the Commission's Reasonable Construction of Subsection 8-406.1(f)(3).**

"It is well settled that a decision of the Commission is entitled to great deference because it is the judgment of a tribunal appointed by law and informed by experience." *United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 12 (1994). A court should not put itself in the place of the Commission and conduct an independent investigation, nor substitute its judgment for the Commission's. *Produce Terminal Co. v. Illinois Commerce Comm'n*, 414 Ill. 582, 589 (1953).

Under the PUA's "strict statutory standard, a reviewing court's reversal, in whole or in part, of a Commission's rule, regulation, order, or decision is limited to the following circumstances: (1) the Commission's findings were not supported by substantial evidence, (2) the Commission lacked jurisdiction, (3) the Commission's

determination violated the state or federal constitution or laws, or (4) the proceedings or manner in which the Commission arrived at its determination infringed on the appellant's state or federal constitutional rights.” *Citizens Util. Bd. v. Illinois Commerce Comm’n*, 166 Ill. 2d 111, 121 (1995) (citing 220 ILCS 5/10-201(e)(iv)); *see also United Cities Gas*, 163 Ill. 2d at 12.

GBX applied for a Certificate under subsection 8-406(b-5) as a qualifying applicant requesting a Certificate for a qualifying project. A007. GBX also elected to pursue the Certificate through the expedited process under section 8-406.1 of the PUA, as subsection (b-5) allows. *Id.*; 220 ILCS 5/8-406(b-5). Subsection 8-406.1(f) permits the Commission to issue a Certificate if the applicant establishes (among other requirements) that: (1) the proposed project is necessary and least-cost, (2) the applicant is capable of efficiently managing and supervising the construction process, and (3) the applicant is “capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.” 220 ILCS 5/8-406.1(f)(1)-(3). The first two requirements were uncontested on appeal. A141, ¶¶ 14-16.

This left subsection 8-406.1(f)(3), on which the parties submitted substantial evidence and argument. *See* A054-55. The Commission reviewed this evidence, as well as GBX’s agreement to be bound by the Revised Financing Condition. *Id.*; *see also* A134, Appendix B (prohibiting GBX from “install[ing] transmission facilities for Phase II [including the Illinois infrastructure] of the Project on easement property until such time as Grain Belt Express has obtained commitments for funds in a total amount sufficient to finance the anticipated total project cost”). The Commission interpreted the plain language of subsection 8-406.1(f)(3) “in its entirety” to require a showing “that the

applicant ‘is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.’” A055. Based on its construction of the language of subsection 8-406.1(f)(3) as a whole and the record evidence before it, the Commission held that GBX satisfied the financing requirement. *See id.*

To reverse the Commission’s decision, the appellate court did not construe the “is capable of financing” language of subsection 8-406(f)(3) according to its plain meaning. The ordinary meaning of “capable” is “[h]aving the needful capacity, power, or fitness for (some specified purpose or activity)” (Oxford English Dictionary) and “having attributes (such as physical or mental power) required for performance or accomplishment” (Merriam-Webster).<sup>3</sup> Departing from this commonly understood meaning, the appellate court construed language of subsection 8-406(f)(3), including that subsection’s use of the word “capable,” to require GBX to already have financing in place to immediately pay the Project’s costs. A145-46, ¶¶ 28-29. Thus, the court reasoned, GBX had not satisfied subsection 8-406(f)(3) because it “did not claim that it had the capability of funding the project”; “[i]nstead, GBX claimed that *it expects* to be able to obtain financing for the project once customer contracts are executed, supply agreements are executed, and site control is obtained in the future.” A146, ¶ 29 (emphasis added).

The court thus rejected the Commission’s finding that GBX’s Project Financing approach satisfied the “is capable” requirement in subsection 8-406.1(f)(3)—a finding supported by the unrebutted evidence about GBX’s experience, access to financing,

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<sup>3</sup> Available at: <https://www.oed.com/search/dictionary/?scope=Entries&q=capable>; and <https://www.merriam-webster.com/dictionary/capable>.

capitalization, and agreement to the Revised Financing Condition. A148, ¶ 34; *see also* A055 (Final Order describing requirement of subsection 8-406.1(f)(3) that “the applicant must be capable of raising the necessary capital”).

Not only did the appellate court depart from the commonly understood meaning of “capable,” the court impermissibly ignored subsection 8-406.1(f)(3)’s requirement that the applicant be capable of financing the proposed project “without adverse consequences” to Illinois residents and ratepayers. *See Stroger v. Reg’l Transp. Auth.*, 201 Ill. 2d 508, 524 (2002) (A statute “should be construed as a whole and, if possible, in a manner such that no term is rendered meaningless or superfluous.”). The Commission reasoned that GPX was capable of financing the project “without adverse consequences” because the Revised Financing Condition prohibited GBX from commencing construction until it had obtained commitments “to finance the anticipated total project cost.” A134 (Appendix B, Revised Financing Condition).

Contrary to the appellate court’s reasoning, the Commission explained that “the Revised Financing Condition prevents adverse financial consequences.” A055. The Commission explained that, if GBX could not satisfy the Revised Financing Condition, “the only parties experiencing adverse financial consequences would be Grain Belt Express investors.” A055. In addition, the Commission noted, GBX had agreed that “if the Project is terminated, all easements that have been acquired will be released.” *Id.* On this basis, giving full effect to all language of subsection 8-406.1(f)(3), the Commission found that the subsection was satisfied. *Id.* In concluding otherwise, the appellate court failed to consider the language of that provision as a whole.

Ultimately, the Commission applied a reasonable, plain language analysis to this PUA provision, and the appellate court applied a different interpretation. If this Court believes that the Commission’s construction—or both the Commission’s construction and that of the appellate court—were reasonable, then the statute is ambiguous under this Court’s holdings. *See, e.g. People ex rel. Madigan v. Illinois Commerce Comm’n*, 231 Ill. 2d 370, 381 (2008). (“An ambiguity exists where the regulation is capable of more than one reasonable interpretation.”). If the Court finds subsection 8-406.1(f)(3) ambiguous, the Court should defer to the Commission when it interprets its operative statute. *See Birkett*, 202 Ill. 2d at 46 (noting “[a] court will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with administering and enforcing that statute”); *see also Madigan*, 2015 IL 116005, ¶ 22. (review of the Commission’s construction of the PUA under section 10-201 is “deferential by statute [and] also deferential by nature” because “we are judges, not utility regulators”).

Because the appellate court construed the PUA’s “capable of financing” requirement in a manner that both departed from the commonly understood meaning of the provision’s language, and failed to consider that language in its entirety, this Court should grant leave to appeal.

**B. This Court’s Review is Warranted Because the Appellate Court Improperly Reweighed the Evidence and Substituted Its Judgment for That of the Commission.**

It is a longstanding principle in Illinois law that “the courts are not authorized to reweigh the evidence or to substitute their judgment for that of the agency even if they believe an opposite conclusion might be reasonable.” *Okino v. Department of Corrections*, 84 Ill. App. 3d 1084, 1091 (1st Dist. 1980) (citing *DeGrazio v. Civil Service Comm’n*, 31 Ill. 2d 482 (1964)); *see also Provena Covenant Med. Ctr. v. Dept. of*

*Revenue*, 236 Ill. 2d 368, 386-87 (2010) (when reviewing an agency decision, “it is not a court’s function . . . to reweigh evidence or make independent determination of the facts”); *Business & Professional People v. Illinois Commerce Comm’n*, 146 Ill. 2d 175, 210 (1991) (“This court will not substitute its judgment for that of the Commission where, as here, it has made an evidentiary determination supported by the record.”). Rather, the reviewing court’s “function is limited to ascertaining whether the administrative agency’s findings and decision are against the manifest weight of the evidence.” *Cohen v. Department of Ins.*, 173 Ill. App. 3d 363, 369 (4th Dist. 1988) (citing *Jackson v. Bd. of Review*, 105 Ill. 2d 501 (1985)).

Here, the appellate court used its flawed reading of the PUA’s “capable of financing” provision, 220 ILCS 5/8-406.1(f)(3), to improperly reweigh and dismiss the unrebutted evidence demonstrating GBX’s capacity to finance the Project without adverse impacts to ratepayers and residents in Illinois. The Commission carefully reviewed GBX’s evidence about its capitalization, relationships with lenders (both its own and through Invenergy), and experience with accessing financing. A047-49. The Commission ultimately held that this evidence satisfied subsection 8-406.1(f)(3)’s “capable of financing requirement,” and, in addition, that the “Revised Financing Condition prevents adverse financial consequences, specifically, that Grain Belt Express would commence construction but be unable to complete it due to insufficient funding.” A055. As the Commission explained, “[i]f Grain Belt Express were unable to satisfy the Revised Financing Condition and therefore fails to construct the Project, the only parties experiencing adverse financial consequences would be Grain Belt Express investors.” *Id.*

The appellate court ignored this evidence, and questioned GBX’s ability to



finance this Project by improperly focusing on GBX’s supposed “failure” to supply financial documents (such as annual profit and loss statements, balance sheets, and other evidence the court deemed relevant). A147-48, ¶¶ 31-33. The court did not explain why this documentation was necessary; it was not, given the extensive evidence that GBX and Invenenergy had sufficient resources and experience to finance the Project.

Thus, the Commission’s finding that GBX was capable of financing the Project without adverse consequences to Illinois residents and ratepayers, and therefore that GBX had satisfied subsection 8-406.1(f)(3), was not against the manifest weight of the evidence. The appellate court’s erroneous and contrary conclusion will have the effect of depriving this State’s residents and ratepayers of the benefits of cleaner, cheaper electricity, and a more resilient grid. This Court should grant leave to appeal in this matter.

**C. The Appellate Court Declined to Rule on the Constitutional and Other Challenges, Creating Needless Confusion That Can Only Be Dispelled by This Court.**

The appellate court reversed the Commission’s decision without ruling on the remaining issues litigated on appeal. A150, ¶ 39. In addition to correcting the appellate court’s erroneous ruling on the “capable of financing” issue, this Court should provide clarity and finality to the litigation by addressing the remaining challenges. *See Citizens Utils. Co. v. Illinois Commerce Comm’n*, 124 Ill. 2d 195, 200 (1998) (addressing waiver issue raised by the Commission that appellate court failed to address in its opinion when invalidating rate base reduction). Below, the Respondent Landowners challenged the constitutionality of subsection (b-5) by arguing that the addition of qualifying direct current applicants violates the special legislation, equal protection and separation of power clauses of the Illinois Constitution. The Landowners’ challenges lack merit.

**1. The Landowners’ Special Legislation and Equal Protection Challenges Misstate Illinois Law and Should Be Rejected by This Court.**

The Illinois Constitution provides that “the General Assembly shall pass no special or local law when a general law is or can be made applicable.” Ill. Const. 1970, art. IV, § 13. “The special legislation clause prohibits the General Assembly from conferring a special benefit or privilege upon one person or group and excluding others that are similarly situated.” *Big Sky Excavating, Inc. v. Ill. Bell Tel. Co.*, 217 Ill. 2d 221, 235 (2005). A court’s “inquiry into special legislation issues is . . . twofold. [It] must determine whether the statutory classification at issue discriminates in favor of a select group and, if so, whether the classification is arbitrary.” *Crusius v. Ill. Gaming Bd.*, 216 Ill. 2d 315, 325 (2005). “A special legislation challenge is generally judged under the same standards applicable to an equal protection challenge.” *Id.*; *see also People v. Warren*, 173 Ill. 2d 348, 362-63 (1996) (“To show that a law, neutral on its face, [such as subsection (b-5)] violate equal protection, the defendant must show that the statute was enacted for a discriminatory purpose.”).

“While the legislature has broad discretion to make statutory classifications, the special legislation clause prevents it from making classifications that arbitrarily discriminate in favor of a select group.” *Big Sky*, 217 Ill. 2d at 235. Courts reviewing a constitutional challenge “begin with the well-settled principle that all statutes are presumed to be constitutional.” *Id.* at 234. “The party challenging the constitutionality of a statute has the burden of rebutting the presumption of validity and clearly establishing a constitutional violation.” *Id.*

The Landowners argued that subsection (b-5) violated the Illinois Constitution’s

special legislation and equal protection clauses by arbitrarily discriminating in favor of GBX which, they contended, was the only entity capable of satisfying the terms of that provision. CLV19-4589-95. They contended that subsection (b-5) is “outcome determinative for GBX,” to the exclusion of other similarly situated entities. CLV19-4596. The Landowners are incorrect.

Subsection (b-5) does not violate the special legislation or equal protection clauses because it does not discriminate. In the proceedings below, the Landowners did not (and could not) identify an entity similarly situated to GBX that was prohibited from securing a Certificate to construct and operate an HVDC line by virtue of subsection (b-5)’s language. Thus, subsection (b-5) does not discriminate, and the first portion of the inquiry is not satisfied to show a special legislation or equal protection violation.

Likewise, the General Assembly decision to limit subsection (b-5) to the specified counties, as well as the provision’s voltage and wattage requirements, were not arbitrary. *See* A064 (reviewing the adopted route’s parameters within the context of the broader, multi-state infrastructure). The HVDC line contemplated by the legislature, like the Project, exists in a finite context of high-voltage transmission infrastructure. Both the Commission and GBX demonstrated how the connection between the Missouri and Indiana portions of the line follows an optimal path through the listed counties. A064.

Subsection (b-5)’s terms were carefully crafted, non-discriminatory, and rationally related to the General Assembly’s legitimate interest in fostering HVDC transmission. This Court should affirm the constitutionality of subsection (b-5).

## **2. Subsection (b-5) Does Not Violate the Separation of Powers Because It Does Not Intrude into the Judiciary’s Role.**

When the Commission issues a Certificate pursuant to subsection (b-5) and

certain interconnection requirements are met, the legislature directed the Commission to find that such projects are for “public use.” When the Commission makes such a finding, the Eminent Domain Act (“EDA”) provides that in a later circuit court condemnation proceeding, there is a rebuttable presumption of “public use.” 735 ILCS 30-5-5-5(c). The Landowners incorrectly argued that this rebuttable presumption violates the separation of powers clause (Ill. Const. 1970, art. II, § 1) because the final declaration of “public use” is properly reserved for the judiciary, not the Commission. CLV19-4597-99.

The Landowners argument is flawed because neither subsection (b-5) nor any provision of the PUA alters any property owner’s rights under the EDA. If, in the future, GBX seeks, and the Commission grants, eminent domain authority any property owner, including Landowners, continue to have the same rights under the EDA that they always had. 220 ILCS 5/8-509.5. *See also Egyptian Electric Cooperative Assn. v. Illinois Commerce Comm’n*, 33 Ill. 2d 339, 342-43 (1965) (landowner’s rights are properly asserted in a circuit court condemnation action).

Subsection (b-5) does not alter this process. Thus, subsection (b-5) does not intrude into the judiciary’s role and does not offend the separation of powers clause. This Court should affirm the constitutionality of subsection (b-5) on this basis as well.

**3. This Court Should Clarify that the PUA Requires the Commission to Regulate More Than Public Utilities and Reject the Landowners’ Narrow and Ahistorical Reading of the Act.**

In addition to challenging the constitutionality of subsection (b-5), the Landowners argued that the Commission’s authority to regulate under the PUA is limited to the regulation of public utilities. CLV19-4586-88. Thus, they argued, the Commission lacked authority to regulate GBX, which is a merchant transmission

company and not a public utility, and could not issue a Certificate to GBX. *Id.* The Landowners are incorrect.

First, the General Assembly determines who the Commission regulates, and has made such a determination with respect to “qualifying applicants.” 220 ILCS 5/8-406(b-5). In addition, the Commission regulates other entities that are not public utilities, including Alternative Retail Electric Suppliers (“ARES”), which are excluded from the definition of “public utility.” *See* 220 ILCS 5/16-102; *Zahn v. North Am. Power & Gas, LLC*, 2016 IL 120526, ¶ 4 (citing definition of “ARES”). The Commission regulates still other entities as well. *See, e.g.*, 220 ILCS 5/13-404.1 (prepaid calling service providers); 220 ILCS 5/15-401 (common carriers by pipelines); 220 ILCS 5/19-110 (alternative gas suppliers). In short, the Landowners’ effort to constrain the Commission’s regulatory authority to public utilities should be rejected.

#### **4. The Commission Acted Within Its Authority and Did Not Attempt to Regulate Beyond the Borders of Illinois**

One of the Landowners, Nafsica Zotos, argued that GBX had effectively (and impermissibly) agreed to extend the Commission’s subject matter jurisdiction to include interstate transmission of electricity, over which the Federal Energy Regulatory Commission (“FERC”) has plenary jurisdiction. CLV20-5667-68; *see also Illinois Landowners*, 2017 IL 121302, ¶ 16 (“Controlling federal precedent makes clear . . . that the siting of new transmission lines is generally not a matter within the jurisdiction of the FERC.”). Landowners are wrong and the Commission’s approval of the Cost Allocation Condition—prohibiting GBX from seeking cost allocation from ratepayers—is not an extraterritorial regulation. The Court should address this issue as well to clarify the Commission’s authority to protect Illinois ratepayers in this manner.

**5. The Commission Correctly Construed Subsection 8-406.1(i) of the PUA and Did Not Abuse Its Discretion When It Allowed GBX Five Years to Begin Construction on the Project.**

Finally, the Court should address the Landowners' argument that the Commission impermissibly granted GBX five years to commence construction of the Project. A097. The Landowners relied on subsection 8-406(f) of the PUA (220 ILCS 5/8-406(f)), which does, in fact, require construction to begin within two years, but this provision is irrelevant. GBX elected to seek a Certificate through section 8-406.1, not section 8-406, and subsection 8-406.1(f)(i) provides: "a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, *in the manner and within the time specified in said order.*" 220 ILCS 5/8-406.1(i) (emphasis added). That final phrase, with no other reference to a time limitation of the sort found in subsection 8-406(f), granted the Commission discretion to set the terms and timeframe of projects it certified under section 8-406.1.

**CONCLUSION**

For the foregoing reasons, this Court should grant review of the appellate court's decision.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I, Brian J. Dodds, Special Assistant Attorney General, certify that Petitioner Illinois Commerce Commission's Petition for Leave to Appeal conforms to the requirements of Rules 315(d), 341(a) and 341(b). The length of this Petition, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, signature page, and the certificate of service, is 5,742 words.

/s/ Brian J. Dodds  
Brian J. Dodds  
Special Assistant Attorney General



No. 131032

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IN THE  
SUPREME COURT OF ILLINOIS

---

CONCERNED CITIZENS & PROPERTY OWNERS;	)	
ILLINOIS AGRICULTURAL ASSOCIATION a/k/a	)	
Illinois Farm Bureau; CONCERNED CITIZENS	)	
ALLIANCE; YORK TOWNSHIP IRRIGATORS; and	)	
NAFSICA ZOTOS,	)	
	)	
Respondents,	)	On Petition for Leave to Appeal
	)	from the Appellate Court of Illinois,
vs.	)	Fifth Judicial District,
	)	Appeal No. 5-23-0271
ILLINOIS COMMERCE COMMISSION; GRAIN BELT	)	
EXPRESS LLC; CLEAN GRID ALLIANCE; HANSON	)	There Heard on Direct Appeal of the
AGGREGATES MIDWEST INC.; GREYROCK, LLC;	)	Order of the Illinois Commerce
CITIZENS UTILITY BOARD; LEONARD BRAD	)	Commission in Docket No. 22-0499
DAUGHERTY, as Trustee of The Leonard Daugherty	)	
Trust Dated July 9, 2010; REX ENCORE FARMS LLC;	)	
and ILLINOIS MANUFACTURERS ASSOCIATION,	)	
	)	
Petitioners.	)	

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**APPENDIX TO  
THE ILLINOIS COMMERCE COMMISSION'S  
PETITION FOR LEAVE TO APPEAL**

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October 3, 2024

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**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Grain Belt Express LLC</b>	:	
	:	
<b>Application for an Order Granting Grain</b>	:	
<b>Belt Express LLC, as a Qualifying Direct</b>	:	
<b>Current Applicant, a Certificate of Public</b>	:	
<b>Convenience and Necessity pursuant to</b>	:	
<b>Sections 8-406(b-5) and 8-406.1 of the</b>	:	
<b>Public Utilities Act to Construct, Operate</b>	:	<b>22-0499</b>
<b>and Maintain a High Voltage Direct Current</b>	:	
<b>Electric Service Transmission Line as a</b>	:	
<b>Qualifying Direct Current Project and to</b>	:	
<b>Conduct a Transmission Public Utility</b>	:	
<b>Business in Connection Therewith and</b>	:	
<b>Authorizing Grain Belt Express LLC</b>	:	
<b>Pursuant to Sections 8-503 and 8-406.1(i) of</b>	:	
<b>the Public Utilities Act to Construct the</b>	:	
<b>High Voltage Direct Current Electric</b>	:	
<b>Transmission Line.</b>	:	

**ORDER**

March 8, 2023

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**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Grain Belt Express LLC</b>	:	
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<b>Application for an Order Granting Grain</b>	:	
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<b>Current Applicant, a Certificate of Public</b>	:	
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<b>Public Utilities Act to Construct, Operate</b>	:	<b>22-0499</b>
<b>and Maintain a High Voltage Direct Current</b>	:	
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<b>Authorizing Grain Belt Express LLC</b>	:	
<b>Pursuant to Sections 8-503 and 8-406.1(i) of</b>	:	
<b>the Public Utilities Act to Construct the</b>	:	
<b>High Voltage Direct Current Electric</b>	:	
<b>Transmission Line.</b>	:	

**ORDER**

By the Commission:

**I. INTRODUCTION**

**A. Procedural History**

On July 26, 2022, Grain Belt Express LLC (“Grain Belt Express” or “GBX” or “Company”) filed with the Illinois Commerce Commission (“Commission”) an Application seeking a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act (“Act”) to directly, or through one or more affiliates or third-party contractors, construct, operate, and maintain the Illinois portion of a high voltage direct current (“HVDC”) electric service transmission line and related facilities and to conduct a transmission public utility business in connection therewith. 220 ILCS 5/8-406(b-5); 220 ILCS 5/8-406.1. Grain Belt Express also seeks an order pursuant to Sections 8-503 and 8-406.1(i) authorizing it to construct the transmission line and related facilities in this docket. 220 ILCS 5/8-503; 220 ILCS 5/8-406.1(i). Grain Belt Express filed the Application as a “qualifying direct current applicant” under Section 8-406(b-5) of the Act and the Project (“Project”) is a “qualifying direct current project” under Section 8-406(b-5). 220 ILCS 5/8-406(b-5). The filing of the Application was accompanied by the prepared direct testimony and exhibits of eleven witnesses on behalf of Grain Belt Express. GBX App. at 85.

Staff of the Commission ("Staff") participated in the proceedings. Petitions to intervene were filed by and granted to: Illinois Agricultural Association d/b/a the Illinois Farm Bureau ("IAA"); Illinois Manufacturers' Association ("IMA"); Concerned People Alliance ("CPA"); Landowners Alliance of Central Illinois, NFP ("LACI"); Nafsica Zotos ("Zotos"); Rex Encore Farms LLC and Rex Encore Properties LLC ("Rex Encore"); certain individual landowners referred to in this proceeding as Concerned Citizens & Property Owners ("CCPO"); Hanson Aggregates Midwest, Inc. and Greyrock, LLC, (together, "Hanson"); Clean Grid Alliance ("CGA"); York Township Irrigators ("YTI"); Citizens Utility Board; and the Leonard Bradley Daugherty Trust.

On August 17, 2022, the Commission granted Staff's Motion to Extend the 150-day Deadline pursuant to Section 8-406.1(g) of the Act to extend by 75 days the deadline for a decision in this proceeding.

Pursuant to notice given as required by law and by the rules and regulations of the Commission, a status hearing was held before a duly authorized Administrative Law Judge ("ALJ") of the Commission via teleconference on August 25, 2022. On that date, the ALJ approved the procedural schedule, which included the setting of the hearing schedule. On November 28, 2022, a status hearing was held at the Commission's offices in Springfield.

The evidentiary hearing was held November 29, 2022 through December 1, 2022 at the Commission's offices in Springfield. Grain Belt Express presented the testimony and/or exhibits submitted by the following witnesses: Shashank Sane, Brad Pnazek, Aaron White, Rolanda Shine, Carlos Rodriguez, Jennifer Stelzleni, James Puckett, Mark Repsher, Anthony Petti, Dr. David G. Loomis, and Michael MaRous. CCPO presented the testimony of Farley Cole, Joseph Gleespen, Michael Buchanan, Floyd Holkenbrink, Jared Walk, Natalie Locke, Nicole Tucker, and Eric Tucker. Staff presented the testimony of Jenna Maurer, Michael McNally, and Theresa Ebrey. CGA presented the testimony of Michael Goggin. IAA, Zotos, CPA, and CCPO collectively presented the panel testimony of Patrick Giordano and Roger W. Turner. Hanson presented the testimony of Kelly O'Brien. Rex Encore presented the testimony of Chad Walker Brigham. IMA presented the testimony of Mark Denzler. The written testimony and exhibits presented by the parties were admitted into the record at the evidentiary hearing. Thereafter, the record was marked "Heard and Taken."

On December 15, 2022, Initial Briefs ("IBs") were filed by Staff, Grain Belt Express, Clean Grid Alliance, Rex Encore, YTI, and the Landowner Alliance ("LA" or "Landowner Alliance"), consisting of the Illinois Agricultural Association a/k/a the Illinois Farm Bureau, Concerned Citizens and Property Owners, Concerned People Alliance, and Nafsica Zotos. On December 29, 2022, Reply Briefs ("RBs") were filed by the same parties and on January 6, 2023, they filed Draft Orders or Statements of Positions.

A Proposed Order was issued on February 2, 2023. On February 16, 2023, Briefs on Exceptions were filed by Staff, Grain Belt Express, Clean Grid Alliance and Landowner Alliance. On February 23, 2023, the same parties filed Reply Briefs on Exceptions. Oral Arguments were held before the Commission on March 3, 2023.

## B. Background

Grain Belt Express previously filed an Application with the Commission on April 10, 2015, in Docket No. 15-0277 pursuant to Section 8-406.1 for a CPCN to construct, operate and maintain an HVDC transmission line and to operate a transmission public utility business, and to construct the transmission line pursuant to Section 8-503 (the “Grain Belt Express Clean Line 2015 Application”). GBX App. at 7. The transmission line proposed in the Grain Belt Express Clean Line 2015 Application is substantially similar in scope, size, and route to the transmission line for which the Company seeks a CPCN in this docket. *Id.*

On November 12, 2015, after a review of the Company’s, Staff’s, and intervenor’s evidence and positions, and after a hearing, the Commission in Docket No. 15-0277 granted a CPCN to Grain Belt Express Clean Line LLC to construct, operate and maintain the proposed transmission line. *Id.*; *Grain Belt Express Clean Line LLC*, Docket No. 15 0277, Order (Nov. 12, 2015) (“the 2015 Order”). The Commission authorized construction of the transmission line pursuant to Sections 8-503 and 8-406.1(i) of the Act. *Id.*

The intervenors in Docket No.15-0277 sought review of the 2015 Order in the Illinois Appellate Court. GBX App. at 7-8. On April 17, 2018, in *Concerned Citizens and Property Owners v. Ill. Commerce Comm’n*, 2018 IL App (5th) 150551, the Illinois Appellate Court reversed the award of the CPCN on the basis that Grain Belt Express Clean Line LLC was not a “public utility,” which the court deemed a prerequisite to obtaining a CPCN under the Act. GBX App. at 12. Specifically, the Court relied on *Ill. Landowners Alliance, NFP v. Ill. Commerce Comm’n*, 2017 IL 121302, to hold that because Grain Belt Express Clean Line LLC did not own, control, operate, or manage, within this State, directly or indirectly, for “public use,” any plant, equipment or property to be used for or in connection with the transmission of electricity at the time of its application, it could not meet the definition of “public utility” under Section 3-105. *Id.*

Subsequently, the Illinois legislature enacted Public Act 102-0662 (“P.A. 102-0662”) which became effective on September 15, 2021. P.A. 102-0662 added subsection (b-5) to Section 8-406 to, among other things, authorize a “qualifying direct current applicant” to file for and obtain a CPCN to construct, operate and maintain a “qualifying direct current project” without owning, controlling, operating, or managing any plant, equipment or property in this State at the time of the application filing or the Commission order. *Id.* at 8. Further, Section 8-406(b-5) streamlines the process and evidentiary considerations of the Commission for applications brought by “qualifying direct current applicants” for “qualifying direct current projects.”

## C. Description of Grain Belt Express and the Project

Grain Belt Express is a limited liability company organized under the laws of the State of Indiana. GBX App. at 1. Grain Belt Express was formed in 2010 as a Delaware limited liability company and converted to an Indiana limited liability company in February 2013. *Id.* Grain Belt Express’ principal offices are located at One South Wacker Drive, Suite 1800, Chicago, Illinois, 60606. *Id.* Grain Belt Express is duly qualified to do business in the State of Illinois.

Grain Belt Express is a wholly owned subsidiary of Invenergy Transmission LLC (“Invenergy Transmission”), a Delaware limited liability company, which is a wholly owned subsidiary of Invenergy Renewables LLC, also a Delaware limited liability company. GBX App. at 2. Invenergy Transmission is an affiliate company of Invenergy LLC (“Invenergy”), which is an Illinois limited liability company. *Id.* at 1. Grain Belt Express states that Invenergy Transmission’s mission is to construct and operate high voltage transmission lines and associated facilities for the purpose of connecting the best renewable resources in the United States and delivering their output to load and population centers, such as Illinois, that have an increasing demand for electricity produced from renewable resources. *Id.* at 2. Grain Belt Express says that in furtherance of its mission, Invenergy Transmission, through its wholly owned direct and indirect subsidiaries, has to date under contract, under construction or in operation, over 4,000 miles of transmission and collection lines, 88 substations, 96 generator step-up transformers and 5,323 pad mount transformers. *Id.* In addition, it is developing two other significant high voltage transmission line projects in the United States. *Id.* Invenergy Transmission is also associated with the development of a third significant domestic high-voltage transmission line through its parent company, Invenergy Renewables LLC. Invenergy Transmission is further associated with the development of the Cardal Transmission project in Uruguay, which is approximately 46 miles of electric line, including 34 miles of high voltage 500 kV transmission lines and a new 500 kV substation. GBX App. at 2; GBX Ex. 4.0 at 5.

Grain Belt Express states that the Project will be a  $\pm 600$  kilovolts (“kV”), 5,000-megawatt (“MW”) capacity, high voltage direct current (“HVDC”) transmission line that will run from an alternating current (“AC”)–to–direct current (“DC”) converter station in Ford County, Kansas, across Kansas, Missouri, and Illinois, to a DC-to-AC converter station in Clark County, Illinois. GBX App. at 3. Grain Belt Express states that Invenergy Transmission and Grain Belt Express, along with their affiliates, are engaged in the development, ownership, and operation of transmission facilities and the provision of transmission service. GBX App. at 5. The exclusive focus of Invenergy Transmission and its subsidiaries is on the development and operation of transmission lines which enables them to propose and execute projects that best serve the need for increased and affordable access to renewable energy. GBX App. at 2.

Grain Belt Express states that the Project is anticipated to be up to a nominal  $\pm 600$  kV, HVDC transmission line and associated facilities that will be capable of delivering energy from renewable energy projects located in Southwestern Kansas or the Southwest Power Pool (“SPP”) electric grid as follows: (i) up to 2,500 MW of power to points of interconnection with Midcontinent Independent System Operator (“MISO”) and with Associated Electrical Cooperative, Inc. (“AECI”) and (ii) up to 2,500 MW of power to a point of interconnection with PJM Interconnection LLC (“PJM”), at the Sullivan Substation of American Electric Power Company (“AEP”) in Sullivan County, Indiana. GBX App. at 3. The Project’s nominal voltage will be at least 345 kV. GBX App. at 3; GBX 5.0 at 3, 4–5.

Grain Belt Express explains that the Project will originate in Ford County, Kansas; traverse southwestern and northern Kansas and northern Missouri to an interconnection point with the 345 kV system in Missouri, where a DC to AC converter station will be located; cross the Mississippi River at a location approximately 2.5 miles south of

Saverton, Missouri, between Mississippi River miles 299 and 300; enter Illinois approximately 6.5 miles west of New Canton, Illinois, in Pike County; and traverse Illinois for approximately 207 miles through Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark Counties, Illinois. GBX App. at 4. The 207-mile Proposed Route in Illinois consists primarily of an HVDC transmission line and includes approximately three to eight miles of a double circuit 345 kV AC transmission line. *Id.* The AC line will run from a converter station proposed in Clark County, Illinois—where current will be converted between DC and AC—to the Indiana border. *Id.* The Project will continue approximately two miles in Indiana to the AEP Sullivan Substation where it will interconnect with the AEP 345 kV transmission system. GBX App. at 4-5. The total length of the transmission line from Ford County, Kansas, to Sullivan County, Indiana, including the Proposed Route of the Project in Illinois, is approximately 800 miles. *Id.* The Project will deliver renewable energy to buyers in Missouri, Illinois, and Indiana, and, through existing transmission facilities and/or additional transmission arrangements, to other states located within or adjacent to the MISO and PJM grids. *Id.*

Grain Belt Express confirms that it has received the necessary regulatory approvals from the state commissions in Missouri, Kansas, and Indiana, three of the four states in which the Project will be located. GBX App. at 5. Grain Belt Express explains that it has filed an application to Amend its Certificate of Convenience and Necessity in Missouri to allow for an increase in the amount of energy delivered to Missouri and for the Project to be constructed in two phases. The Missouri Public Service Commission is expected to rule on the Application to Amend before the end of 2023. Grain Belt Express states that it intends to construct the Project in two phases. *Id.* “Phase 1” is anticipated to comprise that portion of the transmission line starting in Ford County, Kansas and ending at the points of interconnection in Missouri. *Id.* “Phase 2” is anticipated to comprise that portion of the transmission line starting at the converter station in Missouri and ending at the AEP Sullivan Substation in Sullivan County, Illinois. *Id.*

Additionally, Grain Belt Express confirms that it will engage in land acquisition activities in a manner compliant with the Commission’s regulations; will offer a fair and reasonable compensation package to landowners for easements on their properties; and will engage in actions necessary and appropriate to avoid, minimize and remediate any adverse impacts to agricultural properties (such as soil compaction, damage to drainage tiles, and erosion), in accordance with its Agricultural Impact Mitigation Agreement (“AIMA”) with the Illinois Department of Agriculture (“IDOA”).

## **D. Applicable Legal Standards**

### **1. Grain Belt Express’ Position**

Section 8-406 of the Act states that no public utility shall transact any business in this State “until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business” and that “no public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction.” 220 ILCS 5/8-406.

Section 8-406.1(a) provides that a public utility may apply for a certificate of public convenience and necessity for the construction of any new high voltage electric service line and related facilities on an expedited basis if the public utility satisfies certain requirements. Section 8-406.1(f) establishes the following:

The Commission shall, after notice and hearing, grant a certificate of public convenience and necessity filed in accordance with the requirements of this Section if, based upon the application filed with the Commission and the evidentiary record, it finds that the Project will promote the public convenience and necessity and that all of the following criteria are satisfied:

- (1) That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.
- (2) That the public utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction.
- (3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

220 ILCS 5/8-406.1(f).

P.A. 102-0662, which became effective on September 15, 2021, added subsection 8-406(b-5) to the Act, which is directly applicable to the Application. Specifically, newly added Section 8-406(b-5) creates a new category of transmission project called a Qualifying Project. A Qualifying Project is defined as the following:

[A] high voltage direct current electric service line that crosses at least one Illinois border, the Illinois portion of which is physically located within the region of the Midcontinent Independent System Operator, Inc., or its successor organization, and runs through the counties of Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark, is capable of transmitting electricity at voltages of 345kv or above, and may also include associated interconnected alternating current interconnection facilities in this State that are part of the proposed project and reasonably necessary to connect the project with other portions of the grid.

220 ILCS 5/8-406(b-5).

Section 8-406(b-5) also creates a new category of applicant for a CPCN called a “qualifying direct current applicant” (“Qualifying Applicant”) which the statute defines as “an entity that seeks to provide direct current bulk transmission service for the purpose of transporting electric energy in interstate commerce”. *Id.* Under Section 8-406(b-5), a Qualifying Applicant “that does not own, control, operate, or manage, within [Illinois], any plant, equipment, or property used or to be used for the transmission of electricity at the time of its [CPCN] application or the Commission’s order may file an application on or before December 31, 2023 with the Commission pursuant to [Sections 8-406 or 8-406.1] for, and the Commission may grant, a [CPCN] to construct, operate, and maintain a qualifying direct current project.” *Id.*

The new Section 8-406(b-5) limits the scope of the Commission’s review of a Qualifying Project’s CPCN application by stating the following:

If the qualifying direct current applicant demonstrates in its application that the proposed qualifying direct current project is designed to deliver electricity to a point or points on the electric transmission grid in either or both the PJM Interconnection, LLC or the Midcontinent Independent System Operator, Inc., or their respective successor organizations, the proposed qualifying direct current project shall be deemed to be, and the Commission shall find it to be, for the public use.

220 ILCS 5/8-406(b-5).

Further, if the Qualifying Applicant demonstrates in its application that the proposed transmission project has a capacity of 1000 megawatts or larger and voltage level of 345 kilovolts or greater, “the proposed transmission project shall be deemed to satisfy, and the Commission shall find that it satisfies, the criteria stated in ... paragraph (1) of subsection (f) of Section 8-406.1, as applicable to the application, without the taking of additional evidence on this criteria.” *Id.* In this case, the Project will have a capacity of at least 1,000 megawatts and a voltage level of at least 345 kV and is a Qualifying Project. GBX Ex. 5.0 at 4–5. Thus, Section 8-406(b-5) calls for a streamlined evidentiary process, as the Commission must deem satisfied the Section 8-406.1(f)(1) criteria without requiring additional evidence on that subsection.

The Qualifying Project applicant may also include in its application requests for authority to construct under Section 8-503 of the Act. 220 ILCS 5/8-406(b-5). Section 8-406.1(i) of the Act states that, “Notwithstanding any other provisions of this Act, a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.” Section 8-503 empowers the Commission to authorize the erection of a new structure where it is “necessary and should be erected, to promote the security or convenience of . . . the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities.”

As the Commission noted in 2015, “[R]elief under Section 8-406.1, necessarily includes an order granting Section 8-503 authority.” *2015 Order* at 215.

Section 8-406(b-5) reinforces the mandatory nature of Section 8-503 relief, stating, “The Commission shall grant the [CPCN application] and requests for authority under Section 8-503 if it finds that the qualifying direct current applicant and the qualifying direct current project satisfy the requirements of [subsection 8-406(b-5)] and otherwise satisfy the criteria of .... Section 8-406.1 and the criteria of Section 8-503, as applicable to the application and to the extent such criteria are not superseded by the provisions of [Section 8-406(b-5)].” 220 ILCS 5/8-406(b-5). The Commission’s order approving the CPCN application also shall include its findings and determinations on the request(s) for authority pursuant to Section 8-503. *Id.*

Consistent with the statutory mandate that the Commission authorize construction under Section 8-503 if it grants a CPCN, the criteria required to satisfy Section 8-406.1(f)(1) overlap with the criteria required to satisfy Section 8-503. Since the Commission must deem as satisfied the criteria for Section 8-406.1(f)(1), it must also deem as satisfied the criteria for Section 8-503. Thus, if the Commission grants a CPCN under Section 8-406.1 to a Qualifying Project, then an order authorizing construction under Section 8-503 must accompany the CPCN.

Since Grain Belt Express is a Qualifying Applicant and the Project is a Qualifying Project, Grain Belt Express applies for authority in this docket to construct the Project pursuant to Section 8-503. If the Commission grants a CPCN under Section 8-406.1 to the Project, then it must also authorize construction of the Project under Section 8-503.

Illinois courts have also long held that what constitutes public convenience and necessity is within the Commission’s discretion to determine in each case, thereby permitting consideration of a broad range of factors as applicable to the particular case.

The Commission reiterated and relied upon these principles in the *2015 Order*, finding that a demonstration of “necessity” requires consideration “as to whether the benefits of the Project are “needful and useful to the public”; whether the benefits outweigh the costs; and whether the Project would prevent the attainment of a greater net benefit through an alternative project or some combination of alternative projects.” *2015 Order* at 124.

Grain Belt Express agrees with Staff that the General Assembly has effectively legislated that Qualifying Projects serve the “public convenience and necessity.” Grain Belt Express notes, however, that Section 8-406.1(f) “creates an arguably separate CPCN requirement from the three specific criteria listed in Section 8-406.1(f)(1)–(3),” and that “a conservative reading of the Act indicates that the Commission should make a separate finding with regard to convenience and necessity, and then make the Section 8-406.1(f)(1)–(3) determinations.” *Id.* As such, Grain Belt Express approached its analysis in its Application and Initial Brief by demonstrating that the evidence supports an independent finding that the Project promotes public convenience and necessity and additionally satisfies the criteria in Section 8-406.1(f)(1)–(3). Under this analysis, Grain Belt Express notes that a finding that the Project satisfies Section 8-406.1(f)(1) supports a finding that the Project promotes the public convenience and necessity.



## 2. Staff's Position

Staff takes the position that there is no separate “public convenience and necessity” element to Section 8-406.1(f). Staff states that, “[T]he Commission must find a project will promote public convenience and necessity if the three criteria, under Section 8-406.1(f)(1)–(3), are satisfied. In its various CPCN dockets, a fourth criteria, defined vaguely as “promot[ing] the public convenience and necessity” has not been introduced nor considered before the Commission because it simply does not exist. Rather, the Commission’s findings are based on what is required in the statute, which states that new construction will promote the public convenience and necessity *because* the three criteria are satisfied. This is the case regardless of whether the analysis is performed under Section 8-406.1(f)(1)–(3) or Section 8-406 as the criteria in both sections are identical.” Staff RB at 3–4.

Staff further states that the evidence for demonstrating that a project promotes public convenience and necessity is the same evidence that supports a claim that the project satisfies Section 8-406.1(f)(1). Staff then posits that, “Section 8-406.1(b-5) explicitly states that the Commission must find a qualifying project satisfies Section 8-406.1(f)(1) without taking evidence on that criterion. Because the evidence offered by Grain Belt Express to support a finding of “public convenience and necessity” is no different than the evidence that would be offered to support a finding under Section 8-406.1(f)(1), the Commission should not consider that evidence.” Staff RB at 4.

Based on these positions, Staff concludes that, “Therefore, the Commission should reject Grain Belt Express’ argument and the evidence offered in support of this argument because: (1) the General Assembly explicitly instructed that the Commission must find a qualifying project satisfies Section 8-406.1(f)(1); (2) the promotion of the public convenience and necessity is not a separate, fourth criterion that exists in the statute; and (3) the evidence in support of this additional criterion is no different than evidence used to support a finding under Section 8-406.1(f)(1).” Staff RB at 4.

## 3. Landowner Alliance's Position

The Landowner Alliance points out that GBX seeks a CPCN from the Commission pursuant to Sections 8-406.1 and 8-406(b-5) of the Act. When the General Assembly enacted 8-406(b-5), it eliminated the requirement that GBX’s project actually has to meet the public use requirement and offer service to the public generally on non-discriminatory terms and conditions as required by Illinois law. *Miss. River Fuel Corp. v. Ill. Commerce Comm’n*, 1 Ill. 2d 509 (1953). The Landowner Alliance argues that the General Assembly replaced GBX’s obligation to serve the public, and if the Project is designed to deliver electricity into the electric transmission grid, in either or both PJM or MISO, the project is deemed to be for the public use under Section 8-406(b-5). Under Section 8-406(b-5) if the application “shows” that the proposed transmission project has a capacity of at least 1,000MW and a minimum voltage level of 345kV, Sections 8-406(b) and 8-406.1(f)(1) are automatically satisfied.

The Landowner Alliance points out that if Grain Belt Express satisfies the filing requirements in Section 8-406(b-5), it satisfies the requirements of subsection 8-406.1(f)(1) of the Act. Thus, now GBX is only required to satisfy subsections 8-406.1(f)(2) and (3) which state:

The Commission shall, after notice and hearing, grant a certificate of public convenience and necessity filed in accordance with the requirements of this Section if, based upon the application filed with the Commission and the evidentiary record, it finds the Project will promote the public convenience and necessity and that all of the following criteria are satisfied:

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(2) That the public utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction.

(3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

220 ILCS 5/8-406.1(f)(2)-(3).

The Landowner Alliance argues that thus, GBX, as the Applicant, has the burden to demonstrate these factors to the Commission. Public convenience and necessity is found when the service provided by the public utility is “needful and useful to the public.” *King v. Ill. Commerce Comm’n*, 39 Ill. App. 3d 648, 653 (4th Dist. 1976) (quoting *Eagle Bus Lines, Inc. v. Commerce Comm’n*, 3 Ill.2d 66, 78 (1954)).

The Illinois Administrative Procedure Act, 5 ILCS 100/1-1 *et seq.*, governs contested hearings conducted by administrative agencies. Section 10-15 provides “[u]nless otherwise provided by law or stated in the agency’s rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.” 5 ILCS 100/10-15. Neither the Act nor the Commission’s rules provide for an alternative standard for the Applicant’s burden of proof. Therefore, GBX must demonstrate the statutory criteria by a preponderance of the evidence. See *Citizens Utility Bd. v. Ill. Commerce Comm’n*, 2015 IL App (2d) 130817, ¶ 43 (“[T]he Commission [does] not dispute that preponderance-of-the-evidence was the proper standard to be applied.”).

#### **4. Commission Analysis and Conclusion**

The Commission notes that Section 8-406(b-5) of the Act, provides, in pertinent part:

If the qualifying direct current applicant demonstrates in its application that the proposed qualifying direct current project is designed to deliver electricity to a point or points on the electric transmission grid in either or both the PJM Interconnection, LLC or the Midcontinent Independent System Operator, Inc., or their respective successor organizations, the proposed qualifying direct current project shall be deemed to be, and the Commission shall find it to be, for public use. If the qualifying direct current applicant further

demonstrates in its application that the proposed transmission project has a capacity of 1,000 megawatts or larger and a voltage level of 345 kilovolts or greater, the proposed transmission project shall be deemed to satisfy, and the Commission shall find that it satisfies, the criteria stated in item (1) of subsection (b) of this Section or in paragraph (1) of subsection (f) of Section 8-406.1, as applicable to the application, without the taking of additional evidence on these criteria.

220 ILCS 5/8-406(b-5).

The Commission finds that this is a qualifying direct current applicant and a qualifying direct current project as defined in Section 8-406(b-5) of the Act. The Commission notes that Grain Belt Express is seeking a CPCN in this docket pursuant to Section 8-406(b-5) of the Act and thus GBX does not need to request authorization under Section 8-406(a) of the Act. Also, under Section 8-406(b-5) if the application “shows” that the proposed transmission project has a capacity of at least 1,000MW and a minimum voltage level of 345kV, Sections 8-406(b) and 8-406.1(f)(1) are deemed satisfied. The Commission concludes that Section 8-406(b-5) of the Act is clear that the Commission can award a CPCN to a qualifying applicant.

The Commission notes that Section 8-406(b-5) also requires a finding under 8-406.1(f)(1)-(3). Even though as noted, Section 8-406.1(f)(1) is satisfied because Grain Belt Express meets the filing requirements under Section 8-406(b-5) of the Act.

The Commission agrees with Staff and Grain Belt Express that Section 8-406(b-5) requires that the Commission make a finding that the Project satisfies Section 8-406.1(f)(1) without requiring any additional evidence. The Commission also agrees with Staff and Grain Belt Express that a determination that the Project satisfies Section 8-406.1(f)(1)–(3) effectively is a finding that the Project promotes the public convenience and necessity. Grain Belt Express is requesting that the Commission make a separate determination concerning whether the Project promotes the public convenience and necessity. The Commission agrees with Staff’s interpretation that the evidence for demonstrating that a project promotes the public convenience and necessity is the same evidence that supports a claim that the project satisfies Section 8-406.1(f)(1)–(f)(3). The Commission will address the necessary requirements for Grain Belt Express in Section 8-406.1 in Section II. of this Order.

## **II. GRAIN BELT EXPRESS’ COMPLIANCE WITH SECTION 8-406.1 PRE-FILING MEETING AND NOTICE, APPLICATION CONTENT AND OTHER SECTION 8-406.1 REQUIREMENTS**

### **A. Grain Belt Express’ Position**

Grain Belt Express points out that Section 8-406.1(a) of the Act requires that the applicant include with its application certain information regarding the high voltage transmission line project for which the applicant seeks approval, to provide certain notice of the project and to conduct specified public meetings concerning the project. Grain Belt Express states that it has satisfied these requirements.

Section 8-406.1(a)(1)(A)–(B) requires that the application for a CPCN provide a detailed description of the proposed high voltage transmission line, including location maps and plot plans to scale showing all major components, and engineering data. Grain Belt Express states that Attachment 15 of the Application, Rows 1-3, includes detailed citations to the Application and Testimony supporting Grain Belt Express' compliance with the technical requirements of Section 8-406.1(a)(1)(A)–(B). See GBX App., Attach. 15 Rows #1–30.

Section 8-406.1(a)(3) requires that the applicant hold at least three pre-filing public meetings concerning its project in each county where the project is to be located, beginning no more than six months prior to the filing of the Application. Grain Belt Express held three rounds of pre-filing public meetings to receive public comments concerning the Project in each of the counties through which the Proposed Route and the Alternate Route of the Project will run in Illinois no more than six months prior to the filing of the Application. GBX Ex. 2.0 at 18. Specifically, a total of 27 public meetings were held in the following counties: Christian, Clark, Cumberland, Greene, Macoupin, Montgomery, Pike, Scott, and Shelby. GBX Ex. 2.2; GBX Ex. 2.0 at 13. The first round of public meetings was held on dates during the weeks of February 6–12 and February 13–19, 2022; the second round of public meetings was held on dates during the weeks of March 6–12 and March 13–19, 2022; and the third round of public meetings was held on dates during the weeks of April 3–9 and April 10–16, 2022. GBX Ex. 2.2. All of these dates were within the six-month period preceding the date of filing of the Application. Grain Belt Express published notice of each public meeting in at least one newspaper of general circulation in the county in which the public meeting was to be held, once a week for at least three consecutive weeks, beginning no earlier than one month prior to the first public meeting. GBX Exs. 2.3 & 2.4. Grain Belt Express also provided written notice of the public meetings, including a description of the Project, to the Clerk of each of the above-listed Counties in which the public meetings were held. GBX Ex. 2.7. Additionally, by letter to the Executive Director of the Commission, Grain Belt Express invited representatives of the Commission to attend the public meetings. GBX Ex. 2.6. Further details of the public meetings, including the specific dates and copies of the newspaper publication notices and other notices, are provided in the direct testimony and exhibits presented by Grain Belt Express witness Pnazek. See GBX Ex. 2.0 at 11–26; GBX Exs. 2.2–2.9.

Grain Belt Express published notice of the filing of its Application in the official State newspaper within ten days following the date of filing its Application, in accordance with Section 8-406.1(d). Grain Belt Express filed its Application on July 26, 2022, and the notice was published in the official State newspaper on July 29, 2022. The Certificate of Publication and a copy of the official State newspaper page with the notice were filed with the Commission in this docket on August 8, 2022. Staff Ex. 1.0, Attach. A.

Grain Belt Express established a dedicated website for the Project at [www.GrainBeltExpress.com](http://www.GrainBeltExpress.com) at the beginning of Project development in 2010, and it has continually updated the website since that date and will maintain the website until construction of the Project is complete, in accordance with Section 8-406.1(e). GBX App. at 80. Grain Belt Express has included and will continue to include the website address in public notices related to the Project. GBX Ex. 2.0 at 14; GBX App. at 80.

Grain Belt Express has also established a Project hotline at (866) 452-4082, a Project mailing address at offices in Kansas and Missouri, a Project email address at [connect@grainbeltexpress.com](mailto:connect@grainbeltexpress.com), a comment portal on the Project website and a presence on social media at [Facebook.com/GrainBeltExpress](https://www.facebook.com/GrainBeltExpress). GBX App. at 81.

Concurrently with the filing of its Application, Grain Belt Express provided the Chief Clerk of the Commission an application fee of \$100,000 with the filing of its Application, pursuant to Section 8-406.1(a)(2) of the Act. GBX App. at 79.

Section 8-406.1(h) specifies that upon completion of construction of a new high voltage electric service line for which a CPCN was granted pursuant to Section 8-406.1, the utility must pay a one-time construction fee to each county through which the line crosses, equal to \$20,000 times the number of miles of the transmission line in that county. Grain Belt Express states that it will provide the required payment to the counties through which the Project will cross. GBX App. at 49; GBX Ex. 2.0 at 39.

## **B. Staff's Position**

Staff states that there are several requirements contained in Section 8-406.1 of the Act that the Commission must consider. Section 8-406.1(a)(1) requires that the utility provide specific information in its Application about the Project. Grain Belt provides references as to where you can find the information in its Application. See GBX App., Attach. 15.

Section 8-406.1(a)(2) requires the applicant to pay an application fee. Grain Belt submitted its application fee concurrently with the filing of its Application. GBX App. at 79. Section 8-406.1(a)(3) requires the applicant to include a showing that it held at least three pre-filing public meetings to receive public comment in each county where the Project is to be located – all no earlier than 6 months prior to filing its Application. Section 8-406.1(a)(3) also requires the applicant to publish notice of the public meeting in a newspaper of general circulation within the affected county once a week for three consecutive weeks, beginning no earlier than one month prior to the first public meeting; and that notice be provided in writing to the clerk of each county where the Project is to be located. Staff notes that based on its Application, and exhibits, Grain Belt published notice and held these meetings. GBX App. at 79-80; GBX Exs. 2.0 at 191; 2.3, 2.4, 2.7. Section 8-406.1(d) requires the utility to publish notice about the Project in the official state newspaper within 10 days of the utility filing. Staff confirmed that Grain Belt Express published notice of its Application in the Breeze Courier newspaper based in Taylorville, Illinois on July 29, 2022. GBX App. at 80; Staff Ex. 1.0, Attach. A. Section 8-406.1(e) requires the utility to establish a dedicated website at least 3 weeks prior to the first public meeting and maintain that website until Project completion. Staff points out Grain Belt Express established a dedicated website for the Project at [www.GrainBeltExpress.com](http://www.GrainBeltExpress.com) at the beginning of the Project development in 2010, has continually updated the website since that date, and indicates it will maintain the website until construction of the Project is complete. GBX App. at 80.

## **C. Commission Analysis and Conclusion**

The Commission has reviewed the Application and agrees with Staff that Grain Belt Express has complied with the requirements of Section 8-406.1. The Commission

finds that the Application included a detailed description of the Project, including maps and plot plans. The Commission also finds that Grain Belt Express complied with Section 8-406.1(a)(2) by paying the application fee at the time of filing. The Commission also concludes that Grain Belt Express complied with Section 8-406.1(a)(3) and Section 8-406.1(d), as the Company held pre-filing meetings to receive public comments and published notice in the newspapers. Grain Belt Express also maintains a website concerning the Project. Finally, the Commission confirms that Grain Belt Express will pay the required one-time construction fee to each county through which the line crosses, equal to \$20,000 times the number of miles of the transmission line in that county pursuant to Section 8-406.1(h). Therefore, the Commission finds that Grain Belt Express has complied with the requirements of Section of 8-406.1.

### **III. GRAIN BELT EXPRESS' AUTHORITY TO PROCEED UNDER SECTION 8-406(b-5)**

#### **A. Grain Belt Express' Position**

P.A. 102-0662 added subsection 8-406(b-5) to the Act. This new section creates a category of transmission project—the Qualifying Project, which is defined as:

[A] high voltage direct current electric service line that crosses at least one Illinois border, the Illinois portion of which is physically located within the region of the Midcontinent Independent System Operator, Inc., or its successor organization, and runs through the counties of Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark, is capable of transmitting electricity at voltages of 345kv or above, and may also include associated interconnected alternating current interconnection facilities in this State that are part of the proposed project and reasonably necessary to connect the project with other portions of the grid.

220 ILCS 5/8-406(b-5).

In addition, the new section creates a new category of CPCN applicant—the Qualifying Applicant, which is defined as “an entity that seeks to provide direct current bulk transmission service for the purpose of transporting electric energy in interstate commerce.” *Id.* Under Section 8-406(b-5), a Qualifying Applicant “that does not own, control, operate, or manage, within [Illinois], any plant, equipment, or property used or to be used for the transmission of electricity at the time of its [CPCN] application or the Commission’s order may file an application on or before December 31, 2023 with the Commission pursuant to [Sections 8-406 or 8-406.1] for, and the Commission may grant, a [CPCN] to construct, operate, and maintain a qualifying direct current project.” *Id.*

Grain Belt Express states that the Project is a Qualifying Project under Section 8-406(b-5) because it is: (1) an HVDC electric service line that crosses at least one Illinois border, the Illinois portion of which is physically located within the region of MISO and traverses the Enumerated Counties (GBX App. at 60-61) and (2) is capable of transmitting electricity at voltages of 345 kV or above. GBX Ex. 1.0 at 2–3; GBX Ex. 5.0R at 3–4;

GBX Ex. 7.5; GBX App. at 3, 4. Grain Belt Express also states that it is a Qualifying Applicant under Section 8-406(b-5) because it seeks to provide direct current bulk transmission service for the purpose of transporting electric energy in interstate commerce. GBX App. at 3-4; GBX Ex. 1.0 at 17.

Because it is a Qualifying Applicant, Grain Belt Express states that it is therefore authorized to seek a CPCN and the Commission may grant a CPCN to construct, operate and maintain the Project even though Grain Belt Express “does not own, control, operate, or manage, within [Illinois], any plant, equipment, or property used or to be used for the transmission of electricity at the time of its [CPCN] application or the Commission’s order.” 220 ILCS 5/8-406(b-5). Further, Grain Belt Express, as a Qualifying Applicant, has included in its Application a request for authority under Section 8-503, and the Commission must grant the request under Section 8-503 if it finds that Grain Belt Express has otherwise satisfied the criteria of Section 8-406.1. 220 ILCS 5/8-406(b-5).

As the Project is designed to deliver electricity to points on the electric transmission grid in both PJM and MISO, it must be deemed to be, and the Commission must find it to be, for public use. 220 ILCS 5/8-406(b-5); GBX Ex. 5.0R at 3–4.

Finally, P.A. 102-0662 adds language to the Act stating that if the Qualifying Applicant demonstrates in its application that the proposed transmission project has a capacity of 1,000 megawatts or larger and voltage level of 345 kilovolts or greater, “the proposed transmission project shall be deemed to satisfy, and the Commission shall find that it satisfies, the criteria stated in ... paragraph (1) of subsection (f) of Section 8-406.1, as applicable to the application, without the taking of additional evidence on this criteria.” *Id.* In this case, the Project will have a capacity of at least 1,000 megawatts and a voltage level of at least 345 kV. GBX Ex. 5.0 at 4–5. Accordingly, Section 8-406(b-5) calls for a streamlined evidentiary process, as the Commission must deem satisfied the Section 8-406.1(f)(1) criteria without requiring additional evidence on that subsection.

With respect to the Landowner Alliance and YTI’s constitutional argument, Grain Belt Express agrees with Staff that this Commission does not have the authority to declare Section 8-406(b-5) unconstitutional and asserts that these contentions are already the subject of a separate pending proceeding. Grain Belt Express states that fundamentally, this constitutional challenge is beyond the scope of this proceeding and there is no legal basis for the Commission to address it. The constitutionality of a statute is a question of law that does not involve the specialized or technical expertise of an agency. As the Illinois Supreme Court has held, “It is the particular province of the courts to resolve questions of law[.]” *Emps. Mut. Cos. v. Skilling*, 163 Ill. 2d 284, 286 (1994) (reversing a circuit court’s decision to defer questions of law to an administrative agency). “The constitutionality of a statute is a question of law[.]” *Burger v. Lutheran Gen. Hosp.* 198 Ill. 2d 21, 31 (2001). “Administrative agencies are given wide latitude in resolving factual issues but not in resolving matters of law.” *Id.* Although an agency may have concurrent jurisdiction to hear disputed issues of law, “when the question of law was presented to the circuit court in [a] declaratory judgment suit, the jurisdiction of the circuit court became paramount,” *id.* at 290, and that is the case in this proceeding.

## B. CGA's Position

CGA explains that the GBX Project meets the criteria in Section 8-406(b-5) of the Act defining the transmission line as being for “public use” and as meeting the Section 8-406.1(f)(1) of the Act criteria. CGA states that the Project has a Western terminus in Kansas that interconnects with the Southwest Power Pool (“SPP”), a delivery point in Missouri that will interconnect with MISO and its Eastern terminus in Sullivan County, Indiana that interconnects with the PJM grid.

CGA points out that the Project has a total capacity of 5,000 MW and has a nominal voltage of 600 kV. GBX Ex. 1.0 at 3; GBX Ex. 2.0 at 3. Because the GBX Project's specifications exceed the criteria set forth in section 8-406(b-5) the Commission should find that it also satisfies Section 8-406.1(f)(1) of the Act. Moreover, the Commission should find that, pursuant to Section 8-406(b-5), no additional evidence is needed to demonstrate compliance with the Section 8-406.1(f)(1) criteria.

CGA also notes that contrary to the argument advanced by the Landowner Alliance and YTI, Section 8-406(b-5) does not violate Section 13 because Section 8-406(b-5) is an amendment in response to a prior Illinois court decision limiting the application of a certificate of public convenience and necessity and is rationally related to the overall purpose of P.A. 102-0662 -- to increase Illinois' access to and use of clean energy resources, and to reduce carbon emissions from electric generators by 2050.

CGA explains that there are two prongs to the Special Legislation Clause that must be met: (1) the statutory classification discriminates in favor of a select group to the exclusion of those that are similarly situated; and (2) the classification is arbitrary. *Moline Sch. Dist. No. 40 v. Quinn*, 54 N.E.3d 825, 831; 2016 IL 119704, ¶23. CGA also finds the Big Sky Excavating case to be particularly instructive. CGA explains that the Illinois Supreme Court, in *Big Sky Excavating*, found that a change in the Act to accommodate the changing nature of the telecommunications industry at the federal level was “in purpose and design [ ] fully consistent with the Universal Telephone Service Protection law.” *Big Sky Excavating Inc. v. Ill. Bell Tel.*, 217 Ill.2d 221, 238-39; 840 N.E.2d 1174, 1185 (2005). Moreover, the Court found that a statute is to be held unconstitutional as a special law only if it was enacted for reasons totally unrelated to the pursuit of a legitimate state goal. *Id.* at 240. The Big Sky Excavating Court held that the change to the Act was related to a legitimate state interest. See *Big Sky Excavating*, 217 Ill.2d at 240, 840 N.E.2d at 1185-86. CGA explains that Section 8-406(b-5) of the Act is related to a legitimate state interest clearly laid out in the 900+ page bill passed in P.A. 102-0662.

CGA states that a careful review of P.A. 102-0662 reveals that the bill was a cohesive package of comprehensive energy policies addressing numerous facets of the energy industry – distributed energy resources, utility-scale resources, transmission, conversion of coal facilities to solar and battery storage, development of beneficial electrification, job creation, and increasing renewable resources within and delivered to Illinois – and crafted to ensure these policies work together to provide electricity to Illinois customers while decarbonizing the electric generation portfolio in Illinois by 2045. The creation of a qualifying direct current applicant and the alternative process for it to obtain a certificate (i.e., CPCN) in Section 8-406(b-5) of the Act was an intended and thoughtful part of this landmark legislation addressing the legitimate state interest of energy policy.



Moreover, the energy, capacity, and renewable energy credits the Grain Belt Express Project can provide are the type of electric market benefits sought from a direct current applicant/project pursuant to Section 8-406(b-5) of the Act. These benefits will help the State manage multiple energy issues, that P.A. 102-0662 attempts to address in decarbonizing the electric generation portfolio in Illinois.

CGA recommends the Commission find that Section 8-406(b-5) is not only rationally related to but is an integral part of a thoughtfully conceived and comprehensive P.A. 102-0662, and therefore, it is not in violation of Article IV Section 13 of the Illinois Constitution.

### **C. Staff's Position**

Staff states that Grain Belt Express filed its Application pursuant to Section 8-406.1 of the Act. GBX App. at 1. As set forth in the direct testimony of GBX witness Carlos Rodriguez, the testimony and exhibits in the Company's Application demonstrate that the Project will have a capacity of 1,000 MW or larger and a voltage of 345 kV or greater. GBX Ex. 5.0R at 4-5; see also GBX App at 28. For this reason, the Commission is required by statute to find that the Project satisfies the requirements of Section 8-406.1(f)(1) of the Act. 220 ILCS 5/8-406(b-5). Staff agrees with Grain Belt Express' position, stating, "In this case, the Project will have a capacity of at least 1,000 megawatts and a voltage level of at least 345 kV and is a Qualifying Project. See GBX Ex. 5.0R. Thus, the Commission must deem the Section 8-406.1(f)(1) criteria as satisfied without requiring additional evidence on that subsection."

Staff points out that the Landowner Alliance and YTI both argue that Section 8-406(b-5) of the Act is unconstitutional. Staff argues that the Commission is charged with implementing the Act, as drafted by the General Assembly. See, e.g., *State ex rel. Pusateri v. Peoples Gas Light and Coke Co.*, 2014 IL 116844, ¶ 12. The Illinois Supreme Court has held that administrative agencies "have no authority to declare statutes unconstitutional or even to question their validity. When they do so, their actions are a nullity and cannot be upheld." *Goodman v. Ward*, 241 Ill. 2d 398, 411 (2011) (internal quotation omitted); see also *Cinkus v. Vill. Of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d. 200, 214 (2009), as modified (Apr. 23, 2008). The Commission has declined requests that it declare statutes unconstitutional in the past. See, e.g., *Commonwealth Edison Co.*, Docket No. 21-0812, Order at 19 (Feb. 3, 2022); *Ill. Bell Tel. Co.*, Docket No. 01-0614, Order at 12 (June 11, 2002); *Commonwealth Edison Co.*, Docket No. 12-0321, Order at 46 (Dec. 19, 2012) ("[T]he Commission has no authority to declare an Act of the Illinois General Assembly preempted or otherwise unconstitutional...[.] The Commission applies the statute and does not make determinations on its constitutionality." (internal quotation omitted)).

Accordingly, Staff recommends that pursuant to the Illinois Supreme Court's *Cinkus* and *Goodman* decisions, and consistent with its own past practice, the Commission decline to determine whether Section 8-406(b-5) is unconstitutional.

### **D. Landowner Alliance's Position**

The Landowner Alliance and YTI both assert that Section 8-406(b-5) constitutes special legislation in violation of Article IV, Section 13 of the Illinois Constitution of 1970

and violates the Equal Protection and Separation of Powers Clauses of Article II, Section 1 of the Illinois Constitution. The Landowner Alliance notes that Intervenor Bradley Daugherty filed the Lawsuit in the Circuit Court for the Fifth Judicial Circuit in Clark County, Illinois which asserts that Section 8-406(b-5) is unconstitutional for the same reasons outlined by Landowner Alliance and YTI. The Landowner Alliance agrees with GBX's position that the Commission does not have jurisdiction to declare the special legislation enacted for GBX unconstitutional and that this challenge is properly before the Circuit Court in Clark County. *Cinkus v. Vill. of Stickney*, 228 Ill.2d 214 (2000); *Bd. of Educ. of Peoria*, 2013 IL 114853, ¶38. The Landowner Alliance raised the constitutional challenges under the Special Legislation Clause, the Equal Protection Clause, and the Separation of Powers Clause of Article II, Section 1 of the Illinois Constitution before this Commission to avoid any challenges based upon exhaustion of remedies or waiver raised by any party who asserts that Section 8-406(b-5) is constitutional.

The Landowner Alliance argues that determining whether a law runs afoul of the Special Legislation Clause requires a determination of whether the statutory classification discriminates in favor of a particular group, and second, if it does, whether the classification is arbitrary. *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶34, appeal allowed, 163 N.E.3d 713 (Table). The Landowner Alliance asserts that "arbitrary" can mean motivated by caprice, politics, or bias. *Foreman v. Civil Service Comm'n of the City of Chicago*, 7 Ill. App. 2d 122 at 126 (1st Dist. 1955). Also, "arbitrary" can also mean whether it is rationally related to a legitimate state interest. *Moline School District v. Quinn*, 2016 IL 119704, ¶26.

The Landowner Alliance states that prior to the enactment of Section 8-406(b-5) a non-public utility like GBX with no ownership or control of assets to be used for the production, transmission or furnishing of electricity could not utilize the rocket docket process available only for public utilities under Section 8-406.1. The Landowner Alliance argues that after GBX failed to obtain its CPCN as a non-public utility in 2015 and the Third District Appellate Court held that Rock Island Clean Line's project did not satisfy the public use requirement, Invenergy Transmissions, L.L.C. lobbied the General Assembly, which enacted the new Section 8-406(b-5), which allows the Commission to issue a CPCN to a "qualifying direct current applicant," defined as "any entity" that "seeks to provide direct current bulk transmission service for the purpose of transporting electric energy in interstate commerce." 220 ILCS 5/8-406(b-5).

The Landowner Alliance points out that if the qualifying direct current applicant has a "qualifying direct current project," the certificate can be issued "without the taking of additional evidence on these criteria." *Id.* The Landowner Alliance states that it is obvious that the amended section tracks the application of GBX almost exactly. The Landowner Alliance argues that while GBX did not have to put forth any evidence relative to Section 8-406(b), every other entity or utility has that obligation. It goes on to argue that Section 8-406(b-5) essentially states that GBX does not need to meet the requirements of Sections 3-105, 8-406(b), or 8-406.1(f)(1) and does not need to meet the public use requirement to offer services in a non-discriminatory manner.

The Landowner Alliance argues that if GBX is allowed to side-step the public use requirement, the asset ownership requirement, and Sections 8-406(b) and 406.1(f)(1) and proceed with its "qualified direct current project," on or before the arbitrary date of

December 31, 2023, the door closes, and no other entity will qualify under Section 8-406(b-5).

The Landowner Alliance further argues that Section 8-406(b-5) arbitrarily discriminates against landowners, including the Landowner Alliance, that own land within Pike, Scott, Greene Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark Counties, Illinois (the “Enumerated Counties”), to the benefit of landowners that own real estate outside of the Enumerated Counties. Section 8-406(b-5) arbitrarily and unfairly subjects the landowners within the Enumerated Counties to the possibility of the Project traversing through their property without the same level of review by the Commission that is afforded landowners in non-Enumerated Counties.

The Landowner Alliance argues that there is no rational basis for this legislative purpose, and Section 8-406(b-5) is arbitrary and unreasonable. The classification created by the statute is not based upon reasonable differences in kind or situation, and whether the basis of the classification is insufficiently related to the statutory purpose. *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶36, citing *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 394 (1997).

The Landowner Alliance concludes that GBX is the only entity that will be using 8-406(b-5) for its project. Section 8-406(b-5) was passed for the benefit of only one entity, GBX, to enable it to bypass the requirements of Sections 3-105, 8-406(a) and (b) and 8-406.1.

The Landowner Alliance asserts that this special legislation violates the Equal Protection Clause of the Illinois Constitution. The Landowner Alliance argues that under the new legislation, Section 8-406(b-5), landowners in the nine counties are deprived of their right to a full evidentiary hearing and were forced to participate in the rocket docket process, which is available only to public utilities, before a CPCN is granted to a non-public utility merchant transmission line developer. The Landowner Alliance claims that no other project falls within the qualified direct current project designation and that both the qualified direct current applicant and the qualified direct current project are elements of the same denial of Equal Protection.

According to the Landowner Alliance, the legislature looked at the requirements that GBX and Rock Island Clean Line failed to meet under the Act and Illinois common law, and then passed special legislation custom tailored to make sure that GBX could obtain a CPCN. As a result, the Landowners are being treated differently from all similarly situated individuals in violation of the Equal Protection Clause.

The Landowner Alliance further asserts that Section 8-406(b-5) violates the Separation of Powers Clause of the Illinois Constitution. It is the Landowner Alliance’s position that the General Assembly’s purpose in enacting subsection (b-5) was to expressly order the Commission to approve GBX’s Project and grant it a CPCN. The Landowner Alliance states that the portion of Section 8-406(b-5) declaring the Project a public use violates Article II, Section 1 of the Illinois Constitution because, by arrogating to itself the power to declare something a public use, the General Assembly is exercising the judicial power to determine whether a particular use is public or private. The Landowner Alliance argues that it is well settled Illinois law that the determination of

whether, for purposes of exercising the power of eminent domain, a proposed use is a public use is a decision for the courts, not the legislature.

The Landowner Alliance further argues that if this portion of Section 8-406(b-5) is allowed to stand, the General Assembly will have acquired sole power to define what the term "public use" means in Article II, Section 1 of the Illinois Constitution. According to the Landowner Alliance, the General Assembly's eminent domain power would then be left unchecked because there would be no branch of government that could review its public use decisions. The General Assembly would have eminent domain power by fiat: it could merely declare something a public use in order to affect the involuntary transfer of private property from one party to another, which has never been the law in the State of Illinois. The Landowner Alliance concludes that in the public use declaration in Section 8-406(b-5) the General Assembly unconstitutionally usurps the judicial power. The Landowner Alliance contends that GBX's Application should be denied due to these constitutional concerns, along with the other arguments that it has raised in this proceeding.

#### **E. YTI's Position**

YTI supports the constitutional arguments by the Landowner Alliance, including the argument that the Application should be denied as there are constitutional infirmities with Section 8-406(b-5), including violations of the Special Legislation Clause, Equal Protection Clause, and Separation of Powers Clause of the Illinois Constitution.

YTI states that although the Commission does not have the jurisdiction to declare a statute unconstitutional, it can detail the underlying facts which support the premise that a section of the Act has been improvidently adopted or amended by the Legislature in violation of constitutional principles. *Carpetland U.S.A., Inc. v. Ill. Dept. of Employment Security*, 201 Ill.2d 351, 396-397 (2002). YTI requests that the Commission adopt and include in its Order the facts and argument asserted by the Landowner Alliance regarding these constitutional issues.

#### **F. Commission Analysis and Conclusion**

The Commission notes that Section 8-406(b-5) of the Act defines a Qualifying Project, as:

[A] high voltage direct current electric service line that crosses at least one Illinois border, the Illinois portion of which is physically located within the region of the Midcontinent Independent System Operator, Inc., or its successor organization, and runs through the counties of Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark, is capable of transmitting electricity at voltages of 345kv or above, and may also include associated interconnected alternating current interconnection facilities in this State that are part of the proposed project and reasonably necessary to connect the project with other portions of the grid.

220 ILCS 5/8-406(b-5).

In addition, P.A. 102-0662 creates a new category for a CPCN applicant—the Qualifying Applicant, which is defined as “an entity that seeks to provide direct current bulk transmission service for the purpose of transporting electric energy in interstate commerce.” *Id.* Under Section 8-406(b-5), a Qualifying Applicant “that does not own, control, operate, or manage, within [Illinois], any plant, equipment, or property used or to be used for the transmission of electricity at the time of its [CPCN] application or the Commission’s order may file an application on or before December 31, 2023 with the Commission pursuant to [Sections 8-406 or 8-406.1] for, and the Commission may grant, a [CPCN] to construct, operate, and maintain a qualifying direct current project.” *Id.*

The Commission finds that the Project is a Qualifying Project under Section 8-406(b-5) because it is: (1) an HVDC electric service line that crosses at least one Illinois border, the Illinois portion of which is physically located within the region of MISO and traverses the Enumerated Counties and (2) is capable of transmitting electricity at voltages of 345 kV or above. Grain Belt Express also is a Qualifying Applicant under Section 8-406(b-5) because it seeks to provide direct current bulk transmission service for the purpose of transporting electric energy in interstate commerce.

The Commission concludes that Grain Belt Express is a qualifying direct current applicant and the Project is a qualifying direct current project under Section 8-406(b-5). The Commission further concludes that the Project will interconnect with MISO and PJM, and so it must be deemed for “public use” under Section 8-406(b-5). Finally, the Commission concludes that the Project will have a capacity of 1,000 MW or larger and a voltage of 345 kV or greater, and the Commission must therefore find without requiring additional evidence that the Project satisfies the criteria in Section 8-406.1(f)(1).

The Commission also finds that the constitutional arguments raised by the Landowner Alliance and YTI concerning Section 8-406(b-5) are beyond the scope of this proceeding and there is no legal basis or need for the Commission to address them. The Commission derives its authority solely from the Act. 220 ILCS 5/ 1-101 *et. seq.* Because the Commission is purely a statutory creation and possesses no inherent or common law authority, its jurisdiction is limited by the Act. Under the Commission’s subject matter jurisdiction, it has the authority to hear and determine a particular class of cases. The Commission may also grant specifically authorized relief. There is nothing in the Act that gives the Commission the authority to provide the relief the Landowner Alliance and YTI seek. An administrative agency is limited to the powers granted to it by the legislature and any action it takes must be authorized by statute. *Crittenden v. Cook Cty. Comm’n of Human Rights*, 2013 IL 114876, 990 N.E.2d 1161, 1165. If the legislature had intended to give the Commission these powers, it would have done so through the Act. See *e.g. id. at 1170*. As the Illinois Supreme Court has held, administrative agencies “have no authority to declare statutes unconstitutional or even to question their validity. When they do so, their actions are nullity and cannot be upheld.” *Goodman v. Ward*, 241 Ill. 2d at 411. Even if the Commission has the jurisdiction to consider the constitutionality of Section 8-406(b-5), the issue is better suited for resolution in the Circuit Court. See *Emps. Mut. Cos. v. Skilling*, 163 Ill. 2d 284, 290 (1994) (reversing a circuit court’s decision to defer questions of law to an administrative agency).

#### IV. **GRAIN BELT EXPRESS MEETS ALL APPLICABLE SECTION 8-406.1(f) CRITERIA FOR A CPCN**

##### A. **Section 8-406.1(f) – Grain Belt Express’ Promotion of the Public Convenience and Necessity**

###### 1. **Grain Belt Express’ Position**

As a threshold matter, Grain Belt Express notes that the language of the Act, stating “will promote the public convenience and necessity” creates an arguably separate CPCN requirement from the three specific criteria listed in Section 8-406.1(f)(1)-(3). Based on a conservative reading of the Act, Grain Belt Express suggests that the Commission make a separate finding with regard to the convenience and necessity, and then make the Section 8-406.1(f)(1)–(3) determinations.

Grain Belt Express notes that Staff disagrees with this approach and takes the position that the Company’s conservative interpretation goes a step too far as Staff posits that if the 8-406.1(f)(1)-(3) criteria are met, the Project necessarily promotes the public convenience and necessity. Grain Belt Express states that it does not take serious issue with this position because, under any test, the Project promotes the public convenience and necessity.

###### 2. **CGA’s Position**

CGA explains that the analysis of a project’s public convenience and necessity focuses on the need and usefulness of the project. While the Project meets the ‘useful’ standard set forth in 8-406(b-5), CGA also explains that the record includes sufficient evidence to demonstrate that the Project will provide benefits that make it needed and useful. *King v. Ill. Commerce Comm’n*, 39 Ill. App. 3d 648, 653 (4th Dist. 1976) and *Wabash, Chester & Western R.R. Co. v. Ill. Commerce Comm’n*, 309 Ill. 412, 418-19, (1923).

CGA states that the Project is needed and useful to the public for the following seven reasons: (a) it will deliver a significant volume of untapped, high-quality, renewable energy and RECs into PJM and MISO that can be used by Illinois utilities and corporations in Illinois to comply with Illinois’ renewable portfolio standards (see 20 ILCS 3855/1-75(c) and 20 ILCS 3855/1-75(c)(1)(R)); (b) it will reduce RPS compliance costs through increased competition; (c) it will reduce pollution emitted from generators in Illinois and nearby states; (d) it will replace fossil-fired power plants that may retire due to pending carbon dioxide emission rules being considered by the U.S. Environmental Protection Agency; (e) it will promote an effectively competitive wholesale market by reducing energy and capacity prices; (f) it will reduce wholesale market price volatility due to fluctuating fuel prices; and (g) improve system reliability and resilience.

CGA argues that the RECs and renewable energy delivered by the Project also help Illinois meet its decarbonization goals of the Illinois Public Act 102-0662. A second need or use that CGA identifies is the cost savings the renewable energy and RECs delivered by GBX could provide through increased competition. By providing Illinois utilities, and other utilities in PJM and MISO, access to the higher-quality wind and solar resources of Kansas the GBX Project will lower electric costs for Illinois ratepayers. The

additional supply of renewable energy the GBX provides Illinois can only decrease RPS compliance costs and make the market for RECs more competitive.

CGA also responded to Landowners Alliance's argument that the analysis performed by GBX witness Repsher and PA Consulting was fundamentally flawed and cannot be relied upon to demonstrate need. Landowners Alliance's presents two arguments: (1) that the analyses' calculated savings were not presented in present value, and once converted to present value the savings would be \$3.8 billion; and (2) that the benefit analysis cannot be relied upon because it evaluated a future with a carbon price but did not evaluate a future without a carbon price.

CGA concludes that the facts and arguments establish that the Project supports a finding of public convenience and necessity.

### 3. Staff's Position

Staff asserts that Grain Belt Express' argument is incorrect. The new language added by P.A. 102-0662 is clear:

If the qualifying direct current applicant further demonstrates in its application that the proposed transmission project has a capacity of 1,000 megawatts or larger and a voltage level of 345 kilovolts or greater, the proposed transmission project shall be deemed to satisfy, and the Commission shall find that it satisfies, the criteria stated in item (1) of subsection (b) of this Section or in paragraph (1) of subsection (f) of Section 8-406.1, as applicable to the application, without the taking of additional evidence on these criteria ...

220 ILCS 5/8-406(b-5).

Grain Belt Express appears to conflate Section 8-406.1(f)'s language that "the Commission shall ... grant a certificate of public convenience and necessity ... if ... it finds the Project will promote the public convenience and necessity and that all of the following criteria are satisfied" to mean that the Commission must make an additional, fourth finding in order to issue CPCN. 220 ILCS 5/8-406.1(f). However, the Commission must find a project will promote the public convenience and necessity if the three criteria, located in Section 8-406.1(f)(1)-(3), are satisfied. In its various CPCN dockets, a fourth criteria, defined vaguely as "promot[ing] the public convenience and necessity" has not been introduced nor considered before the Commission because it simply does not exist. Rather, the Commission's findings are based on what is required in the statute, which states that new construction will promote the public convenience and necessity *because* the three criteria are satisfied. This is the case regardless of whether the analysis is performed under Section 8-406.1(f)(1)-(3) or Section 8-406(b) as the criteria in both sections are identical.

Staff argues that because the criteria are identical, Grain Belt Express' arguments about whether the Project promotes the public convenience and necessity are no different than the evidence a party would offer to support a claim that its new construction satisfies Section 8-406.1(f)(1). Section 8-406(b-5) explicitly states that the Commission must find a qualifying project satisfies Section 8-406.1(f)(1) without taking evidence on that

criterion. Because the evidence offered by Grain Belt Express to support a finding of “public convenience and necessity” is no different than the evidence that would be offered to support a finding under Section 8-406.1(f)(1), the Commission should not consider that evidence.

Staff concludes that therefore, the Commission should reject Grain Belt Express’ argument and the evidence offered in support of this argument because: (1) the General Assembly explicitly instructed that the Commission must find a qualifying project satisfies Section 8-406.1(f)(1); (2) the promotion of the public convenience and necessity is not a separate, fourth criterion that exists in the statute; and (3) the evidence in support of this fourth criterion is no different than evidence used to support a finding under Section 8-406.1(f)(1).

#### **4. Landowners Alliance’s Position**

The Landowner Alliance argues that the Project does not promote the public convenience and necessity because it provides no benefits to Illinois consumers. It points out that GBX witness Repsher testified that the Project would save Illinois residents nearly \$6.6 billion in energy costs over the forty-year period from 2027-2066. GBX Ex. 8.0 at 11. Mr. Repsher modeled only two scenarios: first, the “Expanded GBX Case,” which contemplates the constructed 5000 MW GBX line, and second, the “Status Quo Case” which concerns only the currently permitted 500 MW capacity line. GBX Ex. 8.0 at 5. Mr. Repsher used a wholesale market model called Aurora, which is licensed to his firm, PA Consulting. GBX Ex. 8.0 at 6. According to Mr. Repsher’s testimony, Aurora simulates the hourly operations of the existing Eastern Interconnection. GBX Ex 8.0 at 6.

Landowner Alliance witnesses Giordano and Turner point out that the fundamental flaws in GBX witness Repsher’s savings estimate are his assumptions that the United States will implement a national carbon pricing regime starting in 2026, and that the carbon price under that new regime would begin at \$24.55 per short ton in 2026 and increase by 2.2% per year for the period covered by his study. GB Ex. 8.0 at 5, fn 2. The Landowner Alliance notes that Messrs. Giordano and Turner testified that all of GBX’s alleged savings evaporate when Mr. Repsher’s carbon pricing assumption is removed. LA Ex. 1.0 at 12; LA Ex. 2.0 at 6.

It is the Landowner Alliance’s opinion that no national carbon price should have been assumed in the PA Consulting Study. GBX Ex. 8.2. Moreover, the PA Consulting Study’s assumed federal carbon price of \$24.55 per ton of CO<sub>2</sub> in 2026, increasing at 2.2% per year through 2066, is much higher than the federal carbon price assumed in Ameren Missouri’s most recent Integrated Resource Plan of only about \$2.50/ton in 2025, \$13/ton in 2030 and \$17/ton in 2040. Nevertheless Mr. Repsher cites Ameren Missouri’s assumed federal carbon price as being broadly consistent with PA Consulting’s federal carbon price assumption. GBX Ex. 8.3 at 123. As stated in Landowner Alliance’s Direct Testimony, PA Consulting Study’s assumed carbon price raises the cost of generation by natural gas combustion turbines, which generally establish wholesale electricity prices as the marginal price setting units in the Eastern Interconnection, by approximately 0.92 cents/kwh. The Panel witnesses calculated that this is more than ten times the very small 0.072 c/kwh reduction in wholesale electricity prices in Illinois based on the PA Consulting Study. There is no question that the very high carbon price assumption is aggressive and



central to the outcome of the PA Consulting Study in favor of the GBX line Project by inflating the cost of competing generation. LA Ex 2.0 at 6-7.

While GBX witness Repsher testified that he disagreed with the conclusion reached by Landowner Alliance witnesses Giordano and Turner (GBX Ex. 8.4 at 8), he admitted on cross examination that he could have run the Aurora model without his carbon price assumption but did not do so. Tr. at 738–741. Thus, while GBX could have run the Aurora pricing model without Mr. Repsher’s carbon pricing model and generated actual results, Mr. Repsher testified that the results would be merely “directionally similar.” Tr. at 748–752.

The Landowner Alliance takes the position that the testimony of Messrs. Giordano and Turner that Mr. Repsher’s carbon pricing assumption is both central to his analysis and fundamentally wrong not only stands unrebutted on the record in this case, but also that as an evidentiary matter the Commission must presume that had Mr. Repsher performed his Aurora analysis without the carbon pricing assumption, the result would have proved Messrs. Giordano and Turner correct. The Landowner Alliance bases this argument on *Beery v. Breed*, 311 Ill. App. 469, 474-478 (2d Dist. 1941) (finding that the failure to produce evidence within a party’s control creates a presumption that the evidence, if produced, would have been adverse to the party). Under the Illinois evidentiary rules established by those authorities, if a party to a case has failed to offer evidence within their power to produce, the finder of fact may infer that the evidence would be adverse to that party if each of the following elements is present: (1) the evidence was under the control of the party and could have been produced by the exercise of reasonable diligence; (2) the evidence was not equally available to the adverse party; (3) a reasonably prudent person under the same or similar circumstances would have offered the evidence if he believed it to be favorable to him; and (4) no reasonable excuse for the failure has been shown. The Landowner Alliance argues that all these conditions are met in this case.

## **5. Commission Analysis and Conclusion**

The Commission agrees with Staff that the “public convenience and necessity” is not a separate element that must be proven under Section 8-406.1(f). The Commission must determine whether the Project satisfies the requirements of Section 8-406.1(f)(1)-(3). If the Commission determines that the Applicant satisfies these requirements, it must find that the Project supports a finding of public convenience and necessity because there is no difference than the evidence that would be offered to support a finding under Section 8-406.1(f)(1). The Commission’s analysis and conclusion on these issues are set forth in detail in Section IV.B.5, Section IV.C.4, and Section IV.C.4., below.

### **B. Section 8-406.1(f)(1)**

#### **1. Grain Belt Express’ Position**

Grain Belt Express states that, as required by Section 8-406.1(f)(1), the Project is necessary to provide adequate, reliable, and efficient service. The Company asserts that the Project is needed to address a lack of adequate transmission service to move electricity from the resource area of Western Kansas to Illinois and other PJM and MISO states. It explains that there is growing demand for renewable energy sources in Illinois,

particularly in light of recent increased RPS goals (including the potential for renewable energy credits (“RECs”) associated with a Qualifying Project to count towards RPS compliance) in Illinois and the retiring of fossil fuel energy generators. GBX Ex. 9.2 at 24 and Table 10. Grain Belt Express states that at the moment, there is inadequate transmission infrastructure to move electricity from areas of high renewable energy resource, like western Kansas to Illinois. GBX Ex. 9.2 at 24; CGA Ex. 1.0 at 20, 22.

Grain Belt Express notes that, even as early as 2014, there has been strong customer interest in the Project. In January 2014, Grain Belt Express Clean Line LLC conducted a Request for Information (“RFI”) process directed to developers of wind generation facilities that could deliver electricity to the Project’s western converter station in Ford County, Kansas. The responses to the RFI aggregated fourteen respondents developing 26 wind farms, with total capacity of more than 13,500 MW. GBX Ex. 1.0 at 37.

Grain Belt Express further states that in January through March 2015, Grain Belt Express Clean Line LLC initiated an open solicitation process, in accordance with the Federal Energy Regulatory Commission’s (“FERC”) requirements, for customers to subscribe for capacity on the Project. A total of fourteen shippers submitted transmission service requests for over 20,600 MW of transmission service. Ten shippers made 3,324 MW of requests for capacity to the Project’s MISO delivery point, more than six times the available capacity. Fourteen shippers requested a total of 17,301 MW of capacity to the Project’s PJM delivery point, approximately five times the available capacity. Grain Belt Express states that the results of the open solicitation demonstrate a strong need for the new service that will be provided by the Project. Grain Belt Express and its affiliates are currently negotiating commercial terms with potential customers, including utilities and commercial and industrial customers. GBX Ex. 1.0 at 37.

Grain Belt Express also indicates that it expects that its co-owners, lessees, and transmission customers will consist principally of (i) entities with wind and solar energy ownership interests located in southwestern Kansas and (ii) buyers of electricity—particularly buyers seeking to purchase electricity generated from renewable resources—located in MISO and PJM who take delivery at the respective delivery points. These buyers of electricity are expected to be principally participants in the wholesale markets (utilities, alternative retail electric suppliers (“ARES”), other competitive retail suppliers and brokers and marketers) but could include retail purchasers. GBX Ex. 1.0 at 17. Under FERC’s Open Access Transmission Tariff (“OATT”) requirements, eligible transmission customers include retail customers taking unbundled transmission service. The ultimate beneficiaries of the Project, according to Grain Belt Express, will be retail consumers of electricity in Illinois and other parts of PJM, MISO, and adjacent markets who purchase and consume electricity from renewable resources that the Project delivers to the MISO and PJM delivery points. GBX Ex. 8.0 at 11.

Grain Belt Express states that the Project will provide specific reliability benefits for Illinois. Grain Belt Express witness Petti provided unrebutted testimony and an unrebutted report titled, *Grain Belt Express: Reliability and Resilience Values*, on which Grain Belt Express relies to demonstrate the Project’s value in increasing reliability and resiliency of electric transmission in Illinois and other states. GBX Ex. 9.0 at 4. Mr. Petti testified that the Project could reasonably provide measurable improvements to the

reliability and resiliency of the regional electric transmission systems with which the Project interconnects, including but not limited to the following:

- Mitigation of high energy prices during extreme weather events. For example, had the Project been in operation during Winter Storm Uri and transmitting 2,500 MW of electricity east to west, the Project could have saved over \$300 million in costs. The total savings generated by the Project with a capacity of 5,000 MW for Winter Storm Uri, the Northeast “Bomb Cycle” cold weather snap of 2017/2018, the Northeast “Polar Vortex” of 2014 and the Midwest “Polar Vortex” of 2019 is estimated at \$407 million. GBX Ex. 9.0 at 5.
- Avoided loss of load benefit. For example, Petti estimates that the Project will provide a Value of Loss of Load (“VOLL”) for MISO Region LRZ4-7, which includes Illinois, ranging from \$84 million to \$552 million every 3 years, which equals a present day value of \$360 million to \$2.37 billion assuming a discount rate of 6.057% and a lifespan of 30 years. *Id.*
- Reduced local resource adequacy procurement obligations. Using projected injections from the Project and cost of new entry for generation capacity, Petti estimates that the Project will mitigate additional reliability driven generation capacity investments of approximately \$526 million per year and approximately \$7.6 billion for the life of the Project (assuming an asset lifespan of 30 years and a discount rate of 6.057%) for a 5,000 MW line capacity. *Id.* at 6-7.
- The Project also hedges against future capacity procurement needs. *Id.* at 7.
- Influence Planning Resource Auction prices. Mr. Petti testified that to approximate the potential influence of the Project over the Planning Resource Auction ACP, Guidehouse developed estimated alternate ACPs that assume GBX in-service at a minimum 1,500 MW injection rating to MISO and applied the MISO provided quantity of load exposed to the 2022/2023 ACP to determine the potential annual PRA savings generated by GBX. Using an adjusted ACP of \$26.82/MW-day Guidehouse estimated an annual savings of \$410.9 million or a savings of \$346.0 million using a \$60/MW-day ACP. *Id.* at 8.
- Value of system restoration capabilities, including the “black start” capability unique to VSC HVDC technology. *Id.* at 8–9.
- HVDC resource reliability, including active and reactive power control and fast power run-back capabilities. *Id.* at 9–10.

Grain Belt Express explains that the Project will drastically increase reliability by connecting four separate balancing authorities and four states and will transmit energy from resource-rich areas to states in other Regional Transmission Organizations (“RTO”).

Grain Belt Express' position is further supported by testimony from CGA. See CGA Ex. 1.0 at 43 (arguing inter-regional transmission is particularly valuable during severe weather events).

Grain Belt Express states that the service the Project will provide will be efficient. The Company has chosen to employ the most efficient transmission technology for transporting large amounts of power, particularly power from variable generation resources, over long distances. Grain Belt Express explains that it is well-established that HVDC is a more efficient technology than AC solutions for the long-haul transmission of large amounts of electric power, especially now that GBX is using the more modern voltage sourced converter ("VSC") technology. GBX Ex. 5.0R at 6. Grain Belt Express further explains that among other advantages, (1) HVDC lines can transfer significantly more power with lower line losses over longer distances than comparable AC lines; (2) VSC HVDC systems can effectively work in very weak systems and integrate large amounts of power with minimal impact to the short-circuit current levels at the POI; (3) HVDC lines can provide power oscillation damping in an AC grid through fast modulation of the AC-to-DC converter stations and thus improve system stability; (4) the HVDC technology being used for the Project will have the ability to provide reactive power/voltage control at the POI by providing ~33% MVar based on the real power rating (i.e. for a 5,000 MW system, can provide ~+/-1,650 MVar); (5) HVDC technology has the ability to tightly control the energy flows either via operator action or automatically, which makes HVDC particularly well-suited to managing the injection of variable wind generation; (6) HVDC lines, unlike AC lines, will not become overloaded by unrelated outages, because the amount of power delivered is strictly limited by the DC converters at each end of the HVDC line, thereby reducing the likelihood that outages will propagate from one region to another; and (7) HVDC lines utilize narrower rights-of-way and fewer conductors than comparable AC lines, thereby making more efficient use of transmission corridors and minimizing visual and land use impacts. GBX Ex. 5.0 at 7–8.

Based on the testimony of GBX witness Rodriguez, who presented a comparison of costs and anticipated losses associated with transmitting 5,000 MW over 800 miles between one  $\pm 600$  kV HVDC bi-pole, multi-terminal system, like the one proposed by Grain Belt Express, and various AC alternatives, including a single circuit 765 kV transmission line (GBX Ex. 5.0R at 11), Grain Belt Express, states that all alternatives are more costly and resulted in more annual line losses. *Id.* at 12. Grain Belt Express further states that the VSC HVDC transmission line proposed by Grain Belt Express is an efficient means to transmit large amounts of energy over long distances and is the most efficient means when compared to alternatives. *Id.* at 7.

It is Grain Belt Express' position that the Project satisfies the first alternate prong of Section 8-406.1(f)(1) because the evidence in the record establishes that the Project is "necessary to provide adequate, reliable, and efficient service to the public utility's customers," and is the least cost means available to do so.

In response to the Landowner Alliance's position that no RTO or MISO has made a determination that the Project is required to enhance reliability, Grain Belt Express notes that RTOs and MISOs do not make "needs" determinations for merchant projects. GBX Ex. 1.6 at 11.

In response to the Landowner Alliance's position that the Project will have a "miniscule" effect on the PJM grid, Grain Belt Express pointed to the report and testimony from GBX witness Petti, who demonstrated the substantial positive impacts that an additional 2,500 MW of inter-regional connection would have, particularly during an extreme weather event like Winter Storm Uri.

Finally, in response to the Landowner Alliance's position that the Project will not serve Illinois, Grain Belt Express directs the Commission to the testimony of GBX witness Rodriguez, who testified that the Project will have access to the Illinois market through connections with MISO and PJM and the Project will serve Illinois ratepayers.

Grain Belt Express states that the Project also meets the second alternative criteria in Section 8-406.1(f)(1) that the Project will promote the development of an effectively competitive market that operates efficiently and is equitable to all customers. GBX states that the Project will deliver low-cost electricity from renewable generation resources in Western Kansas to the Illinois electricity markets. It explains that the windiest sites in the United States are often not located near load centers, and current transmission infrastructure is insufficient to connect many of the best regions for development of wind generation facilities to areas where electricity from renewable resources is in demand. GBX Ex. 1.0 at 27. Grain Belt Express claims that the development of additional transmission infrastructure is critical to the nation's ability to fully exploit its wind resources for the production of low-cost, environmentally responsible electricity. *Id.* According to Grain Belt Express, the limitations of the electric transmission grid are already stifling the growth of wind power development in many areas. *Id.*

Grain Belt Express states that renewable energy sources are competitive. *Id.* Grain Belt Express relies on a number of sources, including a study by Lazard in 2021 demonstrates that renewable energy is actually cheaper than traditional fossil fuel energy sources. *Id.* Bloomberg NEF reports that although the cost of new-build renewables has increased with inflation, the increased costs of materials, freight, fuel and labor, fuel and carbon prices for fossil generators have risen even faster. *Id.* "New-build onshore wind and solar projects are now around 40% lower than . . . new coal- and gas-fired power. . . Renewables remain the cheapest source of new bulk power in countries comprising two-thirds of the world population and nine-tenths of electricity generation." *Id.* Notably, even the Landowner Alliance witness Giordano, admitted (albeit on cross-examination) that renewable energy is more cost effective than ever. Tr. at 804.

Grain Belt Express states that the energy transmitted by the Project will effectively compete in the marketplace in PJM, MISO and their service areas like Illinois. CGA Ex. 1.0 at 23, 24–25. Grain Belt Express explains that this low-cost energy will exert downward pressure on the marketplace.

GBX asserts that the Project will enable at least 2,500 MW of new capacity to access, and increase the supply of wind generation, to the Illinois electricity markets which will exert downward pressure on electricity and REC prices and will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers. Grain Belt Express witness Repsher from PA Consulting analyzed the Project's impact on the Illinois market, assuming a total capacity for the Project of approximately 5,000 MW using a forward-looking industry standard production

cost model called Aurora, which was licensed to PA Consulting by Energy Exemplar. GBX Ex. 8.0 at 6 and fn.3. Grain Belt Express notes that Landowner Alliance's expert, Mr. Turner, agreed that the Aurora is a "valuable tool" and a "well-tested model" that is used by industry participants, electric utilities, power market regulators, independent system operators and other market consultants. Tr. at 807, 810. Notably, Landowner Alliance's witness Turner did not run a forward-looking industry production cost model or otherwise model at all the impact of the Project on the Illinois markets. Tr. at 811.

Grain Belt Express states that Mr. Repsher used the Aurora model, with Project-specific assumptions, to calculate wholesale pricing and emissions outcomes in two cases: one where the Project had a 5,000 MW capacity and delivered 1,500 MW to the Ameren Missouri service territory (in MISO), 1,018 MW to the Associated Electric Cooperative service territory (in AECI) and 2,500 MW at the American Electric Power Indiana service territory (in PJM). GBX Ex. 8.2, Exec. Summary. Grain Belt Express explains that the model projects that the Project will lower wholesale energy pricing in Illinois in two ways: (i) the low-cost, high-capacity factor renewable generation feeding the Project is projected to put downward pressure on power pricing within the Illinois Service Territories, particularly during the evening peak hours when the output of other in-State renewable resources is significantly weaker than what the Project offers, and (ii) the incremental reliability-weighted capacity via Grain Belt Express will tend to increase the overall available supply in the Illinois Service Territories, putting downward pressure on capacity prices in the majority of years, when all else is equal. GBX Ex. 8.0 at 8–9. Grain Belt Express points out that together, these impacts will reduce costs to electric ratepayers across Illinois. *Id.* at 9. Grain Belt Express further states that low-cost energy from the Project displaces higher cost power from inefficient generators in both MISO and PJM. *Id.* It is projected that from 2027–2041, the Project will reduce around-the-clock zonal power prices by an average of one-point-three percent (1.3%) in the PJM ComEd region and two percent (2.0%) in the MISO Zone 4 region. *Id.* at 9–10. According to Grain Belt Express, ultimately, the inclusion of the line and its associated renewable energy results in total energy and expenditures for Illinois residents that are nearly \$6.6 billion lower (approximately 1.3%) from 2027–2066. *Id.* at 11. Grain Belt Express claims that when these savings are combined with the many benefits of emissions reductions to the State of Illinois, the Expanded GBX Case offers the State over \$3.5 billion additional in savings from 2027–2066, bringing the total cumulative benefit to over \$10.1 billion by 2066. *Id.* at 11.

Grain Belt Express additionally explains that that Project offers substantial emissions reductions within the State of Illinois, reducing emissions of CO<sub>2</sub>, SO<sub>2</sub>, and NO<sub>x</sub> in Illinois by 7.4%, 9.9%, and 8.9%, respectively over the 2027–2066 period. *Id.* For comparison, in-State CO<sub>2</sub> emissions savings facilitated by the Project from 2027–2041 are approximately equivalent to removing nearly 5.5 million gasoline cars from Illinois roads for one year. *Id.* Grain Belt Express posits that this is particularly important in light of the Illinois state legislature's passage of P.A. 102-0662, which (among many other provisions) mandates 40% renewable energy by 2030, 50% by 2040 and 100% clean energy (including nuclear) by 2050, specifically calling out the role of HVDC lines in lowering power prices, enabling renewable integration (and therefore emissions reductions) and enhancing grid reliability and resilience. *Id.* at 12.

Grain Belt Express states that the Project will facilitate over 28 million tons of emissions reductions within (or attributable to) the State from 2027–2066. However, due to the regional nature of power grids (and the global nature of the CO<sub>2</sub> issue), these Illinois-only benefits do not tell the entire story. Grain Belt Express states that over the 2027–2066 period, CO<sub>2</sub> emissions reductions in the broader Midwest region (excluding Illinois) due to the Project are over 408 million tons (nearly 15 times the reductions attributable to Illinois alone). *Id.* at 11-12.

Grain Belt Express states that with the injection of low-cost renewable energy from Kansas to the PJM and MISO grids, the testimony and report of Mr. Repsher and the testimony of CGA witness Goggin demonstrate that the Project will exert downward pressure on the electricity marketplace and will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers.

In response to Landowner Alliance's position, Grain Belt Express states that Landowner Alliance witnesses Giordano and Turner admitted that the Aurora model utilized by Mr. Repsher is a valuable tool and a well-tested, good model that is used by industry participants, including electric utilities, power market regulators, independent system operators and other market consultants. LA Ex. 2.0 at 7; Tr. at 810. They also admitted that renewable energy is "cheaper than ever" and, once injected by the Project, will have downward pressure on the Illinois marketplace. Tr. at 802–804, 817–818. Finally, and most telling, they admitted that they did not run their own model. Tr. at 811.

Grain Belt Express explains that Mr. Giordano and Mr. Turner's primary criticism of Mr. Repsher's opinion appears to be that he assumed a national carbon price. See LA Ex. 2.0 at 6. Grain Belt Express points out that notably, Mr. Giordano and Mr. Turner are not independent witnesses. Their firm, GEV Corp., which was retained in this docket by Landowner Alliance, also employs Zotos' counsel, as its vice president and general counsel. Tr. at 802. Further, the primary business of GEV Corp. is in the representation of consumers in their negotiations with energy suppliers and utilities companies in PJM. Tr. at 802, 805. GEV Corp. has virtually no experience representing clients in the MISO territory, at least in the last ten years. Tr. at 805. GEV Corp. has not been qualified in this docket to provide an expert opinion on the impacts of the Project on the wholesale or retail marketplace in Illinois, which is served by both PJM and MISO.

However, according to Grain Belt Express witness Repsher, the carbon price reflects a realistic future case and actually *limits* the potential energy savings induced by the Project. GBX Ex. 8.4 at 8–9. Grain Belt Express states that the carbon price was assumed in both the Status Quo and Expanded GBX cases and eliminating the carbon prices would *still* result in induced savings for Illinois residents. GBX Ex. 8.4 at 8.

Grain Belt Express state that Mr. Giordano and Mr. Turner also opine that the Project cannot deliver electricity to Illinois because it interconnects in Indiana and Missouri, and that retail consumers in Illinois will not experience any downward pressure to the wholesale marketplace caused by the Project. LA Ex. 1.0 at 6–7. Grain Belt Express states that Mr. Giordano and Mr. Turner are simply wrong, and that they either misunderstand or misrepresent the electric marketplace, as described in detail by Mr. Repsher. GBX Ex. 8.4 at 2. Grain Belt Express witness Repsher described in detail how the Illinois consumer will experience savings as a consequence of the Project's impacts

on the wholesale market. *Id.* at 1–5. Grain Belt Express additionally states that the physical location of the interconnection does not need to be in Illinois because the marketplace is regional and not state-specific; load serving entities “operating in Illinois can (and do) contract for (some or all of) a Project’s attributes, regardless of its physical location.” *Id.* at 5. Mr. Repsher provides the specific example of Constellation NewEnergy, Inc. procuring RECs from out-of-state projects. *Id.* at 5–6.

Grain Belt Express points out that the Landowner Alliance argues that Grain Belt Express is motivated to drive the locational marginal price up at the PJM interconnection because that will motivate shippers to ship electricity to the PJM interconnection. Grain Belt Express responds that the Landowner Alliance has misquoted and mischaracterized the testimony of GBX witness Sane, who testified that there are data points other than locational marginal pricing that factor into the price of transmission service, including REC prices and access to the MISO and PJM markets.

Finally, GBX maintains that the Project is the least cost means of satisfying the two alternative criteria in Section 8-406.1(f)(1). Grain Belt Express witness Rodriguez presented a comparison of costs and anticipated losses associated with transmitting 5,000 MW over 800 miles between one  $\pm 600$  kV HVDC bi-pole, multi-terminal system, like the one proposed by Grain Belt Express, and various AC alternatives. Grain Belt Express states that the chart from Grain Belt Express Exhibit 5.0R on page 12, which is supplemented by Exhibit 5.2R, demonstrates that the HVDC line proposed by Grain Belt Express is the least cost alternative to deliver renewable energy from Kansas to Illinois.

Grain Belt Express explains that included in the costs for each of the transmission alternatives (AC or DC) are the following: the per-mile cost for transmission line (structures, conductors, insulators, and hardware) and Right of Way (“ROW”) costs. GBX Ex. 5.0R at 12. Grain Belt Express further explains that included for the AC alternatives are the costs for four (4) substations, two (2) transformers per substation, Static VAR Compensators (“SVC”), series capacitors, shunt capacitors and shunt reactors. *Id.* Costs for four substations are included because AC systems typically require substations approximately every 200 to 300 miles. Included in the cost for the HVDC alternative are three HVDC converters. The cost of each HVDC converter includes the costs for all equipment needed at that converter (including transformers, buswork, switchgear, capacitors, and reactors). *Id.* at 12–13.

Grain Belt Express states that the “Annual Loss Costs” column of the table includes the capitalized cost of annual power losses and represents the value of the revenue lost due to the estimate power losses on the AC or DC line(s). *Id.* at 13.

It is Grain Belt Express’ position that Mr. Rodriguez’s testimony, including his chart and exhibit, conclusively demonstrates that the Project is the least cost alternative, and this testimony is un rebutted.

Grain Belt Express states that Landowner Alliance missed the mark by failing to address Mr. Rodriguez’s testimony or cost analysis, and the Landowner Alliance’s attempt to compare the Project to hypothetical offshore wind projects postulated by a Chicago Tribune editorial to be developed in Lake Michigan are not alternatives to the Project let alone realistic ones. Grain Belt Express also states that the Landowner Alliance’s criticism that Grain Belt Express did not compare upgrade costs between DC



and AC options is not well-founded because that comparison requires knowledge of what AC upgrades would cost. For those data points on which Grain Belt Express does have information, Mr. Rodriguez performs a side-by-side analysis and determined that the Project was the least cost alternative.

## 2. Staff's Position

Staff states that Section 8-406.1(f)(1) of the Act requires the Commission to determine whether “the Project is necessary to provide adequate, reliable, and efficient service to the public utility’s customers and is the least-cost means of satisfying the service needs of the public utility’s customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.” 220 ILCS 5/8-406.1(f)(1).

Staff notes that Section 8-406(b-5) of the Act states, in part:

If the qualifying direct current applicant further demonstrates in its application that the proposed transmission project has a capacity of 1,000 megawatts or larger and a voltage level of 345 kilovolts or greater, the proposed transmission project shall be deemed to satisfy, and the Commission shall find that it satisfies, the criteria stated in item (1) of subsection (b) of this Section or in paragraph (1) of subsection (f) of Section 8-406.1, as applicable to the application, without the taking of additional evidence on these criteria. ...

220 ILCS 5/8-406(b-5).

Grain Belt Express filed its Application pursuant to Section 8-406.1 of the Act. GBX App. ¶ 1. As set forth in the direct testimony of GBX witness Rodriguez, the testimony and exhibits in the Company’s Application demonstrate that the Project will have a capacity of 1,000 MW or larger and a voltage of 345 kV or greater. GBX Ex. 5.0R, 4-5; see *also* GBX App. at 28. For this reason, the Commission is required by statute to find that the Project satisfies the requirements of Section 8-406.1(f)(1) of the Act. 220 ILCS 5/8-406(b-5).

While the Commission is required by law to find that the Project satisfies Section 5/8-406.1(f)(1) of the Act, the Commission must still determine which route is least-cost. Staff Ex. 1.0 at 12. As an initial matter, the Act defines the Project as a high-voltage electric service line and related facilities. 220 ILCS 5/8-406(h). As part of its Application under Section 8-406(f)(1), the Company “shall provide and identify a primary right-of-way and one or more alternate rights-of-way for the Project as part of the filing.” 220 ILCS 5/8-406.1(a)(1)(B)(viii). Thus, under Section 8-406.1(a)(1)(B)(viii), the Commission has jurisdiction to consider, and should consider, alternative routes as part of its analysis.

Staff addresses its recommendation on what route is least-cost in Section V of this below.

As noted above, Staff did not review the evidence related to Section 8-406.1(f)(1) because Section 8-406(b-5) mandates a finding of compliance without additional evidence.

### **3. CGA's Position**

CGA concurs with Grain Belt Express that the Project will provide reliability and resilience benefits to Illinois and the broader PJM and MISO footprints. In addition to the quantitative and qualitative benefits described by Grain Belt Express witness Petti, CGA also relied on testimony from CGA witness Goggin regarding the geographic diversity the Project presents by interconnecting three RTOs. CGA notes that the Project will provide services formerly provided by coal generators that are scheduled to retire, including black-start service, active and reactive power control, voltage and frequency control, dynamic voltage support, emergency power control and power modulation, damping of electro-mechanical oscillations and geography diversity.

CGA agrees with Grain Belt Express that the Project will promote an effectively competitive electricity market. CGA notes that renewable energy is cheaper than new traditional fossil fuel energy resources and that the delivery of low-cost generation helps drive competition across and among multiple wholesale markets. CGA also notes that Mr. Repsher's testimony is consistent with CGA witness Goggin's testimony that transmission lines promote an effectively competitive market by (1) delivering electricity that has a lower cost, including both marginal production cost and long-term Power Purchase Agreement prices, than the electricity in the area to which it is interconnecting; serving as a hedge against volatile fuel prices; reducing capacity market prices and reducing the potential for generators to exercise market power in a region.

### **4. Landowner Alliance's Position**

The Landowner Alliance argues that the Project will not promote the public convenience and necessity because it will not provide benefits to Illinois consumers. The Landowner Alliance states that GBX does not allege that the Illinois electricity market is inadequate, unreliable, inefficient, or uncompetitive. Further, the Landowner Alliance notes that GBX does not assert that the Project is required, or necessary, to make the Illinois electricity market adequate, reliable, efficient, or competitive, and that GBX has presented no evidence demonstrating that reliability will be adversely affected without the Project. The Landowner Alliance points out that GBX witness Sane admitted that no regional transmission organization or independent system operator has made any determination that the Project is needed for reliability. Tr. at 222–223. Likewise, Staff witness Maurer also testified that neither PJM nor MISO has made any determination that the GBX Project is necessary for reliability or to relieve congestion on the grid. Tr. at 432–433.

The Landowner Alliance also asserts that GBX's position on whether it will provide electric service to any customers at all in Illinois is unclear. The Landowner Alliance notes that throughout both GBX's Application and its witnesses' testimony, GBX emphasizes that it will deliver electricity into Illinois and serve load in Illinois. GBX App. at 2, 14; see *also* GBX Ex. 1.0 at 10-11; GBX Ex. 5.0 at 3.

The Landowner Alliance contends that the testimony of GBX's witnesses at the evidentiary hearing shows that GBX's claims that it would serve load in Illinois are nothing more than a facade. As GBX witness Rodriguez admitted on cross examination, what GBX really means is that electricity shipped on the Project and delivered anywhere in the entire Eastern Interconnection "serves customers in Illinois" even if that electricity is never delivered into Illinois. Tr. at 554–555.

The Landowner Alliance points to its witness Mr. Giordano's testimony which made it clear how small the Project's promotion of adequate, reliable, and efficient service in Illinois would be would he stated in part that assuming the Project delivers 2,500 megawatts into the PJM system in Illinois, it would have a minuscule effect. The Landowners Alliance notes that he stated this is a small amount at a very large Eastern Interconnections system that has over 200,000 megawatts. Tr. at 821–823.

The Landowner Alliance further observes that GBX witness Sane testified that a shipper on the Grain Belt Express transmission line would not pay more for transmission service than the difference between the locational marginal price ("LMP") at the point of delivery at AEP/Sullivan and the LMP at the Project's point of receipt in Kansas. The Landowner Alliance claims that Grain Belt Express has an interest in driving up LMP at the point of delivery, which is counterproductive to the marketplace.

The Landowner Alliance notes that Grain Belt Express' assertions that the Project is the least cost is flawed. Specifically, the Landowner Alliance witnesses Giordano and Turner testified that GBX's failure to take account of network upgrade costs gives the Commission an incomplete picture of what will be required for the Project and undermines its claim to be least cost. Additionally, the Landowner Alliance points out that GBX has sought from FERC a waiver of its obligation to make a payment of approximately \$78 million dollars to MISO until it can determine whether the costs of the Project are acceptable to GBX. See Request of Grain Belt Express LLC for Prospective Tariff Waiver, Expedited Action, and Shortened Comment Period filed in FERC's Docket No. ER23-403-000 attached as Exhibit A to the Landowner Alliance's Initial Brief. The Landowner Alliance argues that GBX's desire to keep open its option to discontinue the Project if the costs are too high. The Landowners Alliance states that this shows that not even GBX believes its Project is least cost.

The Application states that "[t]he main objective of the [GBX] Project is to transport clean, low-cost electricity from renewable generation plants to be built in southwestern Kansas, which has high-capacity factor wind and solar resources, to the electricity markets in Missouri and Illinois and other states located within or adjacent to the MISO and PJM grids." GBX App. at 14. The Landowner Alliance argues that contrary to this statement, the record shows that GBX made no comparison of the Project to any other means of obtaining the same benefits for Illinois as required by a least-cost analysis. Mr. Repsher compared running the GBX Line through Illinois with doing nothing in Illinois. The Landowner Alliance states that Mr. Repsher thereby determined that doing nothing provided no benefits to Illinois, while doing something, i.e., the Project, did provide benefits.

## 5. Commission Analysis and Conclusion

The Commission notes that Section 8-406(b-5) of the Act states, in part:

If the qualifying direct current applicant further demonstrates in its application that the proposed transmission project has a capacity of 1,000 megawatts or larger and a voltage level of 345 kilovolts or greater, the proposed transmission project shall be deemed to satisfy, and the Commission shall find that it satisfies, the criteria stated in item (1) of subsection (b) of this Section or in paragraph (1) of subsection (f) of Section 8-406.1, as applicable to the application, without the taking of additional evidence on these criteria. ...

220 ILCS 5/8-406(b-5).

The Commission determined in Section III. F. of this Order that Grain Belt Express is a qualifying direct current applicant and that the Grain Belt Express Project will have a capacity of 1,000 MW or larger and a voltage of 345 kV or greater. Thus, as noted above, Section 8-406(b-5) mandates a finding by the Commission that the Project satisfies Section 8-406.1(f)(1) without requiring additional evidence.

The evidence supports a finding, and the Commission so finds, that the Project is necessary to provide adequate, reliable, and efficient service, will promote a developing and effectively competitive electricity market, and is the least cost means of satisfying those objectives.

On the first element, Grain Belt Express has demonstrated that there is a need to address a lack of adequate transmission service to move electricity from the resource area of western Kansas to the MISO and PJM markets, including Illinois. Grain Belt Express has demonstrated sufficient demand for the service. Grain Belt Express has also demonstrated that the Project will provide substantial reliability and resiliency benefits by interconnecting three regions. The Commission finds that Illinois residents will benefit from this interconnection and delivery of electricity from this Project.

Grain Belt Express has also demonstrated that the Project will provide substantial reliability and resiliency benefits by interconnecting three regions. The evidence demonstrates that the project will mitigate high energy prices during extreme weather events, avoid loss of load, reduce local resource adequacy procurement obligations, hedge against future capacity procurement needs, provide valuable system restoration capabilities like “black start” and provide active and reactive power control and fast power run back capabilities.

Grain Belt Express has also demonstrated that the Project will provide service that is efficient. Grain Belt Express provided substantial evidence on the efficiency of modern HVDC technology, particularly for carrying large amounts of electricity over long distances.

On the second element, Grain Belt Express has demonstrated that the Project will promote an effectively competitive electricity market. It will do so by, at a minimum, injecting low-cost renewable energy into the MISO and PJM markets and exerting downward pressure on electricity and REC prices. Although the Landowner Alliance

challenges how much the Project will impact the Illinois markets, it is undisputed that renewable energy from generators in southwest Kansas is competitive with fossil fuels. This low-cost energy will impact the wholesale market and, in turn, the retail market.

Finally, on the third element, Grain Belt Express witness Rodriguez provides a comparison of other transmission alternatives, including various AC configurations. Using credible pricing guidelines, the MTEP 22, Grain Belt Express demonstrated that the VSC HVDC option was the least cost alternative to transmit large amounts of electricity over long distances.

In sum, the Commission finds that the Project is necessary to provide adequate, reliable, and efficient service, will promote the development and effectively competitive electricity market, and is the least cost means to satisfy Section 8-406.1(f)(1).

**C. Section 8-406.1(f)(2) – Capability to Efficiently Manage and Supervise the Construction Process**

**1. Grain Belt Express' Position**

Grain Belt Express states that it is capable of efficiently managing and supervising the construction process for the Project and has taken sufficient action to ensure adequate and efficient construction and supervision of construction, as specified by Section 8-406.1(f)(2) of the Act. Grain Belt Express explains that it and its parent company, Invenergy Transmission, have experience in developing construction management organizations and overseeing the construction and completion of large projects in the electric utility industry, including wind generation facilities and transmission lines. GBX Ex. 3.0 at 2–3, 6. Grain Belt Express further states that Invenergy and its affiliates are providing engineering, procurement and construction support and management for Grain Belt Express pursuant to services agreements with Grain Belt Express. GBX Ex. 1.0 at 44; Staff Ex. 2.0 Attach. B–H. Grain Belt Express states that Invenergy Renewables built the largest wind farm and the largest solar farm at the time. Tr. at 150. Grain Belt Express further states that Invenergy Renewables has developed and constructed over 4,000 miles of transmission and collection lines located throughout the United States and internationally covering nearly all ice and wind structural loading regions, through various air contaminants and lightning isochronic levels, tying into weak and strong power grids while meeting interconnection requirements, and traversing varied geographical regions. GBX Ex. 3.0 at 7.

Grain Belt Express states that it will assemble an effective construction management team for the Project. GBX App. at 52-23. Key positions in Grain Belt Express' management team will include, but are not limited to, Project Managers, Superintendents, Project Controls, Safety Managers, Material Managers, Quality Managers, Field Engineering Managers, Environmental Compliance Managers, ROW Managers, Land Liaison Managers and Community Relations. *Id.*; GBX Ex. 3.0 at 10.

Grain Belt Express explains that the construction management team's responsibility is to deliver a successful project on time, within budget, at the highest quality, while upholding safety and minimizing environmental and other impacts to land. GBX App. at 53. Grain Belt Express also recognizes that a successful project cannot be achieved without consideration of the input of the local communities and landowners. *Id.*

Grain Belt Express further states that it will engage local communities prior to the start of any construction by, for example, holding project awareness meetings at local facilities to allow the public and the engineering, procurement, and construction (“EPC”) contractor(s) to meet. *Id.* These meetings will serve several purposes, including the following: (i) communicating to the public the details of the construction activities, project schedule and sequencing and (ii) affording Grain Belt Express the opportunity to learn about local suppliers and service providers in the area that may be utilized on the Project. *Id.* Grain Belt Express states that it has committed to seek to maximize the use of local contractors and suppliers where practical and has already entered into an agreement with the Laborers International Union of North America. *Id.* Grain Belt Express will also direct its EPC to utilize union labor for the construction of the Project in Illinois. GBX App. at 53; GBX Ex. 3.0 at 10–11.

Grain Belt Express states that its management team will assign a land liaison to the Project to communicate with landowners prior to entry on their properties, during construction operations and after construction activities are completed, to address any concerns and maintain consistent communications. *Id.* Grain Belt Express explains that these positions will be filled by employees who have experience in both the construction industry and, in this case, working knowledge of agriculture practices. *Id.* This dual knowledge base will aid in conducting successful construction operations across agriculture lands. GBX App. at 53; GBX Ex. 3.0 at 11.

Grain Belt Express explains that the management team for Grain Belt Express will manage the conceptual design of the transmission line. *Id.* at 54. Grain Belt Express will also manage the engagement of one or more EPC contractors to oversee the three major components of the Project development: the converter stations, the transmission line, and the interconnection (both at the generators and at the point of interconnection with SPP, AECI, MISO and PJM). *Id.* The EPC contractor(s) will manage subcontractors to meet project-specific goals on a schedule that Grain Belt Express manages and oversees. GBX App. at 54; GBX Ex. 3.0 at 11.

Grain Belt Express also explains that it has engaged a number of engineering and construction contractors and consultants, including the following: (1) POWER Engineers, Inc. is providing transmission line engineering support, (2) Hanson Professional Services, Inc. is providing geotechnical investigation and foundation design services, (3) Transdesign International LLC is performing detailed structural designs and engineering services, (4) Hatch Associates Consultants, Inc. is developing HVDC models for the interconnection process, (5) Siemens PTI is assisting with the Planning Criteria Section 5.5 and Section 14 studies being conducted by SPP, (6) Quanta Electric Power Services, LLC entered into a development agreement under which it may perform development support, construction advice and engineering services, (7) WSP USA Inc. (“WSP”) is consulting on route development and (8) Contact Land Staff, LLC and WSP are assisting with easement and rights-of-way acquisition. GBX App. at 54; GBX Ex. 1.0 at 46–49.

Grain Belt Express states that it has entered into a Memorandum of Understanding with Hubbell Power Systems to supply conductor hardware and insulators. GBX App. at 54. Grain Belt Express also states that it has also designated Prysmian as a preferred supplier of conductors. GBX Ex. 3.0 at 22–23.

While Grain Belt Express is still in the process of finalizing selection of all vendors and suppliers, the selection of the aforementioned contractors and other contractors selected for the Phase I portion of the Project will guide selection of contractors for the Illinois portion. GBX App. at 55; GBX Ex. 3.0 at 23.

Grain Belt Express' position is that North American Electric Reliability Corporation ("NERC") reliability standards are mandatory and enforceable (through the imposition of monetary penalties or other sanctions), pursuant to Section 215 of the Federal Power Act and FERC regulations and orders. GBX Ex. 3.0 at 24. Compliance with these standards is important to ensure the reliability of the bulk power system. GBX App. at 55. Grain Belt Express will 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 Project, which could result in some or all of the Transmission Operator or Transmission Service Provider functions being assigned to the third party). *Id.* Therefore, according to Grain Belt Express, it will be subject to applicable requirements of one or more NERC reliability standards in some or all of the following categories: Resource and Demand Balancing; Communications; Critical Infrastructure Protection; Emergency Preparedness and Operations Procedures; Facilities Design, Connections and Maintenance; Interchange Scheduling and Coordination; Interconnection Reliability Operations and Coordination; Modeling, Data and Analysis; Personnel Performance, Training and Qualifications; Protection and Control; Transmission Operations; Transmission Planning and Voltage and Reactive Control. *Id.* Grain Belt Express states that it will comply with the requirements of the reliability standards that are applicable to its activities. GBX Ex. 3.0 at 24.

Further, in connection with its current grant of authority by FERC to negotiate rates for transmission service, Grain Belt Express states that it has committed to turn over operational control of the Project, including scheduling responsibilities, to an RTO (which will be SPP, MISO, or PJM), which will operate the transmission line pursuant to a FERC-approved non-discriminatory rate schedule filed under the RTO's OATT. GBX App. at 55-56. *Grain Belt Express LLC*, 147 FERC ¶ 61,098, at PP 3, 13, 28, 31 and 32 (2014).

In designing, constructing, and operating the Project, Grain Belt Express states that it will comply with: (1) the National Electrical Safety Code and the Commission's regulations at 83 Ill. Adm. Code 305, Construction of Electric Power and Communications Lines; (2) other applicable codes and standards; and (3) applicable NERC reliability standards. GBX Ex. 3.0 at 23 and 25-26; GBX App. at 56.

Grain Belt Express also states that it will take appropriate steps to avoid or mitigate adverse impacts to landowner properties and, upon completion of construction activities, repair and restore any land that was disturbed during the construction process, including remediation of soil compaction and repair or replacement of drainage tiles. *Id.* Grain Belt Express commits that it will comply with all mitigation measures and the construction standards and policies set forth in the AIMA. GBX Ex. 3.0 at 36.

Grain Belt Express is also capable of constructing the Project within the requested ROW. Grain Belt Express explains that the preliminary design criteria for the Project assumes a permanent ROW easement width of 150 feet as a typical or average value.

GBX Ex. 3.0 at 26. Grain Belt Express states that it is requesting authority to site a permanent ROW easement between 150 and 200 feet wide in most places (GBX Ex. 3.0 at 26), with the exception of locations that require an atypical span to accommodate terrain features, land considerations and other local factors, in which case Grain Belt Express requests authority to obtain a permanent ROW easement up to 300 feet. GBX App. at 73-74; GBX Ex. 3.0 at 30-32; GBX Ex. 2.0 at 32-33. Grain Belt Express states that it also requests temporary easements for turning and laydown yard easements consistent with notice provided to landowners. GBX Ex. 3.0 at 33-34; GBX Ex. 2.0 at 33.

Grain Belt Express explains that it provided notice to landowners within 75 feet of the Proposed and Alternate Route centerlines (as identified by county records). Tr. at 664-665. However, according to Grain Belt Express, property eligible for siting (property duly noticed) extends beyond 75 feet of centerline in most cases and Grain Belt Express is requesting the siting flexibility to adjust the ROW placement beyond the 150-foot-wide ROW identified in the Application so long as the affected landowner received notice of this proceeding pursuant to Section 406.1(a) or intervened in these proceedings. GBX Ex. 2.20 at 18. Grain Belt Express contends that this flexibility is consistent with flexibility granted recently in Docket Nos. 14-0514, 18-0455, and 21-0551, in which the Commission allowed the applicant the authority to adjust a transmission line's route alignment or pole locations when feasible and consistent with the Commission-approved route location or by agreement of all affected landowners without the need for further Commission approval.

Grain Belt Express states that this additional flexibility will allow Grain Belt Express to site the permanent easement in a way to minimize impacts to landowners and to navigate around bodies of water, wetlands, center pivot irrigation systems, agricultural structures, and other environmental challenges. GBX Ex. 2.0 at 36. Even if granted the requested flexibility, Grain Belt Express states that it is committed to designing the Project with the narrowest ROW possible consistent with safety and reliability standards. GBX Ex. 3.0 at 28. Also, although the requested flexibility will benefit landowners and minimize impacts, Grain Belt Express states that it is not essential to construct the Project. Grain Belt Express witness White testified that he could design the Project with a ROW easement that is 150 feet wide, Tr. at 726, however, such design may accommodate fewer landowner requests or require additional structures and shorter spans.

## **2. Staff's Position**

After review of the Application and supporting materials, Staff witness Maurer testified that she had no reason to dispute Mr. White's assertion that GBX is capable of efficiently managing and supervising the construction process for the Project. Staff Ex. 1.0 at 7. Accordingly, Commission Staff confirms that Grain Belt Express can effectively manage and supervise the construction of the Project.

## **3. Commission Analysis and Conclusion**

The Commission finds that no party raises any concern that Grain Belt Express can efficiently manage and supervise the construction of this Project. Staff recommends that the Commission find GBX is capable of efficiently managing and supervising the construction process. Grain Belt Express provided evidence that it can efficiently manage and supervise the construction of the Project. Its management team has significant



experience with large transmission projects like this one. Invenergy Transmission has a long track record of constructing transmission lines nationally and internationally. Grain Belt Express has the contractor and supplier relationships necessary to construct this Project.

The Commission finds that Grain Belt Express has made the required showing under Section 8-406.1(f)(2).

**D. Section 8-406.1(f)(3) – Capability to Finance the Construction of the Project without Significant Adverse Financial Consequences**

**1. Grain Belt Express' Position**

Grain Belt Express states that it is capable of financing the construction of the Project without significant adverse financial consequences to Grain Belt Express or its customers, as specified by Section 8-406.1(f)(3) of the Act. Grain Belt Express explains that its management team has substantial experience in financing large projects. Grain Belt Express witness Sane testified that he has been involved with financing projects totaling approximately \$5 billion. Tr. at 148. He testified that Invenergy Renewables has built the largest wind farm and the largest solar farm at the time. Tr. at 150. The Company also notes that Grain Belt Express witness Shine testified that she has assisted with over \$1 billion in construction financing. GBX Ex. 4.0 at 1. Ms. Shine's debt financing for a project in El Salvador, alone, was close to \$1 billion. Tr. at 305–306.

Grain Belt Express explains that Invenergy Transmission and its affiliates have developed over 4,000 miles of transmission and collection lines, 88 substations, 96 generator step-up transformers and over 5,000 pad mount transformers over the past 20 years. GBX App. at 57. This is in addition to developing over 191 large-scale clean power projects in the United States and globally, totaling 30 GW and representing \$47 billion in completed transactions. *Id.* Through these relationships, Grain Belt Express states that Invenergy Transmission will have access to significant amounts of expertise and capital. *Id.* Grain Belt Express further states that Invenergy Transmission's financing relationships include such institutions as Wells Fargo, MUFG, GE Capital, JP Morgan, Santander, Morgan Stanley, Natixis, Bank of America, and Rabobank. GBX Ex. 4.0 at 5.

Grain Belt Express calculates that the projected capital expenditure required to construct the total Project and place it into operation is approximately \$4.95 billion (not including network upgrades). GBX Ex. 4.0 at 6; Tr. at 275. According to Grain Belt Express, the projected cost to construct Phase II of the Project and place it into operation is approximately \$1.43 billion (not including network upgrades). GBX Ex. 4.0 at 6. Grain Belt Express states that it is a special purpose vehicle established to construct, own, and operate the Project. *Id.* at 11. Grain Belt Express will finance on a "project-finance basis." Tr. at 128-129, 343–344. Grain Belt Express explains that this is a typical structure in the energy infrastructure industry. Tr. at 129. Once the Project reaches an advanced stage of development and licensing, Grain Belt Express states that it can enter into project-specific financing arrangements with investors and lenders to secure the capital needed to complete development and construction of the Project and place it into operation. GBX Ex. 4.0 at 5. Grain Belt Express further states that project-finance lenders generally prefer developers to have all necessary permits, have procured any

remaining financial commitments beyond the lenders' funding to complete construction, and have a high degree of certainty on budget and timeline. *Id.* at 11.

Grain Belt Express states that the financing process really starts in earnest once customer contracts are executed (which requires a route), supply agreements are executed, and site control is obtained. Tr. at 290–291, 298–299. At that stage, according to Grain Belt Express, developers of wind and solar generation facilities and other potential customers of the transmission line are willing to enter into commercial agreements for an undivided interest (purchase or lease) or long-term contracts for transmission capacity on the Project, and Grain Belt Express will enter into such contracts with interested subscribers that satisfy necessary creditworthiness and other requirements. GBX App. at 57. Grain Belt Express states that it will then raise debt capital using the aforementioned contracts as security for the debt. GBX Ex. 4.0 at 6. Grain Belt Express further states that it anticipates financing approximately 65 to 80% of the project costs through debt, with the debt being funded through the Department of Energy or commercial banks, including those listed institutions above. Tr. at 284, 289–290.

Grain Belt Express states that recent experience shows that significant amounts of liquidity exist in the capital markets for transmission projects that have reached an advanced stage of development. GBX Ex. 4.0 at 6. The capital markets have a substantial history of supporting transmission projects, including merchant projects, and other infrastructure projects, through both debt financings (on a project finance basis) and equity investments. *Id.* Grain Belt Express explains that numerous institutional lenders and investors have provided capital to transmission projects and other infrastructure projects and demonstrate continued interest in this sector. *Id.* at 6–7. Invenergy Transmission further explains that it has developed relationships with many of the major lenders and investors that have been involved in financing transmission projects, which will directly benefit Grain Belt Express. *Id.* at 7.

Grain Belt Express states that the balance of project costs will be provided in some form of equity, which includes equity that Invenergy Renewables Holdings has spent to date (roughly \$60 million). Tr. at 246, 285, 287–288. Invenergy Renewables Holdings—an operating company with billions of dollars in assets—will continue to provide funding to the Project as it approaches construction and until it can be financed. Tr. at 125–126, 128–129.

In addition to the experience and relationships of the management team for Grain Belt Express and the financial backing of its affiliated company, Grain Belt Express is also agreeing to a financing condition recommended by Staff witness McNally (“Revised Financing Condition”) set forth in Appendix B of this Order. GBX Ex. 4.4 at 2; Staff Ex 3.0 at 5.

Grain Belt Express concurs with the Staff’s response to the Landowner Alliance’s position, as set forth below. The Company also countered the Landowner Alliance’s assertion that Grain Belt Express’ request for a waiver of the 60-day negotiation period requirement with MISO indicated an inability to pay by pointing out the language below from the FERC order granting the waiver request:

MISO notes that Grain Belt has satisfied the Commission's waiver criteria in the instant case. MISO states that Grain Belt acted in good faith by timely bringing its concerns to MISO's attention. MISO also notes that the waiver request appears to be of limited scope and is designed to address a concrete problem faced by Grain Belt, as it involves one prospective deadline that will be extended by approximately three to four months according to MISO's estimates. MISO agrees with Grain Belt that it would be reasonable for the Attachment X, section 11.2 timeline to apply in this case regarding the execution and filing of the TCA and the related construction agreements. MISO also states that it is not aware at this time of any undesirable consequences that might result from the Commission granting this waiver request but reiterates that MISO's statements in this pleading should not be interpreted as acquiescence that MHVDC connection studies and injection rights studies necessarily must be synchronized.

GBX RB at Ex. C, ¶ 23. FERC's approval coupled with this language is indicative of the reasonableness of Grain Belt Express' request.

## 2. Staff's Position

Staff notes that Section 8-406.1(f)(3) of the Act requires that prior to issuing the requested CPCN, the Commission must find "that the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers." 220 ILCS 5/8-406.1(f)(3). Staff states that GBX has satisfied this requirement, however, Staff recommends that the Commission approve its proposed Revised Financing Condition.

Staff points out that the Landowner Alliance argues that Section 8-406.1(f)(3) of the Act "requires the Commission to determine not whether the public utility *will be* capable of financing the project, but whether the public utility *is* capable of financing the project." LA IB at 42. GBX witness Shine testified that Grain Belt Express would not be able to finance the Project until it was in an "advanced stage of development." See *Id.* Because GBX is not "presently capable of financing the Project", the Landowner Alliance argues that Grain Belt Express is not capable of financing the Project, and therefore the Commission must deny its Application for a CPCN. *Id.* at 46-47.

Staff disagrees with the Landowner Alliance's assertion. Staff explains that the cardinal rule of statutory construction is to ascertain and give effect to the plain meaning of the statute. *People v. Lemons*, 191 Ill. 2d 155, 159 (2000). The most reliable indicator of legislative intent is the language of the statute. *Id.* Where that intent can be ascertained from the language of the statute, it will be given effect without resorting to other aids for construction. *Id.* In examining the statute, it must be read as a whole and all relevant parts should be considered. *People v. Lewis*, 158 Ill. 2d 386, 389 (1994).

To obtain a CPCN from the Commission, Staff further explains, an applicant must show that it is "capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers." 220 ILCS 5/8-406.1(f)(3). Staff

argues the Landowner Alliance is attempting to read an additional requirement into the statute; specifically, the Landowner Alliance would like the Commission to interpret the statute to require the applicant to demonstrate that the project is, at present, fully financed. Simply put, the statute states that the public utility *is capable* of financing the proposed construction; contrary to what the Landowner Alliance argues, “is capable” does not translate to a condition precedent to the Commission’s issuance of a CPCN. If the General Assembly required that a company seeking a CPCN under Section 8-406.1 have financing in place as a condition precedent prior to the issuance of a CPCN, it would have explicitly required that in the statute. Instead, the statute simply requires that the “public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.” 220 ILCS 5/8-406.1(f)(3). Staff argues that the Landowner Alliance’s attempt to read in additional language and conditions to the statute is contrary to the premise of statutory construction and the plain language of the statute and should be rejected. *Cf. Schultz v. Ill. Farmers Ins. Co.*, 237 Ill. 2d 391, 408 (2010) (“A court may not add provisions that are not found in a statute, nor may it depart from a statute’s plain language by reading into the law exceptions, limitations, or conditions that the legislature did not express.”).

It is Staff’s position that the imposition of the Revised Financing Condition, as Staff recommended and Grain Belt Express accepted, along with the evidence in the record that GBX is capable of financing the project, satisfies the requirements of the statute. Staff highlights that the Revised Financing Condition that it recommended states that Grain Belt Express will not install transmission facilities for the Project on easement property until such time as Grain Belt Express has obtained commitments for funds in a total amount equal to or greater than the total Project cost. GBX App. A at 1. The Revised Financing Condition ensures that Grain Belt Express cannot install transmission facilities on easement properties in Illinois until Grain Belt Express has secured sufficient debt and equity financing and financing commitments to fund the entire construction of the Project. Staff asserts that the imposition of the recommendation prevents the risk that Grain Belt Express could construct structures on easements in Illinois but have to abandon them due to insufficient funds to complete the Project. Staff Ex. 3.0 at 3-4.

The Landowner Alliance continues to mischaracterize the testimony of Mr. McNally by suggesting that his recommendation was based on a blind acceptance of the Grain Belt Express’ assertions that it could finance the project. It is important to note that there is no statutory requirement for Grain Belt Express to provide “financial documents” as requested by the Landowner Alliance. Additionally, Mr. McNally did not “just accept[] GBX’s own assertions that they could [finance the Project]...[,]” as claimed by Landowner Alliance. *Id.* at 47. Mr. McNally reviewed the record and determined that, if the Commission imposes Staff’s recommended Revised Financing Condition on Grain Belt Express, GBX would be capable of financing the proposed construction without significant adverse financial consequences for Grain Belt Express or its customers. See Staff Ex. 3.0. Because Grain Belt Express will utilize project financing and, per the Revised Financing Condition, cannot begin constructing anything until it has secured the total cost of the Project, Staff argues that the Company’s current financials are irrelevant. Further, Mr. McNally’s recommendation was based on the Commission’s finding in Docket No. 15-0277 that a similar financing condition was found adequate to satisfy Section 8-406.1(f)(3). Staff Ex. 3.0 at 4.

Notably, Staff's recommended Revised Financing Condition is identical in substance to the condition in *Rock Island Clean Line LLC*, Docket No. 12-0560 (*rev'd on other grounds, Ill. Landowners Alliance, NFP v. Ill. Commerce Comm'n*, 2016 IL App (3d) 150099) ("Rock Island"). In that docket, Commonwealth Edison Company ("ComEd") made the identical argument that the Landowner Alliance makes here: that because the applicant had "no assets or loan or equity commitments capable of financing the [] cost of the [p]roject", the applicant had failed to "demonstrate that [it] ha[d] any present capability to finance the Project", which ComEd argued that the law required. *Rock Island*, ComEd Ex. 5.0 at 15.

In *Rock Island*, the Commission agreed with Staff. The Commission found that ComEd had not argued whether the applicant was capable of financing the proposed Project in the context of harm to its customers; instead, ComEd chose only to focus on whether the applicant had secured the necessary financing *to prove that it is immediately capable of paying for the project*. *Rock Island*, Order at 150 (Nov. 25, 2014) (emphasis added). The Commission found that ComEd could not simply ignore the second half of the clause in order to deem the applicant deficient in satisfying the financing requirement. *Id.* The Landowner Alliance's argument in this docket is identical to ComEd's argument that the Commission rejected in *Rock Island*.

Staff reiterates that Section 8-406.1(f)(3) does not require Grain Belt Express to be able to finance the project at present. Grain Belt Express plans to use "project financing" to finance the Project, which is typical in the energy infrastructure industry. Once the Project reaches an advanced stage of development and licensing, Grain Belt Express can enter into project-specific financing arrangements with investors and lenders to secure the capital needed to complete development and construction of the Project and place it into operation. *Id.* Project-finance lenders generally prefer developers to have all necessary permits, have procured any remaining financial commitments beyond the lenders' funding to complete construction and have a high degree of certainty on budget and timeline. *Id.*

In *Rock Island*, the Commission emphasized that flexibility is necessary for such Projects so that it can move forward under the Company's business model, while at the same time balancing the need to ensure there will be no adverse consequences to customers. *Rock Island*, Order at 150-51. The Commission found that the finance condition satisfied that criterion, noting "the compromise reached through [Rock Island's] acceptance of Staff's proposed requirement offers the flexibility necessary for a merchant transmission project to be feasible, while still operating within the parameters of our current regulatory structure." *Id.* Further, the Revised Financing Condition is identical in substance to the one adopted by the Commission in the *2015 Order*. The Commission noted that should the Company not satisfy the condition and the Project therefore did not go forward, the financial adverse consequences would be to investors. *2015 Order* at 146-49.

In an attempt to further question GBX's finances, the Landowner Alliance refers to a FERC filing by GBX. Assuming that the filing is true, accurate, and complete, the Landowner Alliance presumes that Grain Belt Express' request for an extension of a transmission connection agreement negotiation period with MISO is an "admission" that "GBX either can't or won't pay MISO" approximately \$78 million by March of 2023. Exhibit

A to the Landowner Alliance's IB is troublesome considering that this exhibit is not a part of the evidentiary record. No foundation has been laid for its admission and, more importantly, no party was provided an opportunity to respond to the exhibit. It is noteworthy that the FERC filing was made nearly a month before the evidentiary hearing, and the Landowner Alliance had ample time and opportunity to enter this exhibit into evidence. Staff asserts that this is speculation, not supported by any evidence in the record in this docket and this assertion should be rejected by the Commission. Additionally, it is also irrelevant should the Commission impose Staff's recommended Revised Financing Condition. First, if Grain Belt Express walks away from the Project if it starts to cost too much, Staff's recommended condition ensures GBX will do so without constructing a single tower or facility in Illinois. Second, if Grain Belt Express' financial situation is as dire as the Landowner Alliance suggests, it will be unable to secure the project financing necessary for the Project from the start, and construction will not occur.

In *Rock Island*, the Commission emphasized that flexibility is necessary for merchant transmission line projects so that the projects can move forward under the Company's business model, while at the same time balancing the need to ensure there will be no adverse consequences, so that the statutory requirements are met. *Rock Island* Order at 151. Staff's recommended Revised Financing Condition offers the flexibility necessary for a merchant transmission project to be feasible while still operating within the parameters of the current regulatory regime.

For these reasons, Staff recommends the Commission: (1) approve Staff's Revised Financing Condition that "requires the Company to have financing in place for the entirety of the Project before beginning construction of Phase II of the Project"; and (2) find that Grain Belt Express satisfies the requirements of Section 8-406.1(f)(3) of the Act. Staff Ex. 3.0 at 4-6.

### **3. Landowner Alliance's Position**

The Landowner Alliance's position is that Grain Belt Express failed to show it is capable of financing the Project as is required by Section 8-406.1(f)(3) of the Act. 220 ILCS 5/8-406.1(f)(3). To satisfy Section 8-406.1(f)(3), the applicant must show that it is capable of financing the construction of the proposed project. *Id.* This clear and unambiguous language requires the Commission to determine whether the applicant is capable of financing the project prior to any CPCN being issued. *Id.* In other words, the applicant's capability of financing the project is a condition precedent to the Commission's issuance of a CPCN. *Id.*

The Landowner Alliance argues that GBX's proposal to finance the Project does not meet the criteria of Section 8.406.1(f)(3). See *id.* Grain Belt Express indicates that it will be able to obtain financing for the Project once customer contracts are executed, supply agreements are executed, and site control is obtained. Grain Belt Express anticipates financing approximately 65% - 80% of the Project through debt, with the debt being funded through the Department of Energy or commercial banks. However, at this time, GBX has no customers for the Project and produced no commitments from the Department of Energy or any financial institution to provide financing of the Project. Tr. at 354-58. Rather, Grain Belt Express requests that the Commission find that GBX is capable of financing the Project based on its assertion that it will be able to obtain

financing from unknown entities in the future. In the meantime, Grain Belt Express indicates that its parent company, Invenergy Renewables Holdings LLC, will continue to provide funding for the Project.

According to the Landowner Alliance, neither of the assertions made by GBX (that GBX can obtain financing at some unknown point in the future and Invenergy Renewables Holdings LLC can pay the costs until then) is supported by actual evidence in the record. The Landowner Alliance contends that Grain Belt Express' plan of obtaining financing in the future after it enters into customer agreements (with unknown parties and unknown terms) with no certainty nor commitments from any potential customers or lenders does not satisfy the present financing capability criteria of Section 8-406.1(f)(3). 220 ILCS 5/8-406.1(f)(3). The Landowner Alliance posits that a future unsupported and uncertain promise does not comply with the requirements of Section 8-406.1(f)(3). *Id.*

The Landowner Alliance asserts that GBX's claim that its ultimate parent company, Invenergy Renewables Holdings LLC, can and will provide funding for the Project until GBX can secure financing is equally unsupported by actual evidence. Initially, the Landowner Alliance points out that Invenergy Renewables Holdings LLC is not a party to this proceeding and thus, not bound to any to-be-issued CPCN. Further, according to the Landowner Alliance, the only evidence provided by Grain Belt Express concerning the financial health of Invenergy Renewables Holdings LLC is the testimony of GBX witness Sane (who is not employed by Invenergy Renewables Holdings) in which Mr. Sane claims that Invenergy Renewables Holdings is "an operating company with billions of dollars in assets." Tr. at 125-26. However, no documents were submitted by GBX to actually prove the financial health of either GBX or Invenergy Renewables Holdings LLC. Grain Belt Express witness Shine confirmed that Invenergy Renewables Holdings LLC maintains financial documents such as annual profit and loss statement, a balance sheet, and a cash flow statement that would demonstrate the financial health of this entity as of December 31, 2021 but admitted that said information was not presented by GBX in this matter. Tr. at 320-23.

The Landowner Alliance emphasizes that Grain Belt Express is once again making the assertion that it will have access to necessary funds from its alleged financially secure parent company, but instead of providing the evidence to support this assertion, it merely asks that the Commission take its word for it. The Landowner Alliance argues that GBX's refusal and/or failure to provide relevant financial documents in its control creates a presumption that the evidence, if produced, would have been adverse to the party. See *Beery v. Breed*, 311 Ill.App.3d 469, 474-78 (2d Dist. 1941). This presumption, according to the Landowner Alliance, further supports the conclusion that Grain Belt Express has not demonstrated that it can currently finance the Project.

Finally, the Landowner Alliance asserts that the financing condition proposed by GBX, as revised through the testimony of Staff witness McNally, does not bolster the financing plan by GBX to allow it to fulfill the requirements of Section 8-406.1(f)(3). Staff Ex. 3.0 at 5-6. The Landowner Alliance claims that the language included in the revised financing condition only further solidifies that Grain Belt Express has not met its burden of showing it is currently able to finance the Project. *Id.* According to the Landowner Alliance, if Grain Belt Express was capable of currently financing the Project, it should be able to provide the documentation set forth in subsections (a) through (d) in the financing

condition as of the time of its application. *Id.* This is the information necessary to satisfy Section 8-406.1(f)(3), and Grain Belt Express is asking that it be allowed to provide this information at some unknown time in the future after the CPCN is issued. The Landowner Alliance argues that the proposed delay in providing the necessary information is simply not the process required by Section 8-406.1(f)(3). *Id.*

In supporting their argument, the Landowner Alliance notes the admission by Staff witness McNally that the financing condition proposed by Grain Belt Express (as revised by him) permits GBX to obtain a CPCN three to five years before it has actually demonstrated it can finance the Project. Tr. at 424-25. Equally concerning to the Landowner Alliance was Mr. McNally's lack of understanding regarding the process that must be followed by GBX to comply with the financing condition, although Mr. McNally did confirm that there will not be another hearing permitted after the required documentation is submitted. Tr. at 411-13, 415-20. Thus, the Landowner Alliance argues that the proposed financing condition not only fails to comply with the timing requirements of Section 8-406.1(f)(3), but it also suggests a procedure that prevents intervenors such as the Landowner Alliance from challenging the financing documentation when Grain Belt Express finally submits said documentation. The Landowner Alliance posits that such a condition does not meet the pre-certificate issuance requirements of Section 8-406.1(f)(3).

The Landowner Alliance argues that Grain Belt Express should not be allowed to rely upon a financing condition that delays providing the required evidence to demonstrate its ability to finance the Project until after it is granted the authority to construct the Project. Nevertheless, if the Commission entertains GBX's requested financing condition, the Landowner Alliance requests that language be added to the condition that prevents Grain Belt Express from contacting landowners to negotiate easements until after the financing condition has been met. The Landowner Alliance asserts that GBX should not be allowed to request easements from landowners until it is actually capable of financing the Project.

Further, because Grain Belt Express is asking that it be permitted to begin construction within five years of the issuance of the CPCN (which is beyond the two-year timeframe permitted under Section 8-406(f) of the Act regarding the effectiveness of the authority granted under a CPCN), the Landowner Alliance requests a finding that the CPCN will be rescinded if Grain Belt Express has not complied with the financing condition within two years from the date the CPCN is granted. See 220 ILCS 5/8-406. Section 8-406(f) provides a set two-year timeframe for the authority granted under a CPCN, and the Landowner Alliance contends that GBX should not be permitted to extend the cloud on the title for the Illinois properties impacted by the Project if it cannot obtain financing within this timeframe. *Id.* In fact, pursuant to the time limit set forth in Section 8-406(f), the Landowner Alliance points out that the Commission does not have the authority to issue the five-year CPCN requested by GBX. *Id.*

For the reasons summarized above, the Landowner Alliance concludes that Grain Belt Express has not demonstrated that it is currently capable of financing the Project. The Landowner Alliance claims that the financing plan, including the financing condition, proposed by GBX confirms this conclusion. The Commission must determine whether GBX has complied with Section 8-406.1(f)(3) before a CPCN can be granted. 220 ILCS 5/8-406.1(f)(3). Because Grain Belt Express has failed to prove that it is currently able to



finance the Project, the Landowner Alliance argues that the Commission must deny Grain Belt Express' Application.

#### **4. Commission Analysis and Conclusion**

Based on its review of the Application, the evidentiary record, and the parties' arguments on this issue, the Commission concludes that Grain Belt Express has demonstrated that it is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. The Commission notes that Grain Belt Express plans to use a project financing approach and has established a single purpose legal entity that will own the facility to be financed and has no other assets, liabilities, or businesses. The Commission relies on the testimony of Grain Belt Express and Staff that the project financing approach is commonly used in the energy and infrastructure industries. There is ample evidence of the need for the Project and the interest of renewable energy developers to support the conclusion that Grain Belt Express will be able to enter into sufficient transmission contracts to support the project financing.

The Commission concurs with Staff that with Grain Belt Express agreeing to be bound by the Revised Financing Condition, the Applicant has satisfied this section of the statute. Section 8-406.1(f)(3) must be considered in its entirety: that the applicant "is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers." The Commission notes that the applicant must be capable of raising the necessary capital without adverse financial consequences. The Commission points out that this type of financing condition has been approved by the Commission in the past. The Revised Financing Condition prevents adverse financial consequences, specifically, that Grain Belt Express would commence construction but be unable to complete it due to insufficient funding. If Grain Belt Express were unable to satisfy the Revised Financing Condition and therefore fails to construct the Project, the only parties experiencing adverse financial consequences would be Grain Belt Express investors. The Commission notes Grain Belt Express' commitment that if the Project is terminated, all easements that have been acquired will be released.

Therefore, the Commission finds that Grain Belt Express satisfies Section 8-406.1(f)(3) and Staff's recommended Revised Financing Condition is adopted. The Revised Financing Condition is attached to the Order as Appendix B.

#### **E. Additional Proposed Conditions for the Certificate**

##### **1. Grain Belt Express' Position**

No party proposed additional conditions, however, Grain Belt Express proposed two conditions concerning cost allocation and an interconnection agreement requirement.

Grain Belt Express states that, as a merchant transmission project, it will recover the costs of constructing and operating the Project directly through its charges to the transmission service customers that purchase transmission capacity and service on the Project. Grain Belt Express states that it does not plan to attempt to recover the costs of constructing and operating the Project as a traditional public utility through RTO cost allocation processes or through other mechanisms that would spread and recover the costs from the general body of retail ratepayers in an RTO footprint or the service areas of one or more utilities (e.g., by recovering the costs from all ratepayers through an RTO

transmission tariff). See GBX Ex. 1.0 at 18–19. Grain Belt Express asserts that it is willing to formally agree not to allocate the development, construction, and operation costs of the Project to Illinois ratepayers via an RTO transmission tariff without first seeking additional approval from the Commission to do so.

Grain Belt Express also states that the western Kansas converter station of the Project will be interconnected with the transmission grid of the SPP RTO, and the Project will have interconnection and delivery points with the AECI and MISO transmission grids in northeast Missouri and with the PJM transmission grid in western Indiana. GBX App. at 25-26. The purpose of these interconnection processes is to ensure that the Project's interconnections with the existing transmission grids comply with all local, regional, and federal reliability standards and requirements. Grain Belt Express must enter into definitive interconnection agreements with SPP, AECI, MISO before it energizes Phase I of the Project, and additionally with PJM before it energizes Phase II of the Project. Grain Belt Express asserts that it is willing to commit that it will not energize Phase I or Phase II of the Project until it has obtained the necessary interconnection agreements for those respective phases. Accordingly, Grain Belt Express is willing to have the following requirement included in this Order:

Prior to energizing Phase I or Phase II of the Project, Grain Belt Express will fully comply with the applicable interconnection requirements of, and sign all necessary interconnection agreements with SPP, AECI, and MISO before energizing Phase I of the Project, and additionally with PJM before energizing Phase II of the Project.

## **2. Landowner Alliance's Position**

The Landowner Alliance generally objects to other proposed conditions, however it does not specifically address the Cost Allocation Condition or the Interconnection Agreement Conditions.

## **3. Commission Analysis and Conclusion**

As the Commission found in 2015, the Commission has the authority to enforce the Cost Allocation Condition. The Commission has the continuing jurisdiction over any CPCN that is granted and within the authority of the Commission, it may rescind a CPCN if a change in facts or circumstances warrants rescission. Grain Belt Express does not have a right to recover its costs through RTO regional cost allocation. As such, the Commission will incorporate a Cost Allocation Condition whereby Grain Belt Express will have to both obtain permission from the Commission to utilize cost allocation to recover costs from Illinois retail electricity ratepayers and to demonstrate to the applicable RTO or RTOs that the benefits of the Project were such that costs should be allocated to all customers through the RTO's transmission tariff.

The Commission also finds that the following Interconnection Agreement Condition is consistent with the Commission's jurisdiction and the Commission adopts the condition set forth below:

Prior to energizing Phase I or Phase II of the Project, Grain Belt Express will fully comply with the applicable interconnection requirements of, and sign all necessary

interconnection agreements with, SPP, AECI, MISO before energizing Phase I of the Project, and additionally with PJM before energizing Phase II of the Project.

## **V. PROPOSED ROUTE OF THE PROJECT IN ILLINOIS AND LAND ACQUISITION**

### **A. Description and Development of the Proposed Route**

#### **1. Grain Belt Express' Position**

Grain Belt Express states that in Illinois, the Project will consist of two different transmission line sections: (1) the HVDC section (the "DC Section") from the Mississippi River crossing in Pike County to the eastern converter station located near West Union in Clark County, Illinois, and (2) the Alternating Current section (the "AC Section") from the eastern converter station into Indiana to terminate at AEP's Sullivan/Breed substation in Sullivan County, Indiana. The DC Section, in its entirety, will consist of an approximately  $\pm 600$  kV HVDC transmission line that runs from the western converter station in Ford County, Kansas to the eastern converter station near West Union in Clark County, Illinois. GBX App. at 3. The DC Section will span approximately 207 miles in Illinois, entering Illinois at the Mississippi River crossing in Pike County. From the Mississippi River crossing, the line will travel in a general southeasterly direction through Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark Counties. The DC Section will end at the eastern converter station near West Union in Clark County, Illinois. The AC Section will consist of one double circuit 345 kV AC transmission line that will run from the eastern converter station to the Sullivan Substation in southwestern Indiana. The line will then run approximately 2 miles in Indiana before terminating at the Sullivan Substation. GBX Ex. 2.0 at 5-6.

Grain Belt Express states that as part of the Project development process it prepared detailed descriptions of both a primary right-of-way (route) and an alternate right-of-way (route), as required by Section 8-406.1(a)(1)(B)(viii) of the Act. These routes have been defined and referred to in the Application, attachments and exhibits thereto as, respectively, the Proposed Route and the Alternate Route. GBX App., Attach. 4 & 5. The Proposed Route and the Alternate Route are also referred to as the "2022 Proposed Route" and the "2022 Alternate Route," respectively. Attachment 4 to the Application contains the legal description of the Proposed Route in Illinois of the DC Section from the Mississippi River to the converter station in Clark County, Illinois and of the AC Section from the converter station to the Illinois-Indiana border. Attachment 4 also contains the legal description of the Alternate Route's DC Section from the Mississippi River to the converter station in Clark County, Illinois and AC Section from the converter station to the Illinois-Indiana border. GBX App., Attach. 4.

Attachment 5 to the Application is a summary-level set of maps depicting the Proposed Route and the Alternate Route for the Project for both the DC Section and the AC Section. Attachment 6 to the Application contains, as required by the Commission's regulations at 83 Ill. Adm. Code 305.50, a map (plat) of the Proposed Route and the Alternate Route showing the following information:

- the location of the transmission line along the entire length of the Proposed Route in Illinois;

- the locations of railroad tracks, electric supply lines, and communications lines that will be crossed by the Proposed Route;
- the locations of all other railroads, electric supply lines, and communications lines located within one-half mile of the Proposed Route; and
- the names of the entities owning or operating the railroads, electric supply lines, and communications lines (items (ii) and (iii) above) shown on the map.

Grain Belt Express explains that the Project routes were developed through a detailed and comprehensive process which spanned over a decade. Beginning in 2012, Grain Belt Express, via its previous owner, conducted an extensive, methodical, multi-level public outreach and information collection process to determine the 2015 Proposed Route and the 2015 Alternate Route for the Project in Illinois. GBX App. at 42-43. The route determination process involved an extensive governmental and public outreach process to engage as many stakeholders as possible, provide them with information on the Project and obtain their input relating to the route development process and related matters (including permitting requirements and other concerns of federal and state departments and agencies and of local governments). It also involved identification and investigation of a large number of possible routes and route segments to arrive at the 2015 Proposed Route and the 2015 Alternate Route.

Grain Belt Express states that the 2015 routing process began with the identification of a study area from the Mississippi River crossing point to the planned converter station location in Clark County and continuing from there to the Illinois-Indiana border. *Id.* Numerous Conceptual Routes within the study area were identified, evaluated, and refined to arrive at a set of potential routes.

Grain Belt Express further states that the 2015 routing process developed both general routing guidelines and technical guidelines that set forth principles to guide the development of alignments considered in the route selection study. GBX Ex. 7.2 at 28–29. The general guidelines established a set of principles used to guide the development of alignments with respect to area land uses, sensitive features and considerations of economic reasonableness. *Id.* The general guidelines also included maximizing distance and impacts on residences, schools, hospitals, and other community facilities; avoiding the need for removing structures; minimizing agricultural, environmental, cultural and visual impacts; and minimizing route length, circuitry, cost and special design requirements. *Id.* The technical guidelines provide limitations related to the physical considerations, design, ROW requirements or reliability concerns for planned Project infrastructure. *Id.* at 29. The technical guidelines included concerns related to minimizing the crossing of other transmission lines; maintaining a safe distance of separation when paralleling transmission lines; minimizing turning angles and placing structures on sloping soils; and maintaining a safe operational distance from existing wind turbines. *Id.* at 28–29.

The 2015 routing process also identified certain routing constraints, which are areas that should be avoided to the extent feasible. *Id.* at 31. These routing constraints were further broken down into large-area constraints and point-specific constraints. *Id.* Large-area constraints included urban areas; federal and state lands; conservation lands;

areas near airports and airstrips; large recreational sites; and large lakes, reservoirs, and wetlands. *Id.* Point-specific constraints include things such as residences; commercial buildings; quarries; irrigation facilities; specific historic buildings and sites; specific sites of threatened, endangered or rare species; and small wetlands or waterbodies. *Id.* at 31–32.

Additionally, the 2015 routing process considered various “routing opportunities”, which are locations where the proposed transmission line might be located with less disruption to surrounding land uses and the natural and cultural environment. *Id.* at 32. Routing opportunities typically included other linear infrastructure and utility corridors, such as existing electric and gas transmission networks, rail lines and roads, along with reclaimed lands or unused portions of industrial or commercial areas. *Id.* Grain Belt Express explains that while paralleling existing linear infrastructure can reduce land use and visual impacts, utilizing such an opportunity may not always be desirable for a number of reasons. *Id.* at 32–33. For example, a route that parallels a roadway is likely to have a greater impact on residences, as residences are generally located adjacent to and accessed via roads. *Id.* at 33. Accordingly, while certain opportunities were explored, they were not always able to be utilized.

This 2015 routing process led to the identification of a set of route segments, referred to as “Alternative Routes”, for the direct current portion of the transmission line in Illinois and continuing for the alternating current portion of the transmission line from the anticipated Clark County converter station site to the Illinois-Indiana border. GBX App. at 42-43. These Alternative Routes were evaluated in detail using an extensive set of routing criteria. *Id.* The result of this process was the identification of the 2015 Proposed Route and the 2015 Alternate Route of the Project in Illinois, which Grain Belt Express Clean Line LLC presented in its application to the Commission in 2015. *Id.*

Grain Belt Express notes that the Commission approved the 2015 Proposed Route with one significant modification referred to as the “Rex Encore Modification” in Pike County, which was proposed at the time by two landowners who intervened in the 2015 proceeding. Grain Belt Express refers to the route the Commission approved in 2015, including the Rex Encore Modification, as the “2015 Approved Route.”

For this docket, Grain Belt Express developed the Proposed Route and Alternate Route of the Project through a detailed and comprehensive process conducted by a multidisciplinary routing team comprised of representatives from Grain Belt Express and WSP, HDR, Inc., and YIMBY Public Affairs, LLC (“2022 Routing Team”). GBX Ex. 7.0 at 6. Grain Belt Express further notes that the 2022 Routing Team members have experience in public outreach and communication, transmission line route selection, natural resource impact assessment, land use assessment and planning, cultural resource identification and assessment, impact mitigation, transmission line engineering and design and construction. GBX Ex. 7.0 at 6. Appendix A of Grain Belt Express Exhibit 7.4 lists the 2022 Routing Team members, their business affiliation, and their respective areas of responsibility. GBX Ex. 7.0 at 6.

According to Grain Belt Express, Exhibit 7.3 (the Grain Belt Express 2022 Illinois Route Selection Study Addendum (“2022 Routing Study Addendum”)) explains in detail the processes used to develop the 2022 Proposed Route and 2022 Alternate Route, the

factors considered in determining these routes and the basis for selection of the 2022 Proposed Route and the 2022 Alternate Route. GBX App. at 44. The 2022 Routing Study Addendum incorporates the 2015 Illinois Route Selection Study submitted with the Grain Belt Express Clean Line 2015 Application and incorporates the iterative process used to determine the 2015 Proposed Route and 2015 Alternate Route. *Id.* Grain Belt Express explains that after the significant outreach and study in support, as described in the testimony of Brad Pnazek and James G. Puckett, the 2022 Routing Team made several minor revisions to the 2015 Proposed Route and the 2015 Alternate Route to develop the 2022 Proposed Route and the 2022 Alternate Route described in the 2022 Routing Study Addendum. Tr. at 696-698; GBX App. at 44.

Three primary sources of information were used in revising the 2015 Proposed Route: (1) the Commission's analysis approving the 2015 Approved Route; (2) updated datasets used for the Project (including aerial imagery and information on state-owned conservation lands); and (3) discussions with individual landowners along the 2015 Approved Route during the 2015 and 2022 routing process. Tr. at 696-698; GBX Ex. 7.0 at 11. According to Grain Belt Express, the majority of revisions to the 2015 Proposed Route and 2015 Alternate Route involve a small number of landowners and reduce potential impacts from routing the transmission line on individual properties and resources. GBX Ex. 7.0 at 11. Those revisions to the 2015 Proposed Route are summarized below and are set out in detail in the 2022 Routing Selection Study Addendum:

(a) **Reroute A-1** incorporates the "Rex Encore Modification," which is in Pike County. This modification was adopted to the 2015 Proposed Route by the Commission in its 2015 Approved Route in response to suggestions made by intervening impacted landowners who advised that the modification would move the 2015 Proposed Route closer to the edge of their parcels and would reduce impacts to managed wildlife habitat and farming operations. The Rex Encore Modification adopted in the 2022 Proposed Route is consistent with the modification adopted in the 2015 Approved Route. Because it is a modification to the 2015 Proposed Route, it is identified as Reroute A-1 to the 2015 Proposed Route in the 2022 Route Selection Study.

(b) **Reroute A-2** is directly east of the Rex Encore Modification in Pike County. Impacted landowners communicated during the public meeting process that they preferred this modification because it sites the Proposed Route to the northern edge of their properties instead of the southern edge of their properties and would have a lower impact on their farming and recreational activities.

(c) **Reroute A-3** is south of Glasgow. The impacted landowner suggested the modification to reduce impacts to relatively contiguous forested areas and proximity to a residence. The Routing Team determined that the proposed modification would require approximately 30% less tree clearing and have a significantly greater length parallel to parcel boundaries. The modification better preserves the intact forested areas,

reduces tree clearing, increases distance from a neighboring residence and avoids crossing a pond near that residence.

(d) **Reroute A-4** is about seven miles east of Roodhouse. The impacted landowner requested the modification to reduce tree clearing in prime recreational forest and to take advantage of higher ground on that part of their parcel. The Routing Team agreed with this suggestion and also determined that the modification would move the Proposed Route further from a residence and closer to parcel boundaries.

(e) **Reroute A-5** is about a mile northeast of Scottville. The Routing Team identified a new gas pipeline infrastructure potentially interfering with the path of the 2015 Proposed Route. Further, the impacted landowner suggested a minor modification to structure placement that would have a lower impact on their agricultural operations. The Routing Team developed this modification to avoid potential impacts with the gas pipeline infrastructure and to reduce overall impacts to the agricultural operations identified by the landowners. The modification additionally aligns with more parcel boundaries and avoids a turn that exceeded 90 degrees and may not have been feasible from an engineering perspective.

(f) **Reroute A-6** is approximately 5.5 miles west of Virden in Macoupin County. The Routing Team developed this modification to increase distance to a residence from 260 feet to 420 feet, reduce overall tree clearing by over 60% and to preserve the existing visual screening provided by trees between that residence and the Proposed Route.

(g) **Reroute A-7** is south of Virden. This modification straightens the alignment, eliminates one mile of the Proposed Route crossing agricultural fields, has nearly its entire length along parcel boundaries, is 14% shorter and has two fewer heavy angles.

(h) **Reroute A-8** is in Cumberland County. Two impacted landowners suggested this modification to even out the distance of the Proposed Route traversing between their two residences, preserve a large old tree with sentimental value and slightly reduce overall tree clearing.

(i) **Reroute A-9** is approximately five miles southeast of Casey in Clark County. This modification shifts the Proposed Route south by about .25 miles for a length of 1.5 miles before angling back to the north and rejoining the 2015 Proposed Route. This modification avoids crossing a large parcel that is in the permanent Wetland Reserve Program. This modification also has more access points, is directly adjacent to a road and has approximately 33% less tree clearing.

*Id.*

Grain Belt Express acknowledges that the development process did result in certain small necessary overlaps between the Proposed Route and Alternate Route. Grain Belt Express explains that the 2022 Alternate Route overlaps the 2022 Proposed Route minimally in Pike and Scott Counties to: (1) reduce impacts to landowners; (2)

avoid concentrated areas of residences and municipalities; and (3) share a known crossing of the Illinois River with six existing gas pipelines (which reduces impacts to the Illinois River and surrounding bluffs and floodplains and minimizes risk of impacts to archeological resources). *Id.* at 19. In sum, the 2022 Alternate Route overlaps a total of only 16.3 miles with the 2022 Proposed Route, which comprises a very small portion (about 7.6%) of the total 2022 Alternate Route alignment. *Id.*

The overlap occurs entirely in the Reroute B-1 modification by relocating the 2022 Alternate Route north of the 2022 Primary Route. *Id.* As explained by Grain Belt Express, this Route Modification significantly minimizes impacts to forested, environmentally sensitive and recreational areas in southern Pike County, which consist of more densely forested areas along the Mississippi River bluffs. *Id.*

Based on sound routing principals, Grain Belt Express deemed the route overlap necessary in three specific areas to minimize impacts. *Id.* The first area of overlap is required at the crossing of the Mississippi River from Missouri into Illinois. *Id.* Both Proposed and Alternate Routes traverse the river with a structure on Jim Young Island and proceed into Pike County for approximately 2,180 feet from the shore of the river, at which point the Proposed and Alternate Routes diverge. *Id.*; Tr. at 701–705. This overlap is necessary because the transmission line must enter Illinois at a point certain and will utilize the Jim Young Island to traverse the Mississippi River. *Id.*; Tr. at 699–705. The transmission line then must proceed across Jim Young Chute Road in a northeasterly direction and to a location where it can angle eastward. GBX Ex. 7.0 at 19. At that angle point, the lines diverge. *Id.*

Grain Belt Express explains the second overlap is necessary to circumvent the City of Pittsfield, Illinois (“City”) wherein the west-to-east path of the Alternate Route requires that it drop south and converge with the Proposed Route just west of the City and east of U.S. Route 54. *Id.* at 20. The Proposed and Alternate Routes overlap for about 4.1 miles to circumvent the City to the south until a point just south of the City, where the Proposed Route angles southeast and the Alternate Route proceeds east and then slightly northeast as it circles around the City. *Id.* This overlap is necessary for the Alternate Route to avoid the densely populated area in and around the City, as it was determined that traversing to the north of the City was not a viable option as it is more densely populated and has an airport and a lake (Lake Pittsfield) that would interfere with transmission line siting, requiring significantly more mileage and hard angles. *Id.*

Grain Belt Express explains the third overlap is necessary to circumvent areas near Milton and Glasgow and to cross the Illinois River. *Id.* Going west to east, the Proposed and Alternate Routes converge southwest of Milton on the west side of the Illinois River, traverse south of Milton and across the Illinois River, traverse south of Glasgow on the east side of the river, and then diverge to the southeast of Glasgow. *Id.* The Proposed and Alternate Routes overlap for 11.4 miles. *Id.* This overlap is necessary for the Alternate Route to avoid the wooded bluffs of the Illinois River and to cross the Illinois River at a known crossing point (shared with the Proposed Route) at an established utility corridor, sharing the crossing of the river with six gas pipelines. *Id.* This shared crossing minimizes impacts to the river, the river bluffs, and floodplain and ensures that the areas have already been surveyed for archaeological resources, which



is an important factor to consider all along the Illinois River floodplain. *Id.* The overlap is also necessary to minimize impacts to Milton, which the Alternate Route avoids. *Id.*

To the east of the river after the crossing, the Proposed and Alternate Routes overlap to minimize impacts to the Illinois River floodplain and bluffs, to stay south of an airport and to stay south of Glasgow. *Id.* at 21. Just southeast of Glasgow, the routes diverge with the Alternate Route dropping south of White Hall into Greene County before traversing east and the Proposed Route continuing east on the north side of Barrow. *Id.*

To avoid any overlap at the river crossing, the Alternate Route would likely need to traverse north of Milton, through the more heavily wooded river bluffs west of the river, cross the river at a site with unknown potential environmental or archaeological impacts or engineering challenges, continue east after the crossing through a wider swath of the floodplain before traversing south and splitting the distance between Glasgow and Alsey. *Id.* This would add mileage, increase impacts to landowners and increase uncertainty in engineering. *Id.* It would also require two utility crossings of the Illinois River within approximately three miles of each other. *Id.*

According to Grain Belt Express, the route overlaps are minimal in the context of the entire route in Illinois and are consistent with the statutory mandate that Grain Belt Express present a “primary right-of-way and one or more alternate rights-of-way for the Project as part of the filing” under Section 8-406.1(a)(1)(viii). However, Grain Belt Express states if this Commission requires a showing of good cause under Section 8-406.1(a)(1)(viii) for the overlaps described above, that showing of good cause is met. *Id.*

Grain Belt Express states that there are no viable alternate routes within the right-of-way width necessary to accommodate the Project in those three areas identified above. GBX Ex. 7.0 at 21. Any other alternates would significantly impact environmental and recreational resources, require multiple utility crossings of the Illinois River (impacting the river bluffs and floodplain), may displace residences, and would require excessive line length or engineering challenges. *Id.* According to Grain Belt Express, the Alternate Route, even with the overlap of the Proposed Route, is the most viable and rational alternate to the Proposed Route. *Id.* In addition, Grain Belt Express points out it is filing its Application as a Qualified Project and, as previously mentioned, new statutory direction indicates that to do so, the route should pass through Scott County, which the 2015 Alternate Route did not. *Id.*

In sum, it is Grain Belt Express’ position that this decade-long, detailed, and comprehensive routing process ultimately led to the selection of the Proposed Route and Alternate Route in this docket. These routes, and the minimal associated overlap, are the best routing options for the Project.

## **2. Staff’s Position**

Grain Belt Express provided a series of maps that depict the Proposed Route and the Alternate Route. GBX Ex. 7.5. Grain Belt Express also provided legal descriptions of the Proposed Route and the Alternate Route. GBX Ex. 7.6. Finally, Grain Belt Express provided additional maps containing information as required by 83 Ill. Adm. Code 305.50.

GBX Ex. 7.7. Staff witness Maurer testified that Grain Belt Express has complied with Section 8-406.1(A)–(B). Staff Ex. 1.0 at 7–9.

### **3. Commission Analysis and Conclusion**

As proposed, the approximately 800-mile transmission line will originate at a converter station in Ford County, Kansas, will traverse through Kansas, Missouri, and will cross the Mississippi River near New Canton, Illinois, whereby the line will enter Illinois. From the Mississippi River crossing, the line will travel through Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark Counties for approximately 207 miles in Illinois. The line will cross the Illinois-Indiana border in Clark County and ultimately terminate at the Sullivan Substation in Sullivan County, Indiana.

The Commission notes that Grain Belt Express provided a Proposed Route and an Alternate Route as required by the Act. 220 ILCS 5/8-406.1(a)(1)(B)(viii). Grain Belt Express indicated that the Proposed Route described above was developed through a detailed and comprehensive process. The Routing Team criteria included minimizing impacts to agricultural land and existing farming activities.

Grain Belt Express' Route Study states that potential routes were revised and refined through iterative reviews, in coordination with state and federal regulatory agencies and with consideration of input from the general public. The potential routes were presented at the public meetings, and attendees were given the opportunity to express their concerns and were encouraged to submit comments. Grain Belt Express considered the input in revisions to the potential routes.

The Commission notes that Section 8-406.1(a)(1)(B)(viii) requires the applicant to identify a primary right-of-way and one or more alternate rights-of-way for the Project absent a showing of good cause. The Commission finds that Grain Belt Express has complied with this provision.

The Commission also finds that Grain Belt Express' route development process was detailed and extensive in determining and presenting the Proposed and Alternate Routes in this docket, the latter of which the Commission will analyze in the next section. The Commission determines that Grain Belt Express' presentation of the Proposed and Alternate Routes satisfies Section 8-406.1(a)(1)(A)–(B).

## **B. Selection of Proposed Route versus Alternate Route**

### **1. Grain Belt Express' Position**

Grain Belt Express states that, after completing the route development process, the Routing Team selected the Proposed Route as the preferred route for the Project in Illinois. GBX Ex. 7.3 at 33. Grain Belt Express states the Proposed Route is reasonable and sound, being derived from a robust selection process that integrated input from government agencies, local officials, and the general public into the route development analysis. GBX Ex. 7.0 at 26. Grain Belt Express also states that given the extensive nature of these efforts, the Proposed Route best minimizes the overall effect of the Project on the natural and human environments, along with historic and cultural resources, while avoiding unreasonably circuitous routes, unreasonable costs, and special design requirements. *Id.*

According to Grain Belt Express, the Proposed Route as described in the 2022 Illinois Route Study Addendum, in Attachment 4 and as depicted in Attachments 5 and 6 of the Application, best meets the overall objective of minimizing impacts on the natural environment (including wetlands and other environmentally-sensitive areas, threatened and endangered species and scenic areas) and human environment (including residences, populated areas, agricultural and mining uses and recreational areas) and on historic and cultural resources, while making the best use of existing divisions of land and other routing opportunities (such as paralleling existing transmission lines and other existing infrastructure) and avoiding costly, non-standard design and construction requirements. *Id.* at 14. In addition, the Proposed Route has a lower estimated construction cost than the Alternate Route. GBX App. at 67. Accordingly, Grain Belt Express states the Proposed Route is the best route for the Project in Illinois when all of the applicable Routing criteria are taken into consideration. GBX Ex. 7.0 at 14.

Grain Belt Express notes that Staff evaluated the twelve routing criteria (“12 criteria”) and concluded that the Proposed Route is preferable to the Alternate Route.

Accordingly, based on the record in this docket, Grain Belt Express states the Commission should approve the Proposed Route.

## 2. Staff’s Position

The Company contends that the Proposed Route best meets the overall objective of minimizing impacts on the natural environment (including wetlands and other environmentally-sensitive areas, threatened and endangered species, and scenic areas) and human environment (including residences, populated areas, agricultural and mining uses, and recreation areas), and on historic and cultural resources, while making the best use of existing divisions of land and other routing opportunities (such as paralleling existing transmission lines and other existing infrastructure) and avoiding costly, non-standard design and construction requirements. GBX Ex. 7.0 at 14.

In prior dockets, the Commission has utilized the 12 criteria for the purpose of evaluating proposed transmission routes. See *Adams Cty. Prop. Owners & Tenant Farmers v. Ill. Commerce Comm’n*, 2015 IL App (4th) 130907, ¶ 55. The 12 criteria are:

1. Length of the line;
2. Difficulty and cost of construction;
3. Difficulty and cost of operation and maintenance;
4. Environmental Impacts;
5. Impacts on historical resources;
6. Social and land use impacts;
7. Number of affected landowners and other stakeholders;
8. Proximity to homes and other structures;
9. Proximity to existing and planned development;
10. Community acceptance;
11. Visual impact; and

## 12. Presence of existing corridors.

The Commission has stated that its decision is based on the balancing of these 12 factors and any other relevant factors presented by the parties, and that no factor for consideration was inherently more important than another factor. *Id.*

Staff analyzed each factor as follows:

1. Factor 1 favors the Proposed Route as the Proposed Route is over five miles shorter.
2. Factor 2 favors the Proposed Route as the Proposed Route is estimated to be significantly less expensive to construct than the Alternate Route.
3. Factor 3 favors the Proposed Route as the Proposed Route is estimated to be significantly less expensive to operate and maintain than the Alternate Route.
4. Factor 4 favors the Proposed Route. Staff noted that the Project will displace substantial amounts of fossil fuel generation and therefore result in environmental benefits for Illinois and the broader region, although Staff could not determine if those benefits would change depending on the route approved. Staff also noted that both routes have some impact to wetlands, wildlife habitat and conservation lands. Staff considered the testimony of CCPO witness Locke, who testified that the Alternate Route would affect over 6.6 acres of her timber land.
5. Factor 5 is neutral. Both routes impact some historical resources.
6. Factor 6 relates to social and land use benefits. Staff indicated that concerns regarding tillage and drainage are addressed. Though not specified, it appears that this Factor came out neutral.
7. Factor 7 is neutral. Staff noted the difficulty in quantifying the number of affected landowners for a project this large. Although the Proposed Route will cross 70 more parcels than the Alternate Route, it is not clear whether there is a significant difference between the number of landowners and other stakeholders affected.
8. Factor 8 favors the Proposed Route. Staff notes that the Proposed Route includes 10 fewer residences within 250 feet and 22 fewer residences within 500 feet than the Alternate Route. The Proposed Route crosses five fewer miles of cropland than the Alternate Route. There are five fewer pivot irrigation crossings within 1000 feet of the Proposed Route.
9. Factor 9 favors the Proposed Route. Staff notes that Grain Belt Express made a number of modifications to accommodate planned development. Further, Intervenor Hanson Aggregates Midwest, Inc. and Greyrock, LLC testified that the Alternate Route would “have a significant detrimental impact on the Hanson Quarry . . . [because it] would interfere with Hanson’s business plans to mine its newly acquired property and would ‘sterilize’ several million tons of stone reserves.” Hanson/Greyrock Ex. 1.0 at 4.

10. Factor 10 is neutral. Staff noted that community comments did not appear to favor one route over another.
11. Factor 11 is neutral. Staff noted that the Proposed Route crosses fewer conservation lands and state highways and is shorter, but also parallels 11 fewer miles of existing rights-of-way than the Alternate Route.
12. Factor 12 slightly favors the Alternate Route. Staff noted that the Proposed Route parallels 29.1 fewer miles of existing transmission lines, 2 fewer miles of roads or railroads, and 11 fewer miles of existing rights-of-way than the Alternate Route, but also primarily followed existing divisions of land along parcel boundaries and half-section lines to lower overall house counts and reduce impact on agricultural operations.

Overall, based on her evaluation of the Proposed Route utilizing the 12 criteria, Staff witness Maurer does not dispute that the Proposed Route is the least-cost option and does not object to its approval. Staff Ex. 4.0 at 2.

### **3. YTI's Position**

YTI urges the Commission to adopt the Proposed Route for that portion of the Project in Clark County.

### **4. Hanson and Greyrock's Position**

Hanson and Greyrock advocate for the Proposed Route. Hanson/Greyrock Ex. 1.0 at 4.

### **5. Rex Encore's Position**

Rex Encore advocates for the Alternate Route in Pike County, west of Pittsfield. Rex Encore's position is examined more in Section V.C.

### **6. Commission Analysis and Conclusion**

Having reviewed the record, the Commission finds that the route selection process was detailed and comprehensive and gave proper consideration to the routing criteria. Grain Belt Express gave proper consideration to stakeholder input, including impacts to agricultural property. The Commission notes that Staff analyzed the Proposed and Alternate Routes in detail, considering the 12 criteria, and determined that the Proposed Route is favorable. The record shows that the Proposed Route consists of the optimal routes based on consideration of numerous routing criteria, including distance from residences, schools, places of worship, commercial buildings, and other structures; avoiding or minimizing impacts to threatened and endangered species and their habitats, forested areas, wetlands, federal, State and local recreation areas, historical or archeologically significant sites, other protected or environmentally sensitive areas, and agricultural uses; use of property lines and field lines; use of existing infrastructure; as well as other routing factors typically considered by the Commission in transmission line and pipeline certificate cases. The Commission agrees with Staff's analysis.

None of the other parties, with the limited exception of Rex Encore, as addressed further below, takes issue with the selection of the Proposed Route. In fact, YTI, for purposes of the defined "YTI Segment," and Hanson Aggregates Midwest, Inc. and

Greyrock LLC advocate for the Proposed Route near their facilities. The Landowner Alliance takes no position with regard to either the description and development of the Proposed Route, the selection of the Proposed Route versus Alternate Route or proposed revisions to the Proposed Route. Nor did any witness or party propose any other alternate routes. Further, apart from Rex Encore (who only requested the Alternate Route be adopted for the portion of the Project that traverses from the point where the line enters Illinois, approximately 6.5 miles west of New Canton, Illinois, to the point where the Proposed Route and the Alternate Route merge southeast of Pittsfield in Pike County), no specific deviations from the Proposed Route were proposed by any party.

In reviewing the Proposed Route, the Commission notes that several factors are neutral (impact on historical resources, impact on social and land uses, impact on landowners and other stakeholders, community acceptance, visual impacts) and one factor slightly favors the Alternate Route (use of existing corridors). However, based upon Staff's evaluation of the 12 criteria utilized by the Commission for purposes of evaluating proposed transmission routes, the Commission finds that the 12 criteria support the selection of the Proposed Route and adopts Staff's analysis and application of the 12 criteria to the Proposed Route. The Commission concludes that the Proposed Route is the appropriate selection because it is shorter; less difficult and costly to construct; less difficult and costly to operate and maintain; less impactful on the environment; less impactful on homes and other structures; and less impactful on existing and planned development. Therefore, the Commission approves the Proposed Route in its entirety as set forth in the Application.

### **C. Proposed Revisions to the Proposed Route**

#### **1. Grain Belt Express' Position**

Grain Belt Express disagrees with Rex Encore's request that the Commission approve the Alternate Route from the Missouri/Illinois border to point where the Proposed and Alternate Routes merge southwest of Pittsfield ("RE Alternate Route").

Grain Belt Express asks that the Commission consider the Proposed Route and its overall effect of the Project, which endeavored to minimize impact on the natural and human environment while avoiding unreasonable and circuitous routes, unreasonable costs, and special design requirements. GBX Ex. 7.10 at 3. According to Grain Belt Express, the Proposed Route would have a lower quantifiable impact than the RE Alternate Route. *Id.* For example, the Proposed Route would have 17.2 fewer acres of forest clearing within the right-of-way and has fewer residences and other structures within close proximity. *Id.*

Grain Belt Express agrees with and adopts Staff's comparison of the Proposed Route to the RE Alternate Route, as set forth below. Grain Belt Express asks that the Commission not adopt Rex Encore's request to approve the RE Alternate Route and instead approve the Proposed Route in its entirety.

#### **2. Staff's Position**

Staff points out that on August 26, 2022, the ALJ issued a Notice of Continuance of Hearing and Notice of Schedule, setting a deadline for Staff and Intervenors to identify

additional alternate routes on or before September 29, 2022. The only party to identify an additional alternate route was Rex Encore. See Rex Encore Ex. 1.0.

Staff notes that Rex Encore witness Brigham recommends that the Commission adopt the RE Alternate Route – New Canton to Pittsfield Segment. *Id.* at 7. Rex Encore owns 1,900 acres of contiguous land as a game reserve and recreational property. Rex Encore Ex. 1.0 at 8. Rex Encore witness Brigham claims that the Proposed Route would diminish and disrupt hunting opportunities, nesting areas, and access to fresh water sources on the property. *Id.* at 9. The Proposed Route would traverse Rex Encore's property such that approximately 200 acres of the property would be located north of the route and 1,700 acres would be south of the route. Rex Encore Cross Ex. 1 at 7. Staff states that by adopting the RE Alternate Route, the route would be moved north and would not run through Rex Encore's property. GBX Ex. 7.10, 3.

Both Staff and Rex Encore served discovery on the Company to determine the impact of the RE Alternate Route on the 12 criteria. GBX Ex. 7.11; RE Cross Ex. 1.

Rex Encore contends that the Proposed Route, modified by the RE Alternate Route, fares better than the unmodified Proposed Route under the 12 criteria the Commission considers in determining which route is least-cost. *Id.* at 10.

Staff notes that Rex Encore concludes that the record does not support GBX's assertion, but instead supports a finding that neither route segment is preferable. *Id.* With regard to environmental impacts, Rex Encore argues that looking just at forest clearing is inappropriate, and the Commission should consider the lower acreage of wetlands and number of streams in the right-of-way of the RE Alternate Route when compared to the Proposed Route. *Id.* at 12. Rex Encore asserts that the remaining six factors do not favor either route. *Id.* at 12-15.

Staff disagrees with Rex Encore and argues that Rex Encore's final conclusions are incorrect and misplaced. First, Rex Encore argues that Grain Belt Express has not demonstrated that the difficulty and cost of construction and operation would increase due to the hillier terrain along the RE Alternate Route. On the contrary, while an exact cost-estimate was not provided, Grain Belt Express has indicated in the record that construction would be more expensive due to 2.4 additional miles of construction in the Mississippi River upland bluffs. GBX Ex. 7.11 at 11. This is due to the necessity of: (1) building specially designed structures to accommodate that terrain; and (2) constructing more off-right-of-way access roads. *Id.* Furthermore, beyond the difficulty of construction and maintenance, an estimate of costs based solely on the length of line disregards the explicit concerns raised by Grain Belt Express. Even in a light most favorable to Rex Encore, the RE Alternate Route is only approximately \$3,500 cheaper than the Proposed Route. This is less than 1/1000<sup>th</sup> of one percent of the Illinois-portion of the total projected construction and development costs of the project. See GBX App. at 48. Even though there are no exact costs included in the record, assuming that the construction of additional off-right-of-way roads and specially designed structures will cost some amount of money, this number is even less.

Second, Staff argues that "the approximately 17% reduction in impacted forested land does not make the Proposed Route preferable for [environmental impacts] when considered with the countervailing reduction in impacted wetlands and streams," Rex

Encore ignores Grain Belt Express' evidence that the impacts to wetlands and rivers crossed is "similar", and the RE Alternate Route's impact is only slightly lower. GBX Ex. 7.11 at 12.

Staff finally pointed out that for visual impacts, Rex Encore claims the difference is not substantial but ignores a 474% increase in residences within a generic viewshed of the RE Alternate Route when compared to the Proposed Route. Rex Encore fails to consider the 12 criteria as a whole and attempts to minimize the factors that favor the Proposed Route, and in doing so, it ignores the analysis that must be completed when determining least-cost. Specifically, what Rex Encore views as "non-substantial" differences are still differences that must be considered when examining the 12 criteria as a whole.

For these reasons, Staff recommends the Commission reject the RE Alternate Route as least-cost.

### **3. Rex Encore's Position**

Rex Encore asserts that the RE Alternate Route – New Canton to Pittsfield Segment improves the Proposed Route for several primary reasons. First, it improves the unmodified Proposed Route under the overall factors the Commission has looked to in prior siting cases, while also greatly reducing the unmodified Proposed Route's significant and unnecessary impact on the properties owned by Rex Encore. Second, the land required for the RE Alternate Route – New Canton to Pittsfield Segment is more likely to be acquired on time and at a reasonable cost.

Rex Encore advocates for the Commission to approve the RE Alternate Route – New Canton to Pittsfield Segment, the RE Alternate Route, defined as that segment of the Alternate Route from where the line enters Illinois, approximately 6.5 miles west of New Canton, Illinois, to the point where the Proposed Route and Alternate Route merge southwest of Pittsfield. Rex Encore advises that it owns over 1,900 acres of contiguous properties southeast of New Canton and about seven miles east of the Mississippi River. Rex Encore has assembled this land through 16 separate transactions and over more than 10 years to develop a world-class recreational destination, which is a game reserve and recreational property with a hunting lodge. Hunting is tightly controlled. Food sources and habitats are monitored and strategically developed. Rex Encore has one full-time employee whose duties are dedicated to the conservation of the natural resources and protecting and cultivating the deer, other wildlife and their food sources.

Rex Encore states that the Proposed Route runs along a boundary line of several parcels but continues to pass directly through Rex Encore's property and is in close proximity to the residence occupied on the farm by Rex Encore's employee and family. It also runs near active hunting areas and through property that, through planned habitat cultivation and other activities, has become and will continue to be deer and other wildlife resting and bedding areas. Rex Encore Ex. 1.0 at 7. The Proposed Route also runs near multiple natural spring and wetland areas at the farm. *Id.*

Rex Encore argues that the unmodified Proposed Route would continue the Project's negative impact on the hunting and recreational features of the property and the personal residence of Rex Encore's employee and family who reside on the farm. In the



view of Rex Encore's management, the Proposed Route would also negatively impact much of the financial value and investment Rex Encore made in purchasing and developing this property for its present use. The Proposed Route would also have a negative impact to the hunting, integrity, and overall enjoyment of the property. Utilizing a segment of the Alternative Route proposed by GBX alleviates the majority of those impacts to Rex Encore's property. Use of the RE Alternate Route – New Canton to Pittsfield Segment should facilitate less costly land acquisition for the transmission developer, is reasonable, is superior to the Proposed Route, and should be adopted by the Commission. *Id.* at 8.

In addition to reducing the negative impacts to Rex Encore's property, Rex Encore argues that the RE Alternate Route better aligns with the Commission's 12 criteria and that GBX and Staff fail to give appropriate consideration to the fact that Rex Encore property is a unique asset and property which has a unique existing land use. Rex Encore asserts that, on an overall basis, the Proposed Route with the RE Alternate Route – New Canton to Pittsfield Segment fares better than the unmodified Proposed Route under these factors. GBX witness Puckett asserts that the Proposed Route is superior to the RE Alternate Route – New Canton to Pittsfield Segment, and Staff witness Maurer makes a similar assertion. Rex Encore states that these assertions fail to withstand scrutiny. First, some of the information relied upon was inaccurate. Second, these assertions do not give appropriate weight to the unique nature of the Rex Encore property, the heightened negative impacts the Proposed Route would have on Rex Encore's property, and the mitigation of those negative impacts by adopting the RE Alternate Route – New Canton to Pittsfield Segment.

#### **4. Commission Analysis and Conclusion**

As stated in Section V. (B) (6), after reviewing the testimony and evidence in the record, the Commission approves Grain Belt Express' Proposed Route. The Commission concludes that the Proposed Route is preferable to the RE Alternate Route when considering the 12 criteria.

The Commission agrees with the Staff's analysis of the 12 criteria. Among other reasons, the evidence in the record indicates that the Proposed Route will be further away from homes and towns. The Proposed Route will impact fewer parcels and unique landowners. The RE Alternate Route would require more forest clearing, would be more expensive due to the 2.4 additional miles of construction in the Mississippi River upland bluffs and the necessity for specifically designed structures to accommodate the terrain, would require more mileage of right-of-way access roads to construct, and would impact the views of more homes. While Rex Encore asserts that the harm to forest land is preferable to the environmental impact on wetlands and streams, Rex Encore has provided no environmental data to support its claims or dispute the Company's evidence that the impacts to wetlands and rivers is similar. The 12 criteria viewed together favor the Proposed Route. Therefore, the Commission approves the Proposed Route set forth in the legal description in Attachment 4 and depicted on Attachments 5 and 6 of the Application. The legal description is attached as Appendix A to the Order.

## **D. Proposed Design Aspects of the Project**

### **1. Easement Widths**

#### **a. Grain Belt Express' Position**

Grain Belt Express affirms that it is committed to designing the Project with the narrowest ROW possible consistent with safety and reliability standards. GBX Ex. 3.0 at 28. The preliminary design criteria for the Project assumes a permanent ROW of 150 feet as a typical or average value. GBX Ex. 3.0 at 26. For both the DC and AC Sections, Grain Belt Express is requesting authority to site a permanent ROW easement between 150 and 200 feet wide in most places, GBX Ex. 3.0 at 26, with the exception of locations that require an atypical span to accommodate terrain features, land considerations and other local factors, in which case Grain Belt Express requests authority to obtain a permanent ROW easement up to 300 feet. GBX App. at 73-74; GBX Ex. 3.0 at 30-32; GBX Ex. 2.0 at 32-33. Grain Belt Express also requests temporary easements for turning and laydown yard easements consistent with notice provided to landowners in this docket. GBX Ex. 3.0 at 33-34; GBX Ex. 2.0 at 33. Specifically, Grain Belt Express requests authority to obtain temporary easements of up to 600 feet beyond the 100-foot permanent easement on one side of a turning structure to accommodate the stringing of the conductor at locations along the route where a major (15- to 90-degree angle) turning structure is required. GBX Ex. 2.0 at 33.

In addition, Grain Belt Express requests the flexibility to permanently site structures outside of the approved ROW when feasible and consistent with the Commission-approved route location or by agreement of all affected landowners so long as the applicable parcel's landowner received notice of this proceeding pursuant to Section 8-406.1(a) or intervened in this proceeding. GBX Ex. 2.20 at 18. This flexibility will allow Grain Belt Express to minimize impacts to landowners and to navigate around bodies of water, wetlands, center pivot irrigation systems, agricultural structures, and other environmental challenges. GBX Ex. 2.0 at 36. Grain Belt Express states that this request for flexibility is consistent with similar grants of flexibility that the Commission has made in prior recent dockets, citing to Docket Nos. 14-0514, 18-0455, and 21-0551. GBX App. at 74; GBX Ex. 2.20 at 18. Also consistent with that flexibility, Grain Belt Express is requesting to site the permanent easement on parcels that received notice of this proceeding pursuant to Section 8-406.1(a) or that intervened in these proceedings, even if the location of such permanent easement extends beyond 75 feet in both directions of the centerline of the ROW identified in the Application. GBX Ex. 2.20 at 18; Tr. at 665.

Grain Belt Express points out that no witness for Staff or the intervenors objected to the proposed permanent or temporary easement widths. Therefore, the Commission should approve this request because it will permit Grain Belt Express to maintain adequate clearances, manage vegetation, provide operational access of the Project, and to ensure the Project complies with applicable regulations, standards and applicable industry codes and standards.

Landowner Alliance and YTI argue that due to Grain Belt Express' notice of landowners within only 75 feet of the centerline of the Proposed Route and Alternate Route, the Final Order should only permit a 150-foot easement for all portions of the Proposed Route other than those locations that require an atypical span to accommodate

terrain features or land considerations, provided the owners of those locations were given proper notice.

Grain Belt Express claims that all of YTI and Landowner Alliance's concerns are moot. Grain Belt Express stated that, based on the evidence in the docket and the positions of the parties, it appears that agreement exists that Grain Belt Express should generally be granted a 150-foot permanent ROW easement in most areas along the Proposed Route, with appropriate increases (up to 300 feet) in areas necessary to accommodate unique features. Neither Landowner Alliance nor YTI filed a reply to Grain Belt Express' request to work with landowners along the Proposed Route to relocate the permanent ROW to areas outside of the Commission approved ROW on parcels of landowners who have either been notified or intervened in this proceeding, and without the need to seek further Commission approval to do so.

**b. Landowner Alliance's Position**

According to the Landowner Alliance, in GBX's Application, it requests "authority to obtain up to a 200-foot permanent easement for a majority of the Project, with the exception of location that require an atypical span to accommodate terrain features, land considerations and other local factors, in which case [GBX] requests authority to obtain a permanent easement up to 300 feet." GBX App. at 73-74. Grain Belt Express has yet to determine the locations where the 300-foot easements are requested. *Id.* fn 55. Since filing the Application, GBX learned that it made a mistake with respect to the landowners who received notice of the Project. GBX Ex. 2.20 at 17-18; Tr. at 636-37. Instead of providing information to allow notification of the Application to be sent to landowners within 500 feet of the centerline of the Proposed Route (as alleged in Paragraph 129 of the Application), GBX actually provided the contact information for landowners within 75 feet of the Proposed Route's centerline. GBX Ex. 2.20 at 17-18; Tr. at 663-70. This means that only the landowners within 75 feet of the centerline of the Proposed and Alternate Routes received notice of the Application as required by 83 Ill. Adm. Code 200.150(h). Tr. at 664-65.

As a result of this error, GBX has admitted that the permanent easement it is requesting will in most cases be limited to 150 feet, instead of 200 feet. Tr. at 669-70. Further, GBX's Senior Transmission Engineering Manager conceded that the proposed project can be safely designed within a 150-foot easement. Tr. at 726-27. Thus, the Landowner Alliance argues that GBX has failed to provide substantial evidence supporting that a 200-foot easement is necessary to construct the Project. *See Kreutzer v. Ill. Commerce Comm'n*, 404 Ill.App.3d 791, 813 (2d Dist. 2010) (holding that an Applicant must provide substantial evidence for its Petition to be approved, which is "evidence that a reasonable person would accept as sufficient to support a certain conclusion."). Due to both the notice error and lack of evidence relating to the need for a larger easement, the Landowner Alliance requests that the Commission only permit a 150-foot easement for all portions of the Proposed Route other than those locations that require an atypical span to accommodate terrain features or land considerations, provided the owners of those locations were given proper notice.

### **c. Commission Analysis and Conclusion**

Based on its review of the evidence and the parties' arguments, the Commission approves a 150-foot easement for all portions of the Proposed Route with the exception of locations that require an atypical span to accommodate terrain features, land considerations, and other local factors, in which case the Commission grants Grain Belt Express authority to utilize a permanent ROW easement up to 300 feet, so long as the owner of the property over which the ROW must traverse was provided notice of these proceedings or intervened herein. The Commission also approves temporary easements for turning and laydown yard easements consistent with notice provided to landowners in this docket. Specifically, the Commission approves temporary easements of up to 600 feet beyond the 100-foot permanent easement on one side of a turning structure to accommodate the stringing of the conductor at locations along the route where a major (15 to 90 degree angle) turning structure is required.

The Commission notes that Grain Belt Express has committed to working with landowners to mitigate the impact of the Project on their interests. As a result, when feasible and consistent with the Commission-approved route location, or by agreement of affected landowners, Grain Belt Express may want to make adjustments to the Project's route alignment or pole locations. The Commission in previous dockets has authorized the applicant for a CPCN to adjust the transmission line's route alignment or pole locations, when feasible and consistent with the Commission-approved route location or by agreement of all affected landowners, without need for further Commission approval. The Commission finds that such flexibility would have similar benefits here. No party opposed Grain Belt Express' request in this regard. The Commission finds this request reasonable and it is approved.

## **2. Structure Types and Other Design Parameters**

### **a. Grain Belt Express' Position**

Grain Belt Express states its structure types and design parameters are a reflection of its coordination with various state agencies and stakeholders. In accordance with the AIMA that Grain Belt Express has signed with the IDOA, the Project will utilize a concrete foundation or embed type foundations that are typical of single pole and lattice mast type structures. GBX App. at 71; GBX Ex. 2.15 at 9. Unless negotiated by the landowner, Grain Belt Express has stated it will not utilize multi-foundation lattice type structures, though such structures may be used for turns, heavy angles, corners, long spans (such as river crossings) and situations where specific engineering, environmental challenges and/or terrain/soil constraints are present as established in Section 1 of the AIMA. GBX App. at 71. Typical structure heights between 100 and 140 feet are expected with the precise height being specified based on topography, structure type and span length and other design requirements. *Id.* Taller structures may be required at river crossings and in certain other situations such as where longer span lengths are required. *Id.* Grain Belt Express anticipates that the pier sizes will vary in diameter from 8 feet to 12 feet for the lattice mast or monopole structures and 4 feet to 6 feet for each pier of the lattice structures. *Id.* The transmission line will be bipolar within a triple bundle configuration for the pole conductors, two dedicated metallic return conductors (one conductor on each side of the transmission structure), and two optical ground wires for communication and

lightning protection. *Id.* Typical span lengths will be 1,000 feet with a maximum span length of 1,200 feet between lattice mast or monopole single-pier structures, with shorter or longer span lengths where warranted by conditions in specific locations. *Id.* Grain Belt Express states that final engineering is typically completed after a final route has been approved by regulatory authorities, so the design could change slightly at that time or based upon further optimization studies. *Id.* In addition, per AIMA direction, Grain Belt Express states it will (i) avoid the use of guy wires to the extent feasible and, if guy wires are used, they will be marked with highly visible guards; and (ii) make a good faith effort to negotiate with landowners regarding the specific placement of the transmission line and structures on their property as appropriate, considering impacts of any placement changes on neighboring parcels and considering other routing criteria so as to minimize the overall impacts to aerial spraying activities along the route of the Project in Illinois. *Id.* at 79.

The Project is anticipated to include three converter stations. GBX App. *Id.* at 72. One converter station will be located in Ford County, Kansas, and will convert electricity delivered through the surrounding grid to this converter station from AC to DC. The second converter station will be located in Missouri and will convert electricity from DC to AC for delivery into the MISO-Ameren and/or AECI grids. The third converter station will be located near West Union in Clark County, Illinois, and will convert electricity transmitted by the Project from DC to AC for delivery to the PJM grid at AEP's Sullivan Substation. Based on the anticipated pathway of the Proposed Route and Alternate Route going into the known Sullivan Substation, Grain Belt Express expects to site the converter station on one or more parcels in Clark County, Illinois.

Grain Belt Express responds to Landowner Alliance's request that the Commission incorporate the terms of the AIMA into the Commission's Order by noting that the AIMA is a bilateral agreement between it and the IDOA and is enforceable by IDOA. Accordingly, Grain Belt Express argues there is no need for the Commission to specifically incorporate the AIMA into its Final Order, as the IDOA is already charged with overseeing and enforcing it.

#### **b. Landowner Alliance's Position**

Landowner Alliance points out that GBX has asserted that the Project will utilize a concrete foundation or embed type foundations that are typical of single pole and lattice mast type structures, on a default basis. GBX Ex. 3.0 at 17. GBX agreed that it will only use multi-foundation lattice type structures for turns, heavy angles, corners, long spans (such as river crossings) and other situations where specific engineering challenges dictate such use or when a lattice structure is required by the landowner. *Id.* Further, the determination of the appropriate structure type on agricultural land is governed by Section 1 of the AIMA included as Attachment 10 to the Application. *Id.* The Landowner Alliance requests these agreed terms should be required in a Final Order.

#### **c. Commission Analysis and Conclusion**

Grain Belt Express entered into an AIMA with the IDOA. Among the commitments it has made, the Project will utilize a concrete foundation or embed type foundations that are typical of single pole and lattice mast type structures. Unless negotiated by the landowner, Grain Belt Express has stated it will not utilize multi-foundation lattice type

structures, though such structures may be used for turns, heavy angles, corners, long spans (such as river crossings) and situations where specific engineering, environmental challenges and/or terrain/soil constraints are present as established in Section 1 of the AIMA.

No party objected to the structure types and design parameters presented by Grain Belt Express and the Commission finds them to be reasonable. Based on its review of the record, the Commission approves the use of the proposed structures for the Project as depicted in drawings provided by Grain Belt Express Exhibit 3.2 and 3.3 and in accordance with the provisions of the AIMA between Grain Belt Express and the IDOA. As the AIMA is an agreement between Grain Belt Express and the IDOA and enforceable as such, the Commission sees no need to adopt the terms of the AIMA in the Commission's Order.

## **E. Grain Belt Express' Approach to Land Acquisition**

### **1. Grain Belt Express' Position**

Grain Belt Express confirms that it is committed to conducting transmission line easement negotiations in a manner that reflects respect for the private property rights of landowners. GBX Ex. 2.0 at 26. Grain Belt Express believes that there are five key elements to a respectful land acquisition approach:

- Communicating the overall need for the Project;
- Seeking feedback from landowners on the routing options;
- Providing information on the routing criteria used by Grain Belt Express;
- Demonstrating respect for private property rights and existing land uses;
- Offering a fair and comprehensive compensation package for transmission line easements.

GBX Ex. 2.0 at 26.

Grain Belt Express asserts the goal of these policies is to facilitate the respectful and equitable treatment of landowners and to support voluntary transmission line easement acquisition. GBX Ex. 2.0 at 26.

Grain Belt Express believes that establishing a Code of Conduct for its employees, land agents, and other representatives who will be in contact with landowners will help establish a tone of respectful dialogue and encourage the voluntary acquisition of transmission line easements. *Id.* at 27. GBX Exhibit 2.13 to the Application contains this Code of Conduct. Among other things, it requires that all communications with landowners and other persons made by employees, right-of-way agents and subcontractor employees representing Grain Belt Express must be factually correct, made in good faith, respectful and reflective of fair dealing, and respectful of the privacy rights of property owners. *Id.*

Grain Belt Express commits to carefully adhere to the Commission's regulations prohibiting actual parcel-specific negotiations for land rights until landowners have been notified in writing of Grain Belt Express' desire to seek land rights, as described in a letter sent via certified mail, return receipt requested. *Id.* Grain Belt Express states it and its representatives will observe the required 14-day waiting period before initiating follow-up

contact with landowners. *Id.* Grain Belt Express states the letter will comply with the content requirements specified in Section 300.30 and records of all letters will be maintained. *Id.*

Additionally, Grain Belt Express confirms that its representatives will carry and present proper identification as required by the Commission regulation. *Id.* At the initial meeting with each landowner, Grain Belt Express representatives will be prepared to provide and discuss the information required by Section 300.30. *Id.* Grain Belt Express also confirms that it will willingly negotiate with the landowner's attorney or other representative if requested by the landowner. *Id.*

Grain Belt Express states that it will not seek condemnation authority on a parcel unless and until it has exhausted reasonable efforts to acquire a transmission line easement through a voluntarily negotiated agreement. GBX Ex. 2.20 at 16.

Grain Belt Express identifies three primary components to Grain Belt Express' voluntary easement compensation package: an easement payment, structure payments and crop loss or damages payments. GBX Ex. 2.0 at 28. Grain Belt Express states it will make a payment equal to 110% of the fair market fee value of the easement area for voluntary easements. *Id.* At signing of the voluntary easement agreement, Grain Belt Express states the landowner will receive a payment for 20% of the total easement value. *Id.* Grain Belt Express states the landowner may elect to receive payment for the balance of the easement value as a lump sum prior to construction, or as an annual payment for as long as the easement remains in effect. *Id.*

Commencing on the first anniversary of the initial annual easement payment, the annual payments will increase by two percent each year. GBX Ex. 2.0 at 28; Tr. at 604–605. The easement area is determined by multiplying the width of the easement ROW by the length of the transmission line route on the landowner's property for a total acreage of the easement area. GBX Ex. 2.0 at 28. The acreage of the easement area is then multiplied by the per-acre fair market fee value of the landowner's property to produce the total easement payment. *Id.* Fair market fee value will be determined through a market study of recent sales in the county as performed by a certified independent appraiser. GBX Ex. 2.0 at 28; Tr. at 596.

Structure payments are calculated based on the type of structure to be installed by Grain Belt Express and the number of structures located on each specific property. GBX Ex. 2.0 at 28. Because landowners have expressed a desire to have the option for a recurring, escalating annual payment, in addition to the option of a one-time, lump sum payment for structures, Grain Belt Express will offer landowners, at their option, either a one-time payment or a recurring annual payment for each structure placed on their property. *Id.* at 28–29. If a landowner elects to receive annual payments, the payments will be made as long as the structure is on the easement. Commencing on the first anniversary of the initial annual structure payment, the annual payments will increase by two percent each year. *Id.* at 29.

Additional payments will be made to compensate landowners for crop damage, crop loss, field repair, damage to drainage tiles, temporary or permanent impacts to center pivot irrigators, or other similar impacts, should they occur. *Id.* Alternatively, for impacts such as damage to drainage tiles, Grain Belt Express will, at the landowner's

option, either hire contractors to repair or remediate the damage, pay qualified contractors of the landowner's choosing to repair or remediate the damage or pay a fair settlement amount negotiated between the landowner and Grain Belt Express for the landowner or its tenant to undertake the responsibility for repair, relocation, or reconfiguration of the damaged drainage feature. *Id.*

After construction of the transmission facilities the landowner will retain the ability to continue agricultural production on the entirety of the easement area, except for the relatively small footprint of the structures. *Id.* Grain Belt Express states the per-structure compensation described above is intended, in part, to compensate landowners for this impact. *Id.*

Grain Belt Express will attempt to acquire all of the rights-of-way through voluntary transactions negotiated in good faith. *Id.* This includes permanent easements, rights for ingress and egress for future maintenance of the Project, and access for vegetation management. *Id.* This also includes temporary access and construction easements during development of the Project. *Id.*

Grain Belt Express prepared Exhibit 2.14 to the Application in accordance with 83 Ill. Adm. Code 300.20. GBX Ex. 2.14. Included in the information packet is the form of letter that Grain Belt Express will send to landowners, in accordance with Section 300.30, prior to contacting them to negotiate the acquisition of an easement. *Id.* Grain Belt Express states that its plan was to send the information packet to all landowners on the Proposed Route and Alternate Route shortly after filing the Application for a CPCN. GBX Ex. 2.0 at 30.

Grain Belt Express states that, although the proposed easement language in GBX Ex. 2.16R includes the following clause, "including electrical fiber optic transmission or other communications to or by third parties," inclusion of that clause is not mandatory to the landowner. If a specific landowner declines to allow such usage, it cannot be forced upon them and it will be excluded. GBX Ex. 2.16R. As the inclusion of the third-party communication language will not be included in the final easement language without landowner consent, there is no need for the Commission to take any action regarding this issue.

## **2. Staff's Position**

Staff notes that numerous CCPO witnesses raise concerns that approval of the CPCN for this Project would allow Grain Belt authority to seek eminent domain to acquire the property on the Commission-approved route. *See generally* CCPO Ex. 1.0, 4.0, 5.0, 6.0, 7.0, 8.0. However, an Order approving the CPCN for this project under Section 8-406.1 of the Act does not, without more, grant Grain Belt authority to acquire property by eminent domain. *See* 220 ILCS 5/8-406.1. Additionally, Grain Belt has explicitly stated that they are not applying for or seeking eminent domain authority in this proceeding. GBX App. at 6-7.

## **3. Landowner Alliance's Position**

The Landowner Alliance points out that as part of its Application, GBX has proposed the following language for easements which will be negotiated with landowners:



Transmission Easement. The Easement includes rights to construct, reconstruct, repair, expand within the Easement, improve, alter, replace, operate, use, inspect, maintain and remove a transmission line, which transmission line shall include poles, towers and structures, such wires and cables as Grantee shall from time to time suspend therefrom, foundations, footings, attachments, anchors, ground connections, communications devices or other equipment, accessories and appurtenances, as Grantee may deem necessary or desirable in connection therewith, and with prior notice to Owner access roads, construction and laydown areas, (the "Facilities"). The Easement may be used for the transmission of electrical energy and for communication purposes, including electrical fiber optic transmission, whether existing now or in the future in order to facilitate the delivery of electrical energy and for any other communication purposes, including electrical fiber optic transmission or other communications to or by third parties.

GBX Ex 2.16R.

The Landowner Alliance states that the last sentence of the proposed language expands the potential use of the easement by GBX (or any of its assignees) for both the transmission of electrical energy and any communication purpose, including electrical fiber optic transmission or other communication to or by third parties. *Id.* GBX admitted (through the testimony of Mr. Pnazek) that this language provides for use of the line beyond the approval sought from the Commission in the Application, and that additional approval from this Commission and administrative bodies in other states would have been obtained before the line could be used by third parties for communication purposes. Tr. at 625-26. GBX also admitted that by including the proposed language about third-party use of the line for communications purposes, it is asking landowners for rights beyond those that would be awarded by the Commission in this matter. Tr. at 640-41.

Because GBX does not have the authority to operate the line for communications purposes (other than for operational needs), the Landowner Alliance argues that it should not be permitted to include the language in the easement allowing for the use of the line for any other communication purposes, including electrical fiber optic transmission or other communication to or by third parties. The Landowner Alliance contends that GBX should not ask landowners for use of their land for purposes beyond which it has authority to do so. As such, the Landowner Alliance requests that should the Application be granted, the Commission require that this language be excluded from the easement proposed to landowners.

#### **4. Commission Analysis and Conclusion**

The Commission notes Grain Belt Express' statements of its intention to obtain as many easements as possible (and ideally, all) in Illinois through negotiations and voluntary agreements with landowners. Grain Belt Express is required to comply with the requirements of 83 Ill. Adm. Code 300 in its contacts and negotiations with landowners.

Grain Belt Express has adopted a Code of Conduct as to its negotiations with landowners; it commits to truthful and respectful interactions and communications with landowners. Grain Belt Express has repeatedly insisted that although it cannot make commitments as to certain actions at this time, it is committed to working with landowners to negotiate additional reasonable measures for prevention and mitigation of potential impacts to the landowners' property.

Grain Belt Express has not requested eminent domain authority at this juncture. Thus, eminent domain and the specific concerns raised by the intervenors and landowners are not at issue here. To be clear, as further set out in Section VIII, this Order does not provide authorization for Grain Belt Express to use eminent domain to acquire easements for the Project, and any grant of eminent domain rights to Grain Belt Express for the Project will require a separate application by Grain Belt Express for eminent domain authority pursuant to Section 8-509 of the Act.

The Commission also finds that the last clause in the proposed easement agreement, “. . . including electrical fiber optic transmission or other communications to or by third parties,” is entirely voluntary. The Commission will not take a position on that language other than to clarify that it is not granting a CPCN to construct or operate fiber optic transmission or other communication cables outside of those required to operate the transmission line and the inclusion of that language in an easement agreement is not mandatory or endorsed by the Commission. Subject to this Order, the Commission approves the easement agreement contained in GBX Exhibit 2.16R.

## **F. Landowner Concerns about Impacts of Construction on Their Property**

### **1. Grain Belt Express' Position**

During this proceeding, Landowner Alliance, CCPO, and Zotos landowner witnesses submitted testimony expressing concerns about potential impacts of the Project on their properties. Grain Belt Express summarized these landowner concerns as follows: (i) that the Project will cause soil compaction to agricultural land; (ii) that the Project will damage drainage tiles; (iii) that the Project will limit aerial application of fertilizer, insecticides, and pesticides; (iv) that the Project will limit landowners' use of their land by increasing cost and reducing efficiency; (v) that the Project will damage forests; (vi) that the Project will interfere with Global Positioning System (“GPS”) guidance systems; (vii) that there will be adverse health impacts as a result of electromagnetic fields; (viii) that the Project will interfere with Cochlear implants; and (ix) that the Project will interfere with Pacemakers. Grain Belt Express states, as set forth in the testimony of Grain Belt Express witnesses Pnazek, White, and Puckett, Grain Belt Express has demonstrated that it will address and resolve landowner concerns in a fair and reasonable manner, will reasonably mitigate and remediate any damage cause by the Project and will adequately compensate landowners for any damages to their property related to the Project.

Grain Belt Express notes that one method by which it will remedy property-specific issues with landowners is via the AIMA. Grain Belt Express and the IDOA have entered into an AIMA, under which Grain Belt Express commits to a series of measures to minimize impacts of the Project to agricultural lands and activities. See GBX Ex. 2.15.

Grain Belt Express states the AIMA will be incorporated into each easement agreement, according to its terms. GBX Ex. 2.0 at 30.

Among other things, the AIMA provides that in constructing the Project across agricultural properties in Illinois, Grain Belt Express will take appropriate steps to prevent adverse impacts to agricultural lands, including steps to prevent or mitigate soil erosion, soil compaction, damage to or interference with drainage tiles, and interference with irrigation systems, and to remediate such impacts should they occur. GBX App. at 78.

The AIMA also provides for “Agricultural Inspectors” (as that term is defined in the AIMA) during the construction phase of the Project. GBX Ex. 2.15 at 2–3. Grain Belt Express explains the role of the Agricultural Inspectors is to assure that the provisions set forth in the AIMA or in any separate document are adhered to in good faith by Grain Belt Express and its contractors and that all agreements protect the resources of both the landowner and Grain Belt Express. GBX Ex. 2.0 at 30–31. Grain Belt Express further explains that the Agricultural Inspectors will have access to all records and agreements regarding the easements and other land rights granted by the landowners to Grain Belt Express and will be available to landowners in the event that actual construction practices in the field diverge from the stated agreements. *Id.* Grain Belt Express also points out that, because the Agricultural Inspectors will be supervised, at least in part, by IDOA, they will be independent and will be authorized to order changes in construction practices and to stop work in the event of a divergence between the landowner agreements and practices in the field. *Id.* Grain Belt Express anticipates that the availability of the Agricultural Inspectors will help to avoid and resolve common construction-related disputes between landowners and the constructors of infrastructure projects. *Id.*

Grain Belt Express recognizes that a certain level of soil compaction can be expected to occur during the construction of the Project on agricultural property. However, Grain Belt Express states that it and its contractors will take steps to avoid or minimize soil compaction. Grain Belt Express states it and its construction contractor will first seek to minimize the amount of acreage subject to compaction by developing a construction access plan with relatively narrow access routes to the construction sites. GBX Ex. 2.0 at 32. During construction, GBX will seek to prevent or limit soil compaction on agricultural land, existing roads will be utilized as much as practicable. GBX Ex. 3.0 at 37. In general, Grain Belt Express will seek to confine vehicular traffic to narrow areas, thereby limiting the potential areas in which compaction could occur. *Id.* Further, heavier equipment will remain on the ROW easement overnight to reduce the frequency of ingress and egress to structure locations. GBX Ex. 3.0 at 37. Crews will use crew cab trucks and truck cranes to access the construction locations, using established access or construction paths. *Id.* Construction mats will be used as necessary in areas where wet conditions are encountered and construction operations may be stopped during significant rain events or when the ground is saturated and access would cause unnecessary rutting. *Id.*

For areas where impacts to agricultural or other sensitive areas prompt greater concern, Grain Belt Express may evaluate with the landowner options of flying in lattice tower sections and erecting towers by way of helicopter. *Id.* According to Grain Belt Express, this means of structure erection further reduces access of heavy machinery and

therefore compaction. *Id.* However, Grain Belt Express states this method of structure erection is not likely for monopole structures due to weight limitations. *Id.*

Following construction, and consistent with the terms of the AIMA, Grain Belt Express states it will seek to restore land that is rutted or compacted as the result of construction activities, as closely as practical, to its pre-construction condition, including by chiseling and fertilization. GBX Ex. 2.0 at 32.

The AIMA requires that Grain Belt Express restore all compacted or rutted land as near as practicable to its original condition. GBX Ex. 2.15 at 12. Section 8 of the AIMA requires that Grain Belt Express, unless the landowner opts to do the restoration work, will rip to a depth of 18 inches all cropland, which has been traversed by construction equipment to alleviate compaction impacts. *Id.* Also, Grain Belt Express will rip, or pay to have ripped, all compacted and rutted soil, weather and landowner permitting, after the electric transmission line has been constructed across any affected property. *Id.*

Grain Belt Express asserts that it has a plan to avoid damaging drainage tiles, will repair any drainage tiles that become inadvertently damaged or will compensate the landowner for the damaged drainage tile. In an effort to avoid damage altogether, Grain Belt Express will work with landowners to determine the locations of drainage tiles prior to commencing construction activities on an agricultural property. GBX Ex. 3.0 at 38. Techniques that may be employed to identify the location of drainage tiles include, but are not limited to, collecting Near Infrared or 4th-band Imagery, reviewing maps maintained by the landowner and walking the property with the landowner, the assessment of historical records that may identify drainage locations and discussions with contractors who installed drainage tiles or utilizing ground penetrating radar. *Id.*

Grain Belt Express states that, as much as practicable, it will first try to relocate structures away from drainage tiles to avoid conflicts. *Id.* at 39. Grain Belt Express further states that, should avoidance be infeasible, the drainage tile will be relocated based on consultation with the landowner and an engineering evaluation by Grain Belt Express. *Id.* at 39. Grain Belt Express also states that, consistent with the AIMA, if the tile is intercepted and will be relocated per an agreement between the Company and the affected landowner, the tile shall be located not less than 50 feet upstream and 50 feet downstream of the interception. *Id.* Grain Belt Express states that tile rerouted over that 100+ feet shall be rerouted according to the process set forth in GBX Exhibit 3.0 at 39. Grain Belt Express further states that in no case shall the length of the rerouted tile exceed 125% of the length of original tile line that will be replaced. *Id.*

Should drainage tile be damaged during construction, Grain Belt Express will work with the landowners to repair the damaged tile in a timely manner. *Id.* Grain Belt Express further states, as specified by the AIMA, drainage tile will be repaired consistent with any available county soil and water conservation district specifications. *Id.* Should no specification exist, Grain Belt Express will employ the United States Department of Agriculture Natural Resources Conservation Service Practice Standard Document, "Surface Drainage" – Code 606. *Id.* at 39-40. Material used will be at least equivalent to original tile drainage material. *Id.* at 39. Grain Belt Express states operation of tile drainage will be at least comparable to pre-construction conditions. *Id.*

Grain Belt Express acknowledges that the presence of overhead transmission lines and other types of above-ground structures have the potential to impact aerial application. However, Grain Belt Express does not agree with the premise, as suggested by certain landowner witnesses, that transmission lines or other above-ground structures will materially interfere with or preclude the landowner from utilizing aerial application. CCPO Ex. 1.0 at 4–5; CCPO Ex. 4.0 at 2. Grain Belt Express states the exact impact, if any, that the Project may have on the use of aerial application of chemicals is dependent on the orientation of each parcel of property and the agricultural operations on it, the placement of the transmission line, and the applicator's expertise and experience. GBX 2.20 at 9.

Grain Belt Express explains that, as addressed in the Illinois Route Selection Study (GBX Exhibit 7.2) and the Direct Testimony of James G. Puckett (GBX Exhibit 7.0), Grain Belt Express' siting guidelines included minimizing potential impacts to farming activities. Grain Belt Express cites the Project's paralleling of existing divisions of land as an example of its efforts to minimize potential impacts to aerial spraying because it reduces the number of structures located in the middle of fields and allows for aerial application parallel and adjacent to the transmission line. GBX Ex. 2.2 at 9.

Grain Belt Express notes that certain landowner witnesses assert that the Project will negatively impact farming costs and efficiency. CCPO Ex. 1.0 at 4; CCPO Ex. 3.0 at 3. Grain Belt Express refutes those assertions for several reasons.

First, the only land directly impacted by the Project will be the footprint of the foundation for the support structures – landowners will still be able to carry on agriculture activities within the right-of-way. *Id.* Further, Grain Belt Express states it has committed to (i) using single foundation support structures on agriculture lands, which have a smaller footprint and a narrower right-of-way than multi-foundation lattice type structures; and (ii) avoiding the use of guy wires in agriculture fields with tangent structures, to further reduce the overall footprint. GBX Ex. 2.2 at 9. Grain Belt Express explains that a typical tangent monopole or steel lattice mast foundation has a 4- to 6-foot diameter and that these structures will be spaced every 1,000 to 1,200 feet. GBX Ex. 3.0 at 18; GBX Ex. 3.0 at 25. Additionally, per Section 3 of the AIMA, Grain Belt Express has committed to working with landowners to minimize placement on agricultural land. GBX 2.15 at 9. To the extent reasonably practicable, Grain Belt Express states support structures will be spaced in such a manner as to minimize their interference with cropland. GBX Ex. 2.15 at 1.

Moreover, Grain Belt Express is offering compensation to landowners through voluntary easement payments of 110% fair market value for the entire area of the easement (even though the owner will be able to farm the easement area except for the area of the support structure foundation), as well as separate payments for each support structure on the property, and crop or other damage payments. GBX Ex. 2.0 at 28.

Grain Belt Express responded to landowner concerns that the Project could damage existing forests. CCPO Ex. 6.0 at 18–20. Grain Belt Express states that avoidance of impacts to the natural environment was an important factor in developing the Proposed Route in Illinois. In developing the Proposed Route, Grain Belt Express was able to avoid impacting wetlands, conservation areas, and large contiguous forested areas. GBX App. at 10. Additionally, Grain Belt Express took extensive measures to

identify and map sensitive habitat and listed species, in consultation with relevant state and federal agencies, and conservation organizations. *Id.* Grain Belt Express took this information into account in developing the Proposed Route so that crossing or proximity to such areas was avoided or minimized. *Id.*

Grain Belt Express also responded to landowner concerns about whether it had conducted an Environmental Impact Study. CCPO Ex. 6.0 at 18-19; CCPO Ex. 9.0 at 9. Grain Belt Express explains that the Grain Belt Express Project in Illinois is not a major federal action under the National Environmental Policy Act, and therefore, preparation of an Environmental Impact Statement is not required. GBX Ex. 6.3 at 1. Nonetheless, Grain Belt Express states it has extensively studied the environmental impacts associated with the Project, and environmental impacts were considered when developing the Proposed Route. GBX Ex. 6.3 at 1–2. Further, Grain Belt Express has consulted with federal agencies, including the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, and state agencies, including the Illinois Department of Natural Resources (“IDNR”) and Illinois Historic Preservation Agency, as well as with conservation organizations like the Illinois Nature Conservancy and other entities regarding measures to avoid, minimize, and mitigate environmental impacts from the Project. GBX Ex. 6.0 at 5.

Grain Belt Express will follow all state and federal regulations and requirements of agencies with jurisdiction over threatened and endangered species. GBX Ex. 6.3 at 4. Grain Belt Express will also coordinate with state and federal agencies to ensure the Project complies with all laws pertaining to wetlands, forests, and conservation areas. *Id.* Further, appropriate state and federal agencies will have jurisdiction over issuing permits to Grain Belt Express concerning potential impacts to environmental and cultural resources, which will enable the applicable statutory and regulatory requirements of those agencies to be enforced. *Id.* at 2.

Several landowner witnesses raised concerns about transmission line interference with Global Positioning Systems. CCPO Ex. 1.0 at 4; CCPO Ex. 4.0 at 2. However, Grain Belt Express asserts that the transmission line should not interfere with the proper operation of a GPS guidance system. GBX Ex. 3.4 at 4. Grain Belt Express states the frequencies at which GPS systems operate are far higher than frequency ranges of significant corona noise produced by transmission lines. *Id.* Additionally, Grain Belt Express states Real Time Kinematic (“RTK”) systems, which are ground-based controls used to make differential calculations and improve positional accuracy of GPS, transmit and receive terrestrial signals typically at Ultra High Frequencies which are greater than 300 MHz. *Id.* Grain Belt Express states since both GPS, and the terrestrial signals on which RTK systems rely, are at far higher frequencies than the upper range of frequencies of significant corona noise, it is highly unlikely that the terrestrial signals for RTK systems and the satellite signals for GPS would be affected by corona noise from the HVDC transmission line. *Id.*

Further, Grain Belt Express states that physical obstruction from transmission lines or structures is very unlikely to affect GPS systems. *Id.* Grain Belt Express further states that GPS guidance systems employ multiple satellites to communicate with a moving piece of farm equipment. *Id.* at 5. Grain Belt Express asserts if there is a momentary interference with one satellite signal due to the location of the equipment and the

transmission line (i.e., an obstruction of the signal from a satellite), other satellite signals will enable reliable operation of the GPS to continue. *Id.* Thus, according to Grain Belt Express, it is very unlikely that a transmission line or structure, which would only physically block satellite signals from one direction, could cause the loss of a GPS signal. *Id.* However, in the very unlikely event that any interference was shown to occur, Grain Belt Express would discuss mitigation and other potential remedies with the individual landowner. *Id.*

Grain Belt Express responded to concerns over electric and magnetic fields (“EMF”) produced by the Project. CCPO Ex. 6.0 at 24–25. Grain Belt Express states this concern is unfounded for several reasons. First, Grain Belt Express states electric charges and the fields associated with them are found everywhere. GBX Ex. 3.4 at 6. For example, the friction from walking across the carpet can create a static electric field at the surface of the body as high as 500 kV/m. *Id.* This static charge is easily dissipated by touching another surface (such as a doorknob) and transferring the charge. *Id.* Electric fields are easily blocked by most objects, such as walls, trees, and fences. *Id.* Few man-made devices produce static electric fields as frequently as does nature, but standing near a DC electrified railway, or sitting in front of a computer screen or television with a cathode ray tube are examples. *Id.* In the latter case, one may be exposed to a static electric field of about 10–20 kV/m at a distance of approximately one foot. *Id.*

Second, Grain Belt Express, likewise points out that magnetic fields are very commonplace. *Id.* Grain Belt Express states the primary natural source of static magnetic fields is the earth itself; its geomagnetic field covers the entire earth. Grain Belt Express states man-made sources include permanent magnets (e.g., the magnets contained in a set of headphones), battery powered appliances, magnetic resonance imaging (“MRI”) scanners, and as before with the static electric fields, DC electric railways. *Id.* Additionally, Grain Belt Express states the earth’s magnetic field ranges from 300 mG at the equator to 700 mG at the magnetic north and south poles. *Id.*

The highest electric field level expected within the ROW is 25 kV/m. *Id.* at 7. Grain Belt Express further states the contribution of air ions to the electric field is affected by weather conditions and the number presented above is the expected peak condition with the likelihood that lower values would be typical. *Id.* Grain Belt Express states the typical nominal electric field within the ROW would be approximately 15 kV/m and at the edge of the ROW less than 1 kV/m. *Id.* Grain Belt Express states, for electric fields, one can easily experience exposure up to 500 kV/m just by walking across a carpeted floor on a dry winter day, which is more than ten times the highest value calculated for the Project. *Id.* Grain Belt Express asserts, the magnetic field exposure experienced daily or in the course of one’s life can range from strengths that are similar to what would be experienced within the ROW of the Project to levels that are orders of magnitude higher. *Id.*

Grain Belt Express states that while questions have been raised about the possibility that static fields may affect health, these questions have focused on sources of extremely strong magnetic fields. *Id.* Grain Belt Express explains that since the weak magnetic fields produced by DC transmission lines are similar to naturally-occurring magnetic fields, those sources have not prompted similar questions. *Id.* Grain Belt Express states many organizations have reviewed and summarized the research on

exposure to static and slowly-varying fields, but none of those organizations found that the body of research indicates that strong static magnetic fields cause long-term health effects. *Id.*

Grain Belt Express notes that while a CCPO landowner witness has also asserted the Project being in the same right-of-way as an AC transmission line creates novel health impacts, the Project will not be collocated in the same ROW of another transmission line (AC or DC) to ensure that the Grain Belt Express Project meets the clearance requirements and operations best practice. CCPO Ex. 6.0 at 7; GBX Ex. 3.4 at 9; GBX 3.5 at 4. As well, Grain Belt Express notes the electric and magnetic fields that result from an AC transmission line being next to the Project are still well below the levels previously discussed and do not create a novel EMF environment that falls outside of the existing literature on health impacts. GBX Ex. 3.4 at 9.

Grain Belt Express responded to several landowner intervenors who expressed concerns about the impact of the Project on Cochlear implants. CCPO Ex. 6.0 at 4, 25; CCPO Ex. 7.0 at 1; CCPO Ex. 8.0 at 1. Additionally, CCPO witness Tucker presented CCPO Exhibit 7.1 concerning the effect of power lines and electrostatic discharge on Cochlear implants from a Technical Services Audiologist from the maker of Cochlear implants. CCPO Ex. 7.1.

Grain Belt Express notes that, despite stating power lines *may* interfere with Cochlear implants, the plain reading of CCPO Exhibit 7.1 leads to the conclusion that the CCPO intervenors will be able to enjoy the entirety of their property without material interference. GBX Ex. 3.4 at 7. For example, Grain Belt Express points out that CCPO Exhibit 7.1 states: (1) “field strengths within publicly accessible areas . . . are low enough not to pose any risk” to the Cochlear implant; and (2) Cochlear implants do “not limit the freedom of recipients to pass below high voltage lines.”

Grain Belt Express confirms that the Project will have less of an impact than the exhibit’s author expected. CCPO Exhibit 7.1 states: “The frequency of these fields [from transmission lines] however is very low and usually in the range 16,6 [sic] - 60Hz. Air is a very poor conductor for electromagnetic fields within this frequency range and therefore, effects are limited to a close area.” Grain Belt Express points out that the Project’s frequency is zero Hz because it is a DC line. GBX IB at 118. Grain Belt Express, applying the same logic as the author of CCPO Ex. 7.1 asserts the already limited impact will be eliminated. *Id.*

Finally, Grain Belt Express states that Ms. Locke’s concern about Cochlear implants (which she does not yet have implanted) would only come to fruition if the Alternate Route is selected by the Commission. *Id.* Grain Belt Express states this is relevant because there are no intervenors advocating for the Alternate Route in its entirety. *Id.*

Grain Belt Express responded to landowner witness concerns about the impact of the Project on his Pacemaker. CCPO Ex. 4.0 at 2. Grain Belt Express stated that CCPO has provided no support for this claim. As well, Grain Belt Express highlights that its parent company, Invenergy Transmission, as a constructor and operator of over 4,000 miles of transmission and collection lines, 88 substations, 96 generator step-up transformers, and 5,323 pad mount transformers, has not been made aware of any



individuals experiencing issues with their Pacemaker due to being in close proximity to an Invenergy transmission line. GBX Ex. 3.4 at 11.

Grain Belt Express responded to CCPO landowner witnesses and Hanson's concerns about the impacts of the transmission line on their properties or operations. Many of these concerns mirror the general concerns discussed above. Grain Belt Express has repeatedly stated that it is fully committed to working with all landowners to understand parcel-specific concerns and to develop plans to address them. GBX Ex. 2.0 at 33. The property-specific concerns expressed by landowner witnesses who submitted testimony in this case are discussed below.

Grain Belt Express points out that CCPO landowner witnesses expressed concern over the impact of the Project on drainage tile system on their property. CCPO Ex. 1.0 at 3–4; CCPO Ex. 2.0 at 2; CCPO Ex. 3.0 at 3; CCPO Ex. 4.0 at 2. Grain Belt Express states to the extent possible it has routed the Project along parcel boundaries when possible and practical to minimize impacts to tile drainage systems generally. GBX Ex. 7.10 at 5–8. Additionally, Grain Belt Express points out that an Agricultural Inspector is included in the AIMA to provide a simple mechanism to ensure compliance by Grain Belt Express and its contractor with the provisions of the AIMA and any other agreements negotiated between Grain Belt Express and landowners. GBX Ex. 2.15 at 2–3.

Grain Belt Express states site-specific surveys will identify the location of and the need to implement measures to avoid and mitigate impacts to drainage infrastructure in the placement of specific structure locations for the Project. Grain Belt Express states that it is committed to mitigating impacts to drainage tile and to repair drainage tile in the event of damage caused by construction or operation.

Ms. Natalie Locke expressed concern that she will lose CO2 sequestration credits and income from timber operations because the Project will require cutting down over five acres of trees on her property. CCPO Ex. 6.0 at 7–8, 18–19. Before discussing Ms. Locke's specific issues, Grain Belt Express points out, again, that Ms. Locke's property is not located along the Proposed Route, but rather on the Alternate Route. This Order approving the Proposed Route moots Ms. Locke's concerns.

Nevertheless, Grain Belt Express goes on to state that it will compensate landowners for commercially marketable timber based on prevailing market value. GBX Ex. 2.20 at 14. Grain Belt Express states that part of the voluntary easement negotiations with landowners will involve negotiating individual damage payments specific to each landowner's property. *Id.* Grain Belt Express states that if marketable timber will be removed from the easement area, a timber appraisal will be prepared by an independent timber appraiser to compensate for the value of any such timber. *Id.* at 15. In addition, Grain Belt Express states landowners can request that any marketable timber removed from the right-of-way be set aside for the landowner to sell. *Id.* at 14. As a result, Grain Belt Express states the landowner will have the opportunity to be compensated for the timber by Grain Belt Express and also sell the timber from the right-of-way. *Id.*

In regard to Ms. Locke's concern over CO2 sequestration credits, Grain Belt Express states Ms. Locke does not have any contracts on her land for selling CO2 credits. However, Grain Belt Express asserts that any appraisal conducted will take into

consideration the value of any contracts for CO2 credits for the timber that would be removed. CCPO Ex. 2.20 at 15.

Ms. Locke also expressed concern about the Project crossing her property when there is already an Ameren transmission line on her property. CCPO Ex. 6.0 at 1. Again, this concern is moot if the Commission approves of the Proposed Route. However, Grain Belt Express states that paralleling existing infrastructure avoids additional fragmentation of the landscape in an otherwise unimpacted area. GBX Ex. 7.10 at 11. Grain Belt Express further states that although Ms. Locke would have two lines cross her property, this is not uncommon in developing transmission line routes and was one of the criteria applied by the Routing Team in conducting the Illinois Route Selection Study. *Id.* Grain Belt Express states, here, the entire length of the Alternate Route, as it relates to Ms. Locke's property, parallels an existing transmission line, thus consolidating linear infrastructure across a landscape and avoiding fragmenting land uses in otherwise unimpacted areas. *Id.*

Ms. Locke also expressed concerns about transmission lines negatively affecting property values by 30% or more. CCPO Ex. 6.0 at 6; CCPO Ex. 9.0 at 2, 7 & 12. Grain Belt Express states Ms. Locke is not an Illinois-licensed real estate appraiser, nor is her testimony based on a comprehensive review of the literature. GBX Ex. 11.4 at 2. Grain Belt Express states that in reality the majority of the published research has found no adverse impact on prices and values. GBX Ex. 11.3 at 1; GBX Ex. 11.4 at 2–3. Grain Belt Express states that when adverse impacts are found in the published literature, they are typically quite small, and in a range between 2% and 9%. GBX Ex. 11.3 at 1; GBX Ex. 11.4 at 3. Furthermore, Grain Belt Express witness MaRous studied prices paid for residences near or adjacent to existing transmission lines. *See generally* GBX Ex. 11.2. Grain Belt Express states those studies showed that there was no adverse impact on property values. GBX Ex. 11.2 at 20. Finally, Grain Belt Express further states Mr. MaRous' research into farmland prices in Christian County indicates that currently existing transmission line corridors have had no more than an average price impact of 2.0% on the properties on which they are located. GBX Ex. 11.3 at 2.

Mr. Jared Walk expressed concern about the Project being cited near a school. CCPO Ex. 5.0 at 3. Grain Belt Express states it took schools into consideration during the Illinois Route Selection Process (See GBX Exhibits 7.1–7.4), along with other important community resources such as community centers, churches, cemeteries, places of worship, and parks. GBX Ex. 7.10 at 11–12. Grain Belt Express states neither route crosses property used for any of these functions, so impacts to existing land use are likewise not relevant. *Id.* at 12. Nonetheless, Grain Belt Express states that the Routing Team did seek to maximize distances from these types of resources because of the cultural sensitivities surrounding them. *Id.* Furthermore, Grain Belt Express states that most of these types of resources, schools included, are located within municipal boundaries and so are not directly adjacent to the Project throughout the project area. *Id.* Grain Belt Express also states for both the Proposed Route and the Alternative Route, no schools are located within 1,000 feet of the routes. *Id.* Finally, Grain Belt Express states given there are no known impacts from transmission lines on human health, the proximity of a transmission line to any of these resources is not relevant from that perspective.

Mr. Eric Tucker expressed concern about his landscaping, garden center, and Christmas tree farm business if the Project requires removing Christmas trees. CCPO Exhibit 8.0 at 1. In general, Grain Belt Express states existing agricultural land uses are allowed to continue within the ROW with the exception of tall growing vegetation. GBX Ex. 7.10 at 12. Grain Belt Express states the AIMA between Grain Belt Express and the IDOA designates the vegetation management practices that are allowed within the right-of-way, along with compensation for crop and other construction related damages. *Id.*

Hanson has expressed concern that the Project will impact its mining operations. Hanson Ex. 1.0 at 4. Grain Belt Express states Hanson's property is not located along the Proposed Route, but rather on the Alternate Route, which no party is advocating be adopted in this area. Hanson Ex. 1.0 at 3. Nonetheless, Grain Belt Express states the requested modification to the Alternate Route would likely add two to three miles of additional length to the route, cross several additional landowners, and cross the Nokomis Quarry company which is situated directly north of the Hanson property. GBX Ex. 7.10 at 5.

## **2. Staff's Position**

Staff points out CCPO witnesses Holkenbrink and Buchanan's concerns that the Project's construction would have negative impacts on their farmland tillage and drainage. CCPO Ex. 3.0 at 3; CCPO Ex. 4.0 at 2. Mr. Holkenbrink states that his property has underground drainage tile and, during construction of the Project, heavy trucks will be passing over this tile, possibly interrupting the proper grade for drainage tile to function properly. CCPO Ex. 4.0 at 2. Mr. Buchanan states that the tile is shallow for draining and heavy equipment will destroy the tile system. CCPO Ex. 3.0 at 3. While the Company informed Mr. Buchanan that they will mitigate damage to his pattern tile system, Mr. Buchanan does not think it is "a very good response because the damage will be unseen until it rains...[.]" *Id.*

Staff states that land use impacts of the Project is one of the 12 criteria, that the Commission needs to consider when approving a route. Staff Ex. 4.0 at 10. Staff does not dispute Mr. Buchanan or Mr. Holkenbrink's testimony that damage could possibly occur to their farmland tillage and drainage during construction of the line. *Id.* However, Mr. Buchanan and Mr. Holkenbrink did not propose an alternate route to alleviate these concerns, so it is unclear how the Commission can remedy these concerns. *Id.* Further, Grain Belt Express has offered to mitigate the damage to these systems to the extent possible. See CCPO Ex. 3.0 at 3. The Company has explained that, ultimately, site-specific surveys will identify the location of and need to implement measures to avoid and mitigate impacts to drainage infrastructure in the placement of specific structure locations for the Project. GBX Ex. 7.10 at 13. GBX has committed to working with landowners to specifically locate drainage infrastructure and other landscape features and then work to avoid impacting those facilities. *Id.* Furthermore, Grain Belt Express has entered into an AIMA with the IDOA, which includes specific requirements related to drainage tiling that should offer protections to landowners. GBX Ex. 2.15 at 10.

## **3. Landowner Alliance's Position**

In its Application, GBX requests that the Commission approve a larger "Route Corridor" for the approved route within which GBX must site the permanent easements

required for the Proposed Route. GBX App. at 75. Specifically, GBX asks that the Commission authorize it to locate the permanent easements anywhere within 500 feet on either side of the centerline of the approved route. *Id.* Accordingly, the “Route Corridor” requested by GBX in its Petition was defined as 1,000 total feet wide, with 500 feet extending on either side of the centerline of the approved route, and GBX seeks to have authority to site the permanent easements for the approved route anywhere within the 1,000-foot Route Corridor without obtaining additional Commission approval. *Id.*

The Landowner Alliance argues that GBX does not cite to any legal authority or provision within the Act that permits or supports its request for the proposed Route Corridor. It references prior dockets before this Commission in which similar route corridors were purportedly allowed and indicates that the Kansas Corporation Commission and Missouri Public Service Commission have allegedly approved a similar corridor for the portion of this project in those states. *Id.* at 73-77. The Landowner Alliance contends that none of these references are binding legal authority or precedent for purposes of this Petition. *Miss. River Fuel Corp. v. Ill. Commerce Comm’n*, 1 Ill.2d 509, 513 (1953).

Further, the Landowner Alliance argues that the Commission should not authorize the Route Corridor requested by GBX because a similar routing request has been rejected by the courts. In *Kreutzer v. Ill. Commerce Comm’n*, the Appellate Court for the Second District found that a request by ComEd that it be granted a right-of-way of up to 175 feet to have flexibility in siting its transmission line should not have been permitted by the Commission. *Kreutzer v. Ill. Commerce Comm’n*, 404 Ill.App.3d 791, 813-14, 344 Ill. Dec. 5, 936 N.E.2d 147 (2010). The Court in *Kreutzer* held that the Commission’s order had to describe with reasonable certainty the amount of land it authorized ComEd to acquire, and ComEd did not explain why it needed a range of 175 feet in particular to make adjustments. *Id.* at 814. In rejecting the argument raised by the Commission that there was no prejudice to the landowners in allowing the larger right-of-way because they would have an opportunity to argue before the condemnation court what specific portion of their property ComEd may acquire, the *Kreutzer* Court opined, “We think the prejudice to [the landowners] would lie in subjecting them to the trouble and expense of additional proceedings for ComEd to prove what it already should have proven.” *Id.* at 815.

Like ComEd in the *Kreutzer* case, the Landowner Alliance posits that GBX has not explained in this matter the reason it is requesting the specific amount of 500 feet (or the limited 75 feet discussed below) for purposes of siting the line. Such a vague request does not comply with the reasonable certainty that must be provided to the landowners concerning the portion of the land that will be subject to the line. See *id.* at 814-15. In fact, if the proposed Route Corridor is permitted, there is virtually no certainty as GBX is not identifying the specific properties where the line may be placed, rather, it is asking that it be allowed to choose any of the properties located within the Corridor on which to site the line. Applying the reasoning from *Kreutzer*, the Landowner Alliance contends that GBX’s request for the Route Corridor should be denied.

Additionally, the Landowner Alliance claims that the evidence in the record does not support the Corridor sought in the Verified Petition. GBX stated in its Verified Petition that landowners within the 1000-foot-wide Route Corridor (meaning those owners within 500 feet on either side of the centerline of the Proposed and Alternate Routes) were

provided notification of this Petition pursuant to 83 Ill. Adm. Code 200.150(h). GBX App. At 75. However, as noted above, GBX admitted that an error was made concerning the landowners who received notice of the Verified Petition as GBX only supplied the contact information for owners within 75 feet of the centerline for the Proposed and Alternate Routes, instead of 500 feet. GBX Ex. 2.20 at 17-18; Tr. at 663-70. As a result, GBX has reduced the requested Route Corridor from 1,000 feet to 150 feet. Tr. at 665.

Thus, the Landowner Alliance requests that if the Commission entertains GBX's request for a Route Corridor, any such Corridor should be limited to 150 feet, which encompasses those owners who received notice within 75 feet on either side of the centerline of the approved route. Additionally, GBX agreed (through the testimony of the Vice President for Transmission Development for Invenergy, Brad Pnazek, who is the senior person overseeing this Project) that GBX would not contact the landowners outside the limited Route Corridor who did not receive notice of the Verified Petition concerning the routing of the Project, and the Landowner Alliance requests that this agreed restriction should be included in the Final Order if the Route Corridor is allowed. Tr. at 666-67.

#### **4. Commission Analysis and Conclusion**

The Commission notes the many concerns and opinions of the many residents and businesses that will ultimately be affected by this Project. The Commission does not take these concerns lightly. It is necessary for the Commission to weigh the benefits of this type of project with the potential concerns. Grain Belt Express has not requested eminent domain. Thus, eminent domain and the specific concerns raised by the intervenors and landowners are not at issue here.

The Commission notes that the AIMA requires Grain Belt Express to discuss the mitigation measures it attempts to employ with the landowner before implementing them and that the AIMA will be incorporated into Grain Belt Express' easement agreement. Additionally, Grain Belt Express will employ Agricultural Inspectors (as defined in the AIMA) to verify and enforce compliance with the AIMA by Grain Belt Express and its contractors. The Agricultural Inspectors will have the authority to stop non-compliant construction activities. The AIMA specifies the measures Grain Belt Express will use to avoid, mitigate, and minimize impacts of the Project on landowner property, including damage related to soil compaction, drainage tiles, and aerial application of chemicals. Additionally, if damage does occur, Grain Belt Express will repair or replace as necessary, and will compensate landowners for reduction in crop yields related to the construction, operation, or maintenance of the Project. However, Grain Belt Express indicates that it is not limited by the AIMA, its easement form, or its other commitments. The Commission anticipates that Grain Belt Express will continue to take reasonable measures to address landowner concerns in connection with negotiating easements.

The Commission notes that Grain Belt Express has addressed landowner concerns regarding environmental concerns. Grain Belt Express explained that it will coordinate with the necessary local, state, and federal agencies and will secure all necessary permits. The Commission expects Grain Belt Express to obtain all required permits and to coordinate with government agencies as necessary.

Some intervenors raised concerns about transmission line interference with GPS systems and potential health impacts. The Commission notes that Grain Belt Express

explained that the frequencies at which GPS systems operate is much higher than the frequency range of corona noise emitted by transmission lines, such that the line is unlikely to interfere with GPS. Additionally, the Commission notes that Grain Belt Express witness White reviewed publications produced by governmental and other scientific and health organizations that analyzed studies on long-term health effects of EMF. Grain Belt Express witness White is qualified as a licensed professional electrical engineering to calculate and report the strength of electric fields produced by the line and compare those with the recommended maximum EMF exposure limits.

Some landowners have raised concerns that property values will suffer because of the Project. However, Grain Belt Express witness MaRous provided testimony in which he analyzed and conducted studies comparing the sales prices of land with transmission line easements with land without easements. The result of Mr. MaRous' analysis is that transmission lines generally do not cause any impact on property prices and values. Where studies do find adverse impacts, those impacts range from 2% to 10%. However, those adverse impacts are generally temporary and land values return to the initial price or higher as landowners become used to the transmission line. The Commission finds Mr. MaRous' results to be credible.

YTI raised concerns about the transmission line interfering with its center pivot irrigation systems. Grain Belt Express states it minimized impacts to center pivot irrigators as a Routing Criterion in developing the Proposed Route and Alternate Route both in 2015 and in 2022 and will continue to work to minimize impacts of construction activities that may cause an irrigator to be temporarily out of service. As well, Grain Belt Express has stated that additional payments will be made to compensate landowners for crop damage, crop loss, field repair, drainage tile damage, temporary or permanent impacts to center pivot irrigators, or other similar impacts, should they occur.

The Commission finds that Grain Belt Express has undertaken and developed reasonable measures and procedures to avoid or reduce impacts on affected properties. The Commission expects Grain Belt Express to comply with its obligations under the AIMA. In addition, the Commission has noted the various means testified to by Grain Belt Express witnesses that will be employed to avoid, mitigate, and minimize impacts to land. The Commission expects Grain Belt Express and its contractors to employ the avoidance, mitigation, and remediation measures as testified to in this case by Grain Belt Express witnesses.

## **VI. REQUEST FOR AUTHORITY UNDER SECTIONS 8-503 AND 8-406(I)**

### **A. Grain Belt Express' Position**

Grain Belt Express requests that the Commission enter an order in this proceeding granting a CPCN to construct, operate, and maintain the Project, and also authorizing Grain Belt Express to construct the Project pursuant to Section 8-503 of the Act. GBX App. at 81. Section 8-503 states in pertinent part:

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public

utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order.

220 ILCS 5/8-503.

Additionally, Section 8-406.1(i) of the Act provides:

Notwithstanding any other provisions of this Act, a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.

220 ILCS 5/8-406.1(i).

As the Project is a high voltage electric service line and Grain Belt Express is seeking a CPCN pursuant to Section 8-406.1, the granting of a CPCN for the Project automatically triggers Section 8-503 authorization pursuant to Section 8-406.1(i). Accordingly, Grain Belt Express asserts that if the Commission grants it a CPCN in this proceeding, it must authorize Grain Belt Express, pursuant to Section 8-503 and Section 8-406.1(i), to construct the Project along the Proposed Route described in Attachment 4 and depicted on Attachments 5 and 6 to the Application.

Aside from the statutory direction pursuant to Section 8-406.1(i) of the Act that the granting of a CPCN pursuant to Section 8-406.1 compels the grant of authority under Section 8-503 to construct the Project, Grain Belt Express states that the record establishes that the requirements for an order under Section 8-503 have been independently met. This is because the criteria to satisfy Section 8-503 are duplicative of the criteria to satisfy Section 8-406.1(f)(1). In addition, for purposes of a Qualifying Project, such as the Project, Section 8-406(b-5) requires that the Commission find that the criteria of Section 8-406.1(f)(1) have been satisfied. If the Commission determines that the Section 8-406.1(f)(1) criteria are satisfied, the Commission must find (and the evidence in the record supports such a finding) that the criteria to satisfy Section 8-503 have been satisfied. See 220 ILCS 5/8-406(b-5), 8-406.1(i).

Grain Belt Express notes that Section 8-406.1(i) specifies that the order authorizing Project construction shall do so “in the manner and within the time specified” by the Commission. This language provides the Commission with significant flexibility. Pursuant to this provision, Grain Belt Express states that the Final Order should specify that construction of the Project should commence within five years (60 months) following

the date of the Commission's Final Order in this docket. Grain Belt Express asserts this timeline is necessary because a Project of this scale requires detailed planning and significant long-lead time activity. For instance, negotiating voluntary easements with landowners can be a slow process, often involving attorneys on both sides. If it becomes necessary for Grain Belt Express to pursue condemnation of one or more easements, then Grain Belt Express will need to apply separately for that authority with the Commission and, if granted, pursue condemnation proceedings in the Circuit Court. Grain Belt Express is not requesting condemnation authority pursuant to Section 8-509 of the Act in this proceeding. Additional long-lead items include, but are not limited to, environmental reviews and permitting, engineering and design and materials procurement. *Id.* These are all time-consuming endeavors and the five-year time horizon requested by Grain Belt Express takes this into account.

Grain Belt Express states that this timeline is also necessary because the Project will be developed in two Phases. *Id.* at 126. Phase I of the Project, which will include transmission line facilities from Kansas to Missouri, will be constructed first and will have the first commercial operation date. Phase II of the Project, which will include transmission line facilities from Missouri into Illinois and terminating at the Sullivan Substation in Indiana, will be constructed second and will have the second commercial operation date. Grain Belt Express anticipates commencing Phase II of the Project within five years by initiating work on access roads, conducting environmental surveys, conducting boring work and other activities. GBX Ex. 1.6 at 5–6. Additionally, prior to commencing construction, the Project will need to complete the interconnection process with SPP, AECI, MISO, and PJM and finish the environmental permitting process that follows the receipt of an approved route. *Id.* Finally, Grain Belt Express asserts that five years is necessary to permit adequate time to obtain full financing, which is dependent upon certain pre-construction activities being completed as previously discussed. GBX Ex. 4.0 at 10–11. Accordingly, Grain Belt Express requests that it be allowed five years (60 months) following the issuance of an Order in this docket to begin construction on Project access roads, conduct Project related environmental surveys, and conduct boring work and activities for the Project.

Grain Belt Express notes that there has been concern expressed by intervenors that the requested five-year pre-construction period will leave landowners “in limbo” regarding the status of the Project and whether certain land will ultimately be needed to support Project development. Grain Belt Express responds that this is not the case as Project representatives will be available to speak with landowners and provide updates. In addition, landowners can visit the Grain Belt Express website or otherwise contact the Grain Belt Express team for updates on Project development matters at any time. GBX Ex. 1.6 at 5.

Grain Belt Express responds to Landowner Alliance's assertions that granting Section 8-503 is premature by stating that, pursuant to Sections 8-406(b-5) and 8-406.1 of the Act, if the CPCN applicant is a Qualifying Project, which the Project is, and the applicant is awarded a CPCN, the Commission shall also authorize the construction of the project pursuant to Section 8-503. See 220 ILCS 5/8-406.1(i). Grain Belt Express states, accordingly, an Order authorizing a CPCN for the Project must also include the authorization to construct the Project.



Grain Belt Express further criticizes the Landowner Alliance's attempt to falsely tie Section 8-503 approval with eminent domain authority pursuant to Section 8-509. *Id.* Grain Belt Express points to Staff's support in its Initial Brief, which states: "an Order approving a CPCN for this project under Section 8-406.1 of the Act does not, without more, grant Grain Belt authority to acquire property by eminent domain." See 220 ILCS 5/8-406.1.; GBX App. at 6-7. Grain Belt Express states, accordingly, the Landowner Alliance's assertions regarding the withholding of Section 8-503 authority should be disregarded and, if a CPCN is ordered by the Commission, the Order should include Section 8-503 authority and specify that Project construction should begin within five years (60 months) following the date of the Commission's Order in this docket.

### **B. Landowner Alliance's Position**

The Landowner Alliance asserts that Section 8-503 is important because it is a condition to obtaining eminent domain powers under Section 8-509. See 220 ILCS 5/8-509. Section 8-509 states, in part: "When necessary for the construction of any alterations, additions, extensions, or improvements ordered or authorized under Section 8-406.1, 8-503, or 12-218 of this Act, any public utility may enter upon, take, or damage private property in the manner provided for by the law of eminent domain." *Id.*

The Landowner Alliance argues that providing GBX with Section 8-503 relief is premature given all of the proposed contingencies which must be met prior to construction commencing, like having adequate financial commitments, etc. Rock Island Clean Line LLC, sought Section 8-503 relief in Docket No. 12-0560, and the Commission had the same concerns and denied it Section 8-503 relief as premature. Particularly, it stated:

ComEd and Staff argue that Rock Island's request for Section 8-503 relief is premature, in that Rock Island is seeking authority that cannot be utilized given the contingencies, conditions and regulatory approvals still needed.

While the Commission is by no means suggesting that RI would have to satisfy every contingency or uncertainty before Section 8-503 authorization may be granted, the Commission does agree with Staff and ComEd that under the circumstances, it would be premature to grant Section 8-503 relief to Rock Island in this proceeding.

Docket No. 12-0560, Order at 215.

In addition, the Landowner Alliance asserts that if the Commission grants Section 8-503 relief to GBX via Section 8-406.1(i), it is "authorizing or directing" it to commence construction of the Project "in the manner and within the time specified in said order." 220 ILCS 5/8-406.1(i). The Landowners Alliance argues that although CPCNs must be exercised within two years (220 ILCS 5/8-406(f)), GBX acknowledges it could take up to 5 years to commence construction without any showing of why the statutory time requirement should be relaxed. See GBX App. at 82-83.

The Landowner Alliance believes that GBX is not capable of complying with the Section 8-503 authorization it seeks for several reasons. First, it does not own, control, operate, or manage any plants, equipment, or property used for or in connection with the

transmission, delivery, or furnishing of electricity in Illinois. Second, it also does not have any customers, suppliers, or sufficient capital investments. Finally, it does not have the basic infrastructure, suppliers, customers, or sufficient funding to start doing transmission work. The Landowner Alliance believes it is impossible for GBX to utilize any Commission certificates within 2 years as required.

### C. Staff's Position

Staff states Grain Belt Express requests an Order pursuant to Section 8-503 of the Act authorizing it to construct the Project. Because the criteria to satisfy Section 8-503 of the Act are duplicative of the criteria to satisfy Section 8-406.1(f)(1) of the Act, Grain Belt Express argues that the Commission must find that the criteria to satisfy Section 8-406.1(f)(1) of the Act have also been satisfied.

Staff points out that the Landowner Alliance argues that providing GBX with Section 8-503 relief is premature given all of the proposed contingencies which must be met prior to construction commencing. To support its argument, the Landowner Alliance relies on arguments made by ComEd and Staff in *Rock Island*, specifically, that granting that applicant's request for Section 8-503 relief would be premature, which the Commission accepted in its Final Order. See *Rock Island*, Order at 215.

Staff argues that the Landowner Alliance fails to acknowledge the statutory requirement imposed on the Commission in relation to Section 8-503. Pursuant to Section 8-406.1(i) of the Act, if the Commission grants a CPCN to Grain Belt Express, it "shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order." 220 ILCS 5/8-406.1(i) (emphasis added). Accordingly, the Landowner Alliance's contention must be rejected.

As an initial matter, the Landowner Alliance's reliance on Staff's testimony in a different proceeding nearly a decade ago is improper. Staff's testimony provided in *Rock Island* was based on a different statute with different statutory requirements than here. The applicant in *Rock Island* sought authority under 8-406 of the Act, not 8-406.1 of the Act. See *Rock Island*, Order at 1. Pursuant to Section 8-406.1(i) of the Act, the Commission "shall" include an Order pursuant to Section 8-503 of the Act if it grants Grain Belt Express a CPCN. The statutory language does not provide discretion and explicitly requires that an order pursuant to Section 8-503 must be issued if Grain Belt Express is granted a CPCN.

Further, even if the statute did not require the Commission to include an Order pursuant to Section 8-503 of the Act, Staff's recommendation in *Rock Island* is not applicable here, and the Landowner Alliance's reliance on it is misplaced. Staff's recommendation was based on issues surrounding whether or not the Act granted a non-public utility rights inherent to public utilities. Revisions to the Act made by P.A. 102-0662 have addressed the issues that led to Staff's recommendation in *Rock Island*. Therefore, Staff's recommendation in *Rock Island* is wholly inapplicable here and the Landowner Alliance's reliance on it is completely misplaced.

Staff recommends that, if the Commission grants Grain Belt Express' Application for a CPCN, in its Order, pursuant to Section 8-406.1(i), the Commission authorizes the construction of the project under Section 8-503 of the Act.

#### **D. Commission Analysis and Conclusion**

The Commission notes that pursuant to Section 8-406.1(i) of the Act, if the Commission grants a CPCN to Grain Belt Express, it is required to include an Order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said Order. 220 ILCS 5/8-406.1(i).

In accordance with Section 8-503 and Section 8-406.1(i) of the Act, the Commission authorizes Grain Belt Express to construct the Project, as described in this Order, in the manner and time specified in this Order. Section 8-406(f), gives the Commission discretion to alter or modify the certificate for the Applicant. 220 ILCS 5/8-406.1(i). Grain Belt Express requested an additional time period, sixty months, to begin construction of the Project. The Commission concludes that Grain Belt Express is authorized to construct the Project along the route approved in this Order and described on Appendix A hereto, in accordance with the conditions and requirements adopted, and other findings made in this Order, and with construction on the Illinois portion of the Project to commence within five years (60 months) following the date of the Commission's Order, unless subsequently modified by this Commission.

### **VII. GRAIN BELT EXPRESS' ACCOUNTING-RELATED REQUESTS**

#### **A. Use of the FERC Uniform System of Accounts**

##### **1. Grain Belt Express' Position**

Grain Belt Express states that as a multi-state provider of transmission services in interstate commerce it will be subject to the jurisdiction of FERC as well as of this Commission, and that it 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 Provision of the Federal Power Act, 18 C.F.R. Part 101. GBX App. at 84. Attachment 16 to Grain Belt Express' Application is a copy of the Chart of Accounts that Grain Belt Express has adopted in accordance with FERC's Uniform System of Accounts. *Id.*

Grain Belt Express further states that based on the nature of its operations, Grain Belt Express will be a "public utility" but will not be an "electric utility" as defined in the Act. *Id.* Grain Belt Express asserts that because it will not be an "electric utility," based on a literal application of 83 Ill. Adm. Code 415 ("Part 415"), Uniform System of Accounts ("USOA") for Electric Utilities, it will not be subject to the Commission's regulations at Part 415. *Id.* Nevertheless, Grain Belt Express acknowledges that the USOA in Part 415 would be the Commission's system of accounts that is the most closely relevant to Grain Belt Express' operations. *Id.* In Part 415, the Commission has adopted FERC's Uniform System of Accounts in 18 C.F.R. Part 101 as the Commission's Uniform System of Accounts for Electric Utilities, with certain deviations. *Id.*

Grain Belt Express states that maintenance of its books and records of account in accordance with FERC's USOA at 18 C.F.R. Part 101 will provide appropriate, useful,

and sufficient accounting and financial information for this Commission's regulatory purposes. *Id.* Accordingly, Grain Belt Express requests in its Application that, to the extent the Commission deems necessary, it waive the applicability of 83 Ill. Adm. Code 415 to Grain Belt Express so long as Grain Belt Express maintains its books and records in accordance with FERC's USOA at 18 C.F.R. Part 101. *Id.* Additionally, in response to Staff Data Request TEE 1.04, Grain Belt Express stated it would submit to the Commission its FERC Form 1, Electric Annual Report, in lieu of Form 21 ILCC, the annual report prescribed by the Commission for Illinois electric utilities. Staff Ex. 2.0 at Attach. A.

Although it remains Grain Belt Express' position that Part 415 is inapplicable, it is willing to agree to an accounting condition ("Accounting Condition") to the CPCN and to which the Staff has also agreed. See GBX Ex. 4.5 at 3–4.

## 2. Staff's Position

Staff recommends that the Commission allow Grain Belt Express to maintain financial and accounting books and records pursuant to the FERC USOA and require Grain Belt Express to submit reports and information in accordance with the Commission USOA and follow all other provisions of Part 415. Staff Ex. 2.0 at 3-4. Staff states that although the Commission USOA will not be used to determine the transmission rates for the assets constructed by Grain Belt Express in the instant proceeding, (see GBX Exhibit 4.0 at 17), the Commission USOA and its instructions may still be relevant for Grain Belt Express' financial reports or other submissions to the Commission in the future. Staff Ex. 2.0 at 4. Therefore, Grain Belt Express should be directed to follow the provisions of Part 415 in its financial reports and submissions to the Commission. *Id.* Staff recommends that the Commission require Grain Belt Express to provide annually both FERC Form 1 and the additional schedules as set forth in the General Instructions to Form 21 ILCC. Staff Ex. 2.0 at 11.

Therefore, as a condition of the approval of the Application, in addition to its FERC Form 1, Staff recommends that the Company also provide the 0 Series: General Corporate Schedules required by all utilities filing Form 21 ILCC, and the 600 Series: Electric Data required by all electric utilities. *Id.* at 6.

In response, Company witness Shine agreed to the following Accounting Condition:

- (1) Once Grain Belt Express is required by FERC to maintain its financial and accounting books in accordance with FERC's USOA, Grain Belt Express will commit to filing with the [Commission] its first available FERC Form 1, as well as the following schedules under Form 21 ILCC ("Schedules"), in accordance with the Illinois Uniform System of Accounts set forth in [83 Ill. Adm. Code] 415: a. 0 Series: General Corporate Schedules; and b. 600 Series: Electric Data;
- (2) Following the initial filing described in Paragraph 1 of this Accounting Condition, Grain Belt Express will file with the [Commission] the FERC Form 1 and Schedules annually; and
- (3) Starting March 8, 2024, Grain Belt Express will file an annual status report with the [Commission] advising whether Grain Belt Express'

commitment to file its first available FERC Form 1 and the Schedules, as set forth in Paragraph 1 of this Accounting Condition, has triggered.

GBX Ex. 4.5 at 3-4.

Staff agrees with the revisions to its proposed conditions. GBX Ex. 4.6; *see also* GBX Ex. 4.5 at 3-4.

Staff recommends that the Commission allow Grain Belt Express to maintain financial and accounting books and records pursuant to the FERC USOA and require Grain Belt Express to comply with the Accounting Condition.

### **3. Commission Analysis and Conclusion**

The Commission finds that Grain Belt Express should be directed to follow the provisions of Part 415 to the extent required by the agreed Accounting Condition in its financial reports and submissions to the Commission. The Commission will allow Grain Belt Express to maintain financial and accounting books and records pursuant to the FERC USOA, on the condition that Grain Belt Express complies with the Accounting Condition agreed to with Staff and described in this Section of the Order.

#### **B. Administrative Service Agreement and Request for Proprietary Treatment**

##### **1. Grain Belt Express' Position**

Grain Belt Express states that it and its affiliates and affiliate contracts are not subject to Section 7-101(3) until such time as Grain Belt Express is granted a CPCN and formally becomes a public utility. At that time, Grain Belt Express confirms that it will comply with Section 7-101(3), if applicable. Section 7-101(3) is applicable if Grain Belt Express is not exempted pursuant to Section 7-101(4). Section 7-101(4) exempts Administrative Service Agreements in certain situations, for example, if a contract made in the ordinary course of business for the purchase of services, supplies, or other personal property are at prices not exceeding the standard or prevailing market prices. GBX Ex. 4.4 at 5-6.

While Grain Belt Express maintains this position, in the interests of expediency and transparency, Grain Belt Express will agree to file the Administrative Services Agreement (subject to a "Confidential and Proprietary Information – Attorneys' Eyes Only" designation) in this proceeding upon the granting of a CPCN and requests that the Commission enter an Order approving the Administrative Services Agreement pursuant to Section 7-101(3) concurrent with the Commission approving Grain Belt Express' Application for a CPCN. GBX Ex. 4.4 at 6.

Grain Belt Express advises that the prepared testimony and exhibits which were filed contemporaneously with its Application contain financial and business information that it regards as proprietary and confidential. Those materials include the document shared by Grain Belt Express in response to Staff Data Request TEE 1.06. Specifically, Grain Belt Express provided confidential and proprietary copies of its "1.06.1 Administrative Services Agreement" with Invenergy, effective January 28, 2020; "1.06.2

Grain Belt Express LLC – Joinder” document; and 1.06.3 Invenergy Transmission LLC – Joinder” document. Those documents were provided on an Attorneys’ Eyes-Only basis.

Grain Belt Express argues that these documents are asserted to be confidential and proprietary for the following reasons, among others. First, Grain Belt Express and its ultimate parent company, Invenergy, are not publicly held companies but rather privately held entities that are owned at this time by a small number of investors. Due to the privately held ownership structure, the financial information of Grain Belt Express and Invenergy should be accorded confidential and proprietary treatment. Second, disclosure of Grain Belt Express’ and Invenergy’s financial information at this time could be financially and competitively harmful to Grain Belt Express and Invenergy in their negotiations with potential providers of products, materials, and services. Finally, confidential and proprietary treatment of these documents would be consistent with the terms of the protective order granted in this docket entered by the ALJ on September 14, 2022, Section 4-404 and Section 200.430 of the Commission’s Rules of Practice.

Grain Belt Express points out that Section 4-404 of the Act, specifies that, “The Commission shall provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity.” 220 ILCS 5/4-404. Grain Belt Express requests that in its Order in this proceeding, the Commission specify that the information designated by Grain Belt Express as proprietary and confidential in the testimony and exhibits submitted in this proceeding (including the in camera portions of the transcripts of the evidentiary hearing) shall be accorded proprietary and confidential treatment for a period of five years from the date of submission or for such other period as is agreed to by affected parties, unless such period shall be extended at some future time pursuant to applicable Commission rules.

## **2. Staff’s Position**

Staff points out that the Company provided a confidential and proprietary copy of its Administrative Services Agreement for services provided by Invenergy, LLC to Grain Belt Express, effective January 28, 2020. Staff Ex. 2.0, Attachment B (Public). The types of services that will be provided to Grain Belt Express, as well as its affiliated operating companies, by Invenergy include:

[E]xecutive management, accounting, treasury, finance, tax, payroll, employee benefits, human resources, procurement, accounts payable and receivable, engineering, real estate and property management, internal audit, regulatory and legal functions. Direct and overhead services performed by employees of Invenergy or its affiliates on behalf of or for the benefit of Grain Belt Express and other subsidiaries are recorded as costs of the subsidiary through time charging and overhead allocation procedures.

GBX App. at 52.

Affiliate transactions are addressed in Section 7-101(3) of the Act, which states in part:

No management, construction, engineering, supply, financial or similar contract and no contract or arrangement for the purchase, sale, lease or exchange of any property or for the furnishing of any service, property or thing, hereafter made with any affiliated interest, as hereinbefore defined, shall be effective unless it has first been filed with and consented to by the Commission or is exempted in accordance with the provisions of this Section or of Section 16-111 of this Act. ...

220 ILCS 5/7-101(3).

Staff notes that Grain Belt Express will require the services and support provided by Invenergy or its affiliates to operate the proposed facilities. GBX App. at 52; GBX Ex. 4.0 at 12. Grain Belt Express acknowledged that it has current affiliate relationships that may qualify as “affiliated interests” once the Company is a public utility. Staff Ex. 2.0, Attachment C. Staff argues that therefore, Grain Belt Express needs Commission approval of the Administrative Services Agreement in this proceeding. Staff Ex. 2.0 at 8.

After review and clarification of certain components of the Administrative Services Agreement for Services provided to GBX by Invenergy LLC, Staff recommends that the Commission enter an Order that approves the Services Agreement provided and direct GBX to file the executed Administrative Services Agreement as a compliance filing in this proceeding. *Id.* at 11. Grain Belt Express agrees with Staff’s recommendation. GBX Ex. 4.4 at 5-6.

### **3. Commission Analysis and Conclusion**

The Commission notes that Grain Belt Express will require the services and support provided by Invenergy or its affiliates to operate the proposed facilities. Grain Belt Express acknowledged that it has current affiliate relationships that may qualify as “affiliated interests” once the Company is a public utility. Staff points out that Grain Belt Express needs Commission approval of the Administrative Services Agreement in this proceeding. Grain Belt Express and its affiliate, Invenergy, are not publicly held companies but rather privately held entities. Therefore, the Company is requesting that the affiliated interest agreements remain confidential. The Commission approves Grain Belt Express’ Administrative Services Agreement and directs GBX to file the executed Administrative Services Agreement as a compliance filing in this proceeding. The Commission further finds that when Grain Belt Express files its Administrative Services Agreement it should request the “Confidential and Proprietary” designation at that time. The Commission will review and approve the Administrative Services Agreement, if appropriate.

The Commission normally only grants a period of two years for protection of proprietary and confidential information. Since the Company is requesting five years to begin construction, the Commission agrees with Grain Belt Express’ request that all confidential information placed into the record in this proceeding should be treated as proprietary and confidential for a period of five years from the date of this Order. Accordingly, pursuant to Section 4-404 of the Act, the Commission directs that all confidential information placed into the record of this proceeding shall be treated as proprietary and confidential for a period of five years from the date of this Order.

## **VIII. COMMISSION CONCLUSION**

Having reviewed the record evidence, the Commission finds that Grain Belt Express has satisfied the criteria in Sections 8-406(b-5) and 8-406.1. It is clear from the language in these Sections, that they were created specifically to allow applicants to construct, operate, and maintain an HVDC transmission line and to operate a transmission public utility business, without consideration of other Sections of the Act. For these reasons, the Commission finds that Grain Belt Express' request for a CPCN, pursuant to Section 8-406(b-5) and 8-406.1 of the Act, subject to the Revised Financing Conditions and Accounting Condition, should be granted and that Grain Belt Express should be issued a CPCN as set forth herein. The Commission also finds that pursuant to Section 8-406.1(i) and Section 8-503 of the Act, Grain Belt Express is authorized to construct the proposed high voltage electric service line and related facilities as described in, and in the manner and within the time specified, in this Order.

## **IX. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having given due consideration to the Application and evidentiary record, is of the opinion that:

- (1) Grain Belt Express is a limited liability company organized under the laws of the State of Indiana and is duly authorized to do business in the State of Illinois;
- (2) the Commission has jurisdiction over Grain Belt Express and the subject matter of this proceeding;
- (3) the recitals of fact and conclusions of law reached by the Commission in the prefatory portion of this Order are supported by the evidence and hereby adopted as findings of fact;
- (4) Grain Belt Express and the Project meet the requirements to proceed under Section 8-406(b-5) of Act;
- (5) Grain Belt Express has fulfilled the requirements of Section 8-406.1 of the Act;
- (6) pursuant to Section 8-406.1(f) of the Act, subject to the determinations made in this Order, the Commission finds that the Project will promote the public convenience and necessity; pursuant to Section 8-406.1(f)(1), the Project is necessary to provide adequate, reliable, and efficient service to Grain Belt Express' customers and is the least-cost means of satisfying the service needs of its customers or will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least-cost means of satisfying those objectives;
- (7) pursuant to Section 8-406.1(f)(2) of the Act, subject to the determinations made in this Order, the Commission finds that Grain Belt Express is capable of efficiently managing and supervising the construction process for the Project and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction of the Project;



- (8) pursuant to Section 8-406.1(f)(3) of the Act, subject to the determinations made in this Order, the Commission finds that Grain Belt Express is capable of financing the proposed construction of the Project without significant adverse financial consequences for Grain Belt Express or its customers;
- (9) subject to the determinations made and conditions and requirements imposed in this Order, pursuant to Section 8-406.1 of the Act, a CPCN should be issued to Grain Belt Express as ordered below;
- (10) pursuant to Section 8-503 and Section 8-406.1(i) of the Act, the Commission finds that the construction of the Project is necessary and it should be erected to promote the security and convenience of the public, to promote the development of an effectively competitive electricity market and to secure adequate services and facilities;
- (11) subject to the determinations made and conditions and requirements imposed in this Order, pursuant to Section 8-406.1(i) of the Act, Grain Belt Express should be authorized to construct the Project as described herein, and in the manner and time specified in this Order, with construction of the Project within the State of Illinois to commence within five years (60 months) following the date of this Order, unless modified by the Commission;
- (12) Grain Belt Express should be issued a CPCN to construct, operate, and maintain the Project, an up to  $\pm 600$  kV HVDC transmission line and associated facilities, including a DC-to-AC converter station in Clark County, Illinois, and a double circuit 345 kV AC line from the converter station to the Illinois-Indiana border, in the State of Illinois, along the Proposed Route described in Grain Belt Express' Application's Attachment 4 and as depicted in Appendix A, with a permanent right-of-way, for both the DC and AC sections of the Project, of between 150 and 200 feet around the centerline of the transmission line from the Mississippi River to the Illinois-Indiana border, with the exception of locations that require an atypical span to accommodate terrain features, land considerations and other local factors, in which case Grain Belt Express is authorized to obtain a permanent ROW easement up to 300 feet, and additional temporary easements of (i) 50 feet beyond the permanent right-of-way as required for purposes of access, turning and laydown yard easements during the construction of the Project and (ii) up to 600 feet beyond the permanent right-of-way at those locations with turning structures at 15- to 90- degree angles as described in Section V.D.1;
- (13) Grain Belt Express should be allowed the flexibility as described in Section V.D.1 to permanently site structures outside of the approved ROW when feasible and consistent with the Commission-approved route location or by agreement of all affected landowners so long as the applicable parcel's landowner received notice of this proceeding pursuant to Section 8-406.1(a) or intervened in this proceeding. Consistent with the flexibility, Grain Belt Express should be allowed to site the permanent easement on parcels that received notice of this proceeding pursuant to Section 406.1(a) or that

intervened in these proceedings, even if the location of such permanent easement extends beyond 75 feet in both directions of the centerline of the ROW identified in the Application and Grain Belt Express testimony and exhibits without having to seek additional approval from the Commission is granted; and

- (14) the Commission adopts the Cost Allocation Condition set forth in Section IV.E, the Interconnection Condition set forth in Section IV.E., the Financing Condition set forth in Section IV.D.1, and the Accounting Condition set forth in Section VII.A of this Order, and grants confidential and proprietary treatment, pursuant to Section 4-404 of the Act, to the information designated by Grain Belt Express as confidential and proprietary in the testimony and exhibits submitted in this proceeding, for a period of five (5) years from the date of submission in this proceeding, unless that period is extended for good cause shown pursuant to 83 Ill. Adm. Code 200.430. Further, the Commission orders Grain Belt Express to file the Administrative Services Agreement with the Commission in this proceeding as set forth in Section VII.B., at which time the Commission will review and approve the Administrative Services Agreement if appropriate.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a Certificate of Public Convenience and Necessity is hereby issued to Grain Belt Express LLC pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act, and that said Certificate shall read as follows:

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

IT IS HEREBY CERTIFIED that the public convenience and necessity require (1) the construction, operation and maintenance by Grain Belt Express LLC of a high voltage direct current transmission line and an alternating current transmission line, and related facilities, as described in this Order over the Proposed Route approved by the Commission and described in the legal description set forth in Grain Belt Express Attachment 4 filed on e-docket in Docket No. 22-0499 and in Appendix A to this Order, and (2) the transaction of an electric public utility business by Grain Belt Express in connection therewith, all as set forth in this Order.

IT IS FURTHER ORDERED that pursuant to Section 8-406.1 and Section 8-503 of the Public Utilities Act, Grain Belt Express LLC is authorized to construct the proposed high voltage electric service line and related facilities as described in, and in the manner and within the time specified, in this Order.

IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity and the other authorizations granted herein are, and shall be, subject to, and Grain Belt Express LLC shall comply with, the Cost Allocation Condition set forth in Section IV.E, the Interconnection Condition set forth in Section IV.E., the Financing Condition set forth in Section IV.D.1 and Appendix B to this Order, and the Accounting Condition set forth in Section VII.A in this Order.

IT IS FURTHER ORDERED that pursuant to Section 4-404 of the Public Utilities Act, all confidential information placed into the record of this proceeding shall be treated as proprietary and confidential for a period of five years from the date of this Order.

IT IS FURTHER ORDERED that any and all motions, objections and requests not ruled upon in this proceeding are hereby deemed disposed of in a manner consistent with the determinations and ultimate conclusions herein.

IT IS FURTHER ORDERED that, pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission, this 8th day of March, 2023.

(SIGNED) CARRIE ZALWESKI

Chairman

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

**Grain Belt Express LLC** )  
 )  
**Application for an Order Granting Grain Belt** )  
**Express LLC, as a Qualifying Direct Current** )  
**Applicant, a Certificate of Public Convenience** )  
**and Necessity pursuant to Sections 8-406(b-5) and** )  
**8-406.1 of the Public Utilities Act to Construct,** )  
**Operate and Maintain a High Voltage Direct** )  
**Current Electric Service Transmission Line as a** )  
**Qualifying Direct Current Project and to** )  
**Conduct a Transmission Public Utility Business** )  
**in Connection Therewith and Authorizing Grain** )  
**Belt Express LLC Pursuant to Sections 8-503 and** )  
**8-406.1(i) of the Public Utilities Act to Construct** )  
**the High Voltage Direct Current Electric** )  
**Transmission Line.** )

**Docket No. 22-\_\_\_\_\_**

**ATTACHMENT 4**

**LEGAL DESCRIPTIONS OF THE PROPOSED ROUTE AND THE ALTERNATE  
ROUTE OF THE PROJECT IN ILLINOIS**

## **Grain Belt Express Proposed Route Legal Description – DC Section**

The following is a legal description for the Grain Belt Express DC Section Proposed Route in Illinois, which is approximately 207.8 miles long, generally using a Right of Way that will vary between 150 and 200 feet.

### **Legal Description**

Beginning at a point approximately 2,400 feet South and 160 feet West from the NE corner of Section 20 T5S R7W of the Fourth Principal Meridian, Pike County, IL.

Thence extending Northeasterly approximately 0.85 miles (4,342 feet) through Section 21 of said Township and Range to a point approximately 155 feet North and 1,664 feet West from the SE corner of Section 16 in T5S R7W.

Thence extending Southeasterly approximately 2.20 miles through Sections 16, 21, 22, and 23 to a point approximately 2,495 feet North and 472 feet West of the SE corner of Section 23 in T5S R7W.

Thence deflecting Easterly approximately 2.21 miles through Sections 23 and 24 in T5S R7W to a point approximately 2,631 feet North and 148 feet West of the SE corner of Section 19 in T5S R6W.

Thence deflecting Southerly approximately 1.49 miles through Section 19 to a point approximately 144 feet North and 156 feet West of the SE corner of Section 30 in T5S R6W.

Thence Northeasterly approximately 1 mile, to a point approximately 150 feet North and 150 feet West of the SE corner of Section 29 T5S R6W.

Thence Southeasterly approximately 1.85 miles through Sections 28 and 27 in T5S R6W, to a point approximately 50 feet South and 1,000 feet West of the NE corner of Section 34 in T5S R6W.

\*Thence Northeasterly approximately 1.82 miles through Sections 27 and 26 in T5S R6W, to a point approximately 1,690 feet South and 2,620 feet East of the NW corner of Section 25 in T5S R6W.

\*Thence deflecting Easterly approximately 1.99 miles through Section 30 in T5S R5W to a point approximately 1,508 feet South and 2,468 feet East of the NW corner of Section 29 in T5S R5W.

Thence deflecting Southerly approximately 0.24 miles (1,258 feet) through Section 29 in T5S R5W to a point approximately 2,767 feet South and 2,479 feet West of the NE corner of Section 29 in T5S R5W.

Thence deflecting Easterly approximately 1.75 miles through Sections 29 and 28 in T5S R5W to a point approximately 2,754 feet South and 1,828 feet East of the NW corner of Section 27 in T5S R5W.

Thence Northeasterly approximately 0.10 miles (844 feet) to a point approximately 2,326 feet South and 2,164 feet East of the NW corner of Section 27 in T5S R5W.

Thence Southeasterly approximately 0.22 miles (1,802 feet) to a point approximately 2,775 feet South and 1,727 feet West of the NE corner of Section 27 in T5S R5W.

Thence deflecting Easterly approximately 1.3 miles through Sections 27 and 29 to a point approximately 2,795 feet South and 88 feet East of the NW corner of Section 25 in T5S R5W.

Thence deflecting Southerly approximately 0.61 miles (3,199 feet) through Section 25 to a point 683 feet South and 94 feet East of the NW corner of Section 36 in T5S R5W.

Thence deflecting Easterly approximately 0.84 miles (4,447 feet) to a point approximately 679 feet South and 474 feet West of the NE corner of Section 36 in T5S R5W.

Thence deflecting Easterly approximately 1.85 miles along the Northern Section lines of Sections 31 and 32 in T5S R4W, to a point approximately 1,489 feet West of the NE corner of Section 32 in T5S R4W.

Thence deflecting Southeasterly approximately 1.00 mile to a point approximately 530 feet East of the center of Section 33 in T5S R4W.

Thence deflecting Easterly approximately 1.57 miles through the middle of Sections 33 and 34 in T5S R4W to a point approximately 1,239 feet East of the West quarter corner of Section 35 in T5S R4W.

Thence deflecting Southeasterly approximately 0.26 miles (1,352 feet) to a point approximately 150 feet South of the center of Section 35 in T5S R4W.

Thence deflecting Easterly approximately 0.81 miles (4,280 feet) to a point approximately 2,544 feet North and 1,792 feet East of the SW corner of Section 36 in T5S R4W.

Thence deflecting Southeasterly approximately 3.25 miles through Section 31 in T5S R3W and Sections 6, 5, and 8 in T6S R3W to a point approximately 2,695 feet South and 433 feet East of the NW corner of Section 9 in T6S R3W.

Thence deflecting Easterly approximately 5.01 miles through the middle of Sections 9, 10, 11, and 12 in T6S R3W and Sections 7 and 8 in T6S R2W to a point approximately 1,429 feet East of the West quarter-corner of Section 8 in T6S R2W.

Thence deflecting Northeasterly approximately 0.71 miles (3,795 feet) through Section 8 in T6S R2W to a point approximately 2,873 feet North and 83 feet East of the SE corner of Section 9 in T6S R2W.

Thence Southeasterly approximately 0.22 miles (1,186 feet) to a point approximately 1,254 feet East of the West quarter-corner of Section 9 in T6S R2W.

Thence deflecting Easterly approximately 1 mile to a point approximately 1,478 feet East of the West quarter-corner of Section 10 in T6S R2W.

Thence deflecting Northeasterly approximately 0.22 miles (1,171 feet) to a point approximately 2,569 feet South and 2,412 feet West of the NE corner of Section 10 in T6S R2W.

Thence deflecting Easterly approximately 0.21 miles (1,129 feet) to a point approximately 2,569 feet South and 1,283 feet West of the NE corner of Section 10 in T6S R2W.

Thence deflecting Southeasterly approximately 0.23 miles (1,229 feet) to a point approximately 60 feet West of the East quarter-corner of Section 10 in T6S R2W.

Thence deflecting Easterly approximately 0.91 miles (4,784 feet) through Section 11 in T6S R2W to a point approximately 360 feet West of the East quarter-corner of Section 11 in T6S R2W.

Thence deflecting Southeasterly approximately 0.59 miles (3,100 feet) to a point approximately 207 feet North and 1,587 feet East of the SW corner of Section 12 in T6S R2W.

Thence deflecting Easterly approximately 0.88 miles (4,625ft) through Section 12 in T6S R2W in Pike County, IL, crossing the 4th Principal Meridian, and into Section 29 in T13N R13W in Scott County, IL to a point approximately 2,312 feet South and 1,159 feet West of the NE corner of Section 29 in T13N R13W.

Thence deflecting Southeasterly approximately 0.48 miles (2532 ft) to a point approximately 1,369 feet East and 2,550 feet South of the NW corner of Section 28 in T13 N R13W.

Thence deflecting Easterly approximately 1.65 miles through Sections 28 and 27 in T13N R13W to a point approximately 2,579 feet South and 70 feet East of the NW corner of Section 26 in T13N R13W.

Thence deflecting Southeasterly approximately 0.21 miles (1,122 feet) to a point approximately 2,648 feet North and 1,186 feet East of the SW corner of Section 26 in T13N R13W.

Thence deflecting Easterly approximately 1.40 miles to a point approximately 2,586 feet North and 1,344 feet West of the SE corner of Section 25 in T13N R13W.

Thence deflecting Southeasterly approximately 0.43 miles through Section 25 of T13N R12W to a point approximately 2,275 feet North and 961 feet East of the SW corner of Section 30 in T13N R12W.

Thence deflecting Easterly approximately 0.64 miles (3,396 feet) to a point 2,240 feet North and 578 feet West of the SE corner of Section 30 in T13N R12W.

Thence Southeasterly approximately 0.78 miles (4,109 feet) through Sections 30 and 29 of T13N R12W to a point approximately 1,414 feet South and 1,325 feet East of the NW corner of Section 32 in T13N R12W.

Thence deflecting Easterly approximately 1.68 miles through Sections 32 and 33 in T13N R12W to a point approximately 1,418 feet South and 135 feet East of the NW corner of Section 34 in T13N R12W.

Thence deflecting Southeasterly approximately 0.42 miles to a point approximately 2,514 feet North and 1,931 feet East of the SW corner of Section 34 in T13N R12W.

Thence deflecting Easterly approximately 5.38 miles through the middle of Sections 35 and 36 in T13N R12W and Sections 31, 32, and 33 in T13N R11W to a point approximately 2,588 feet North and 1,313 feet East of the SW corner of Section 34 in T13N R11W.

Thence deflecting Southerly approximately 1.77 miles through Section 34 in T13N R11W in Scott County, IL and Section 3 in T12N R11W in Greene County, IL, to a point approximately 1,391 feet South and 1,324 feet East of the NW corner of Section 10 in T12N R11W.

Thence deflecting Easterly approximately 3.98 miles through Sections 10, 11, and 12 in T12N R11W and Sections 7 and 8 in T12N R10W to a point approximately 1,642 feet South of the North quarter-corner of Section 8 in T12N R10W.

Thence deflecting Southeasterly approximately 0.77 miles (4,046 feet) to a point approximately 2,788 feet South and 1,262 feet East of the NW corner of Section 9 in T12N R10W.

Thence deflecting Easterly approximately 1.16 miles to a point approximately 2,507 feet East of the West quarter-corner of Section 10 in T12N R10W.



Thence deflecting Southeasterly approximately 0.24 miles (1,280 feet) to a point approximately 2,576 feet North and 1,252 feet West of the SE corner of Section 10 in T12N R10W.

Thence deflecting Easterly approximately 5.33 miles through Sections 11 and 12 in T12N R10W in Greene County, IL, and Sections 7, 8 and 9, in T12N R9W in Macoupin County, IL, to a point approximately 2,552 feet North and 1,756 feet East of the SW corner of Section 10 in T12N R9W.

Thence Southeasterly approximately 0.26 miles (1,370 feet) through Section 10 to a point 1,268 feet North and 2,179 feet East of the SW corner of Section 10 in T12N R9W.

Thence Southerly approximately 0.25 miles (1,323 feet) to a point 32 feet South and 2,377 feet East of the NW corner of Section 15 in T12N R9W.

Thence deflecting Southerly approximately 0.36 miles (1,886 feet) to a point 1,886 feet South and 2,580 feet West of the NE corner of Section 15 in T12N R9W.

Thence deflecting Easterly approximately 0.25 miles (1,298 feet) East to a point 1,887 feet South and 1,281 feet West of the NE corner of Section 15 in T12N R9W.

Thence deflecting Northeasterly approximately 0.46 miles (2,443 feet) through Section 15 to a point approximately 1,344 feet South and 1,044 feet East of the NW corner of Section 14 in T12N R9W.

Thence deflecting Easterly approximately 3.32 miles through Sections 14 and 13 in T12N R9W and Sections 18 and 17 in T12N R8W to a point approximately 1,404 feet South and 1,263 feet West of the NE corner of Section 17 in T12N R8W.

Thence deflecting Southeasterly approximately 0.26 miles (1,382 feet) to a point 1,490 feet South and 115 feet East of the NW corner of Section 16 in T12N R8W.

Thence deflecting Easterly approximately 0.44 miles (2,335 feet) to a point 1,451 feet South and 2,528 feet West of the NE corner of Section 16 in T12N R8W.

Thence deflecting Northeasterly approximately 0.24 miles (1,255 ft) to a point 1,343 feet South and 1,278 feet West of the NE corner of Section 16 in T12N R8W.

Thence deflecting Easterly approximately 2.28 miles through Sections 16, 15 and 14 in T12N R8W to a point approximately 1,340 feet South and 813 feet East of the NW corner of Section 13 in T12N R8W.

Thence deflecting Northeasterly approximately 0.41 miles (2,150 feet) to a point approximately 2,472 feet East of the SW corner of Section 12 in T12N R8W.

Thence deflecting Easterly approximately 2.6 miles along the southern boundary of Section 12 in T12 N R8W and Sections 7 and 8 in T12N R7W to a point approximately 1,237 feet East of the SE corner of Section 9 in T12N R7W.

Thence Northeasterly approximately 0.18 (946 feet) to a point approximately 220 feet North of the South quarter-corner of Section 9 in T12N R7W.

Thence Southeasterly approximately 0.22 miles (1,444 feet) to a point approximately 1,641 feet West of the SE corner of Section 9 in T12N R7W.

Thence deflecting Easterly approximately 3.96 miles along the southern boundary of Sections 9, 10, 11, and 12 of T12N R7W and Section 7 in T12N R6W and to a point approximately 407 feet West of the SE corner of Section 7 in T12N R6W.

Thence deflecting Southeasterly approximately 0.91 miles (4,792 feet) through Section 17 in T12N R6W to a point approximately 1,533 feet West of the East quarter-corner of Section 17 in T12N R6W.

Thence deflecting Easterly approximately 6.38 miles through Sections 17, 16, 15, 14 and 13 in T12N R6W in Macoupin County, IL, and Sections 18 and 17 in T12N R5W in Montgomery County, IL, to a point approximately 2,631 feet North and 2,359 feet East of the SW corner of Section 16 in T12N R5W.

Thence deflecting Southerly approximately 1.00 mile to a point approximately 2,659 feet North and 2,306 feet East of the SW corner of Section 21 in T12N R5W.

Thence deflecting Easterly approximately 2.87 miles through Sections 21, 22 and 23 in T12N R5W to a point approximately 2,652 feet South and 2,490 feet West of the NE corner of Section 24 in T12N R5W.

Thence deflecting Southerly approximately 5.50 miles through Sections 24, 25 and 36 in T12N R5W and Sections 1, and 12 in T11N R5W to a point approximately 262 feet North of the South quarter-corner of Section 13 in T11N R5W.

Thence deflecting Southeasterly approximately 0.73 miles (3,844 feet) through Section 13 in T11N R5W to the East quarter-corner of Section 24 in T11N R5W.

Thence deflecting Easterly approximately 16.49 miles through Sections 19, 20 and 21 in T11N R4W in Montgomery County, IL, Sections 22, 23 and 24 in T11N R4W in Christian County, IL, Sections 19, 20, 21, 22, 23 and 24 in T11N R3W, and Sections 19, 20, 21, 22 and 23 in T11N R2W to a point approximately 2,682 feet North and 2,481 feet West of the SE corner of Section 24 in T11N R2W.

Thence deflecting Southerly approximately 1.00 mile through Section 24 to a point approximately 2,608 feet South and 2,494 feet East of the NW corner of Section 25 in T11N R2W.

Thence deflecting Easterly approximately 3.73 miles through Sections 30, 29 and 28 in T11N R1W to a point approximately 2,629 feet South and 2,446 feet West of the NE corner of Section 27 in T11N R1W.

Thence deflecting Southerly approximately 1.01 miles to a point approximately 2,614 feet South and 2,481 feet East of the NW corner of Section 34 in T11N R1W.

Thence deflecting Easterly approximately 2.94 miles through Sections 35 and 36 in T11N R1W to a point approximately 2,567 feet South and 2,470 feet West of the NE corner of Section 31 in T11N R1E.

Thence deflecting Southerly approximately 6.78 miles through Section 31 in T11N R1E in Christian County, IL, and Sections 6, 7, 18, 19, 30 and 31 in T10N R1E in Shelby County, IL to a point approximately 1,445 feet South and 2,429 feet West of the NE corner of Section 6 in T9N R1E.

Thence deflecting Easterly approximately 4.26 miles through Sections 5, 4, 3 and 2 in T9N R1E to a point approximately 1,509 feet South and 80 feet East of the NW corner of Section 1 in T9N R1E.

Thence deflecting Easterly approximately 6.38 miles through Section 1 in T9N R1E and Sections 6, 5, 4, 3, 2 and 1 in T9N R2E to a point approximately 1,134 feet South and 113 feet West of the NE corner of Section 1 in T9N R2E.

Thence deflecting Easterly approximately 0.26 miles (1,391 feet) a point approximately 1,291 feet South and 1,223 feet East of the NW corner of Section 6 in T9N R3E.

Thence deflecting Easterly approximately 3.75 miles through Sections 6, 5, 4 and 3 in T9N R3E to a point approximately 1,337 feet South and 1,253 feet East of the NW corner of Section 2 in T9N R3E.

Thence deflecting Southeasterly approximately 0.78 miles (4,141 feet) to a point approximately 266 feet North and 1,826 feet West of the SE corner of Section 2 in T9N R3E.

Thence deflecting Southeasterly approximately 1.35 miles through Section 2 in T9N R3E and Section 11 in T9N R3E to a point approximately 549 feet West of the East quarter-corner of Section 12 in T9N R3E.

Thence deflecting Easterly approximately 3.25 miles through the middle of Sections 7, 8 and 9 in T9N R4E to a point approximately 2,588 feet North and 1,824 feet East of the SW corner of Section 10 in T9N R4E.

Thence deflecting Northeasterly approximately 0.62 miles (3,273 feet) to a point approximately 1,336 feet South of the NE corner of Section 10 in T9N R4E.

Thence deflecting Easterly approximately 1.15 miles through Section 11 in T9N R4E to a point approximately 1,355 feet South and 1,020 feet East of the NW corner of Section 12 in T9N R4E.

Thence deflecting Southeasterly approximately 0.39 miles (2,038 feet) to a point approximately 2,587 feet North and 2,446 feet West of the SE corner of Section 12 in T9N R4E.

Thence extending Easterly approximately 3.77 miles through Sections 7, 8 and 9 in T9N R5E to a point approximately 2,614 feet North and 2,489 feet West of the SE corner of Section 10 in T9N R5E.

Thence deflecting Southeasterly approximately 0.55 miles (2,921 feet) to a point approximately 1,288 feet North and 70 feet East of the SW corner of Section 11 in T9N R5E.

Thence deflecting Easterly approximately 7.92 miles through the Southern half of Sections 11 and 12 in T9N R5E and Sections 7, 8, 9, 10, 11 and 12 in T9N R6E in Shelby County, IL to a point approximately 1,355 feet North and 2,424 feet East of the SW corner of Section 7 in T9N R7E in Cumberland County, IL.

Thence deflecting Northeasterly approximately 0.52 miles (2,751 feet) to a point approximately 2,647 feet North and 70 feet West of the SE corner of Section 7 in T9N R7E.

Thence deflecting Easterly approximately 0.72 miles (3,789 feet) through Section 8 in T9N R7E to a point approximately 2,625 feet North and 1,217 feet West of the SE corner of Section 8 in T9N R7E.

Thence deflecting Southeasterly approximately 0.23 miles (1,210 feet) to a point 2,450 feet North and 24 feet West of the SE corner of Section 8 in T9N R7E.

Thence deflecting Northeasterly approximately 0.67 miles (3,5113 feet) to a point approximately 2,117 feet South and 1,515 feet West of the NE corner of Section 9 in T9N R7E.

Thence deflecting Southeasterly approximately 0.38 miles (2,018 feet) to a point approximately 2,596 feet North and 413 feet East of the SW corner of Section 10 in T9N R7E.

Thence deflecting Easterly approximately 3.48 miles through the middle of Sections 10, 11 and 12 in T9N R7E and Section 7 in T9N R8E to a point approximately 2,636 feet North and 1,053 feet West of the SE corner of Section 7 in T9N R8E.

Thence deflecting Southeasterly approximately 0.49 miles (2,563 feet) to a point approximately 1,486 feet North and 1,195 feet East of the SW corner of Section 8 in T9N R8E.

Thence deflecting Easterly approximately 4.38 miles through Sections 9, 10, 11 and 12 in T9N R8E to a point approximately 1,245 feet North and 363 feet West of the SE corner of Section 12 in T9N R8E.

Thence deflecting Southeasterly approximately 0.33 miles (1,723 feet) to a point approximately 690 feet North and 1,303 feet East of the SW corner of Section 7 in T9N R9E.

Thence deflecting Easterly approximately 1.45 miles through Sections 7 and 8 in T9N R9E to a point approximately 673 feet North and 831 feet West of the SE corner of Section 8 in T9N R9.

Thence deflecting Southeasterly approximately 0.71 miles (3,747 feet) through Sections 9 and 16 in T9N R9E to a point approximately 1,155 feet South and 2,443 feet East of the NW corner of Section 16 in T9N R9E

Thence deflecting Northeasterly approximately 0.18 miles (936 feet) to a point approximately 1,154 feet South and 1,650 feet West of the NE corner of Section 16 in T9N R9E.

Thence deflecting Easterly approximately 0.78 miles (4,105 feet) through Section 16 to a point approximately 1,425 feet South and 2,443 feet East of the NW corner of Section 15 in T9N R9E.

Thence deflecting Southeasterly approximately 0.98 miles (5,191 feet) to a point approximately 2,192 feet South and 2,401 feet West of the NE corner of Section 14 in T9N R9E.

Thence extending Easterly approximately 1.90 miles through Section 13 in T9N R9E to a point approximately 2,089 feet South and 2,159 feet West of the NE corner of Section 18 in T9N R10E.

Thence deflecting Northeasterly approximately 0.23 miles (1,193 feet) to a point approximately 1,298 feet South and 1,256 feet West of the NE corner of Section 18 in T9N R10E.

Thence deflecting Easterly approximately 9.58 miles through the Northern half of Sections 18, 17, 16, 15, 14 and 13 in T9N R10E and Section 18 in Township 9N R11E in Cumberland County, IL crossing the 3rd Principal Meridian, and Sections 18, 17, 16, 15, in T9N R14W in Clark County, IL to a point approximately 1,305 feet South and 314 feet East of the NW corner of Section 14 in T9N R14W.

Thence Southeasterly approximately 0.35 miles (1,823 feet) to a point approximately 2,723 feet South and 1,481 feet East of the NW corner of Section 14 in T9N R14W.

Thence deflecting Easterly approximately 0.66 miles (3,487 feet) to a point 2,639 feet North and 132 feet West of the SE corner of Section 14 in T9N R14W.

Thence deflecting Southeasterly approximately 0.26 miles (1,356 feet) to a point 2,500 feet North and 1,160 feet East of The SW corner of Section 13 in T9N R14W.

Thence deflecting Easterly approximately 0.39 miles (2,079 feet) through Section 14 to a point approximately 2,655 feet North and 1,693 feet West of the SW corner of Section 13 in T9N R14W.

Thence Northeasterly approximately 0.40 miles (2,119 feet) to a point approximately 1,322 feet South and 66 feet West of the NW corner of Section 13 T9N R14W.

Thence deflecting Easterly approximately 4.73 miles through Section 13 in T9N R14W and, Sections 18, 17, 16, 15, and 14 in T9N R11E in Cumberland County, IL, crossing the 3rd Principal Meridian, and Sections 18, 17, 16, and 15 in T9N R13W in Clark County, IL to a point approximately 1,295 feet South and 14 feet West of the NE corner of Section 14 in T9N R13W.

Thence deflecting Northeasterly approximately 0.60 miles (3,188 feet) through Sections 14 and 13 in T9N R13W to a point approximately 694 feet North and 2,435 feet East of the SW corner of Section 12 in T9N R13W.

Thence deflecting Easterly approximately 2.06 miles through Section 18 in T9N R12W to a point approximately 623 feet South and 1,784 feet West of the NE corner of Section 17 in T9N R12W.

Thence extending Easterly approximately 5.08 miles through Sections 16, 10, 11 and 12 in T9N R12W and Sections 7 and 8 in T9N R11W to a point approximately 1,500 feet North and 1,416 feet West of the SE corner of Section 8 in T9N R11W, terminating at the Clark County converter station, which is described as:

That part of the Southeast  $\frac{1}{4}$  of Section 8, Township 9 North, Range 11 West of the second principal meridian described as follows: All of the Northeast  $\frac{1}{4}$  South of Mill Creek; The Eastern  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  lying South of Mill Creek; All of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  East of Mill Creek; The Eastern  $\frac{1}{2}$  of the Southwest  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$ ;

and also

That part of the Northeast  $\frac{1}{4}$  of Section 9, Township 9 North, Range 11 West of the second principal meridian described as follows: All of the Northern  $\frac{1}{2}$  of the Northern  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$ , except for 6 acres in the western  $\frac{1}{2}$  of the Northern  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ ; All being situated in York Township, Clark County, Illinois; All being situated in York Township, Clark County, Illinois

## **Grain Belt Express Proposed Route Legal Description – AC Section**

The following is a legal description for the Grain Belt Express AC Section Proposed Route in Illinois, which is approximately 3.6 miles long, generally using a Right of Way that will vary between 150 and 200 feet.

### **Legal Description**

Beginning at a point in Section 8 in T9N R11W, Clark County, that is approximately 1,830 feet North and 307 feet West of the SE corner of Section 8 in T9N R11W, at the Eastern boundary of the Clark County converter station property, which is described as:

That part of the Southeast  $\frac{1}{4}$  of Section 8, Township 9 North, Range 11 West of the second principal meridian described as follows: All of the Northeast  $\frac{1}{4}$  South of Mill Creek; The Eastern  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  lying South of Mill Creek; All of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  East of Mill Creek; The Eastern  $\frac{1}{2}$  of the Southwest  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$ ;

and also

That part of the Northeast  $\frac{1}{4}$  of Section 9, Township 9 North, Range 11 West of the second principal meridian described as follows: All of the Northern  $\frac{1}{2}$  of the Northern  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$ , except for 6 acres in the western  $\frac{1}{2}$  of the Northern  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ ; All being situated in York Township, Clark County, Illinois; All being situated in York Township, Clark County, Illinois

Thence extending Easterly approximately 3.6 miles through Sections 8, 9, 10, 11 and 12 in T9N R11W in Clark County, IL and terminating at the Indiana/Illinois border approximately 1,220 feet North of the SE corner of Section 12 in T9N R11W.



## **Grain Belt Express Alternate Route Legal Description – DC Section**

The following is a legal description for the Grain Belt Express DC Section Alternate Route in Illinois, which is approximately 212.9 miles long, generally using a Right of Way that will vary between 150 and 200 feet.

### **Legal Description**

Beginning at a point approximately 2,400 feet South and 160 feet West from the NE corner of Section 20 in T5S R7W, Pike County, IL.

Thence extending Northeasterly approximately 0.82 miles (4,342 feet) through Section 21 T5S R7W to a point approximately 155 feet North and 1,664 feet West from the SE corner of Section 16 in T5S R7W.

Thence deflecting Easterly approximately 3.16 miles along the southern boundary of Sections 16, 15, 14, and 13, in T5S R7W to a point approximately 13 feet South of the NE corner of Section 24 in T5S R7W.

Thence Easterly approximately 1.24 miles along the northern boundary of section 19 in T5S R6W to a point 199 feet south and 106 feet east of the NW corner of Section 20 in T5S R6W.

Thence Northeast approximately 2.44 miles along the northern boundary of Section 20, 21, and 22 to a point approximately 50 feet north and 2,020 feet west of the SE corner of Section 15 in T5S R6W.

Thence deflecting Southeasterly approximately 0.91 miles (4,803 feet) through Sections 15 and 22 in T5S R6W to a point approximately 1,467 feet North and 747 feet East of the SW corner of Section 23 in T5S R6W.

Thence deflecting Southeasterly approximately 1.08 miles through Section 23 T5S R6W to a point approximately 634 feet north and 1,281 feet East of the SW corner of Section 24 T5S R6W.

Thence deflecting Easterly approximately 0.72 miles (3,804 feet) through Section 24 T5S R6W to a point approximately 767 feet North and 64 feet East of the SW corner of Section 19 T5S R5W.

Thence deflecting Northeasterly approximately 0.29 miles (1,514 feet) in Section 19 T5S R5W to a point approximately 1,251 feet North and 1,504 feet East of the SW corner of Section 19 T5S R5W.

Thence deflecting Easterly 1.63 miles through Sections 19 and 20 to a point approximately 1,221 feet North and 102 feet East of the SW corner of Section 21 in T5S R5W.

Thence Northeasterly approximately 0.52 (2,731 feet) to a point approximately 2,696 feet north and 2,476 feet east of the SW corner of Section 21 in TS5 R5W.

Thence generally Easterly approximately 3.31 miles through Sections 21, 22, and 23 to a point approximately 27 feet west of the East quarter-corner of Section 24 in T5S R5W.

Thence Southeasterly approximately 0.62 miles (3,261 feet) through Section 24 to a point approximately 2,549 feet west of the East quarter-corner of Section 19 T5S R4W.

Thence deflecting Easterly approximately 0.72 miles (3,805 feet) through Section 19 T5S R6W to a point approximately 1,256 feet East of the West quarter-corner of Section 20 in T5S R4W.

Thence deflecting Southerly approximately 1.56 miles through Sections 20 and 29 in T5S R4W to a point approximately 1,232 feet East of the NW corner of Section 32 in T5S R4W.

Thence deflecting Easterly approximately 0.44 miles (2,340 feet) along the northern boundary Section 32 to a point approximately 63 feet South and 1,488 feet West of the NE corner of Section 32 in T5S R4W.

Thence deflecting Southeasterly approximately 1.0 miles through Section 32 to a point approximately 1,941 feet west of the East quarter-corner of Section 33 in T5S R4W.

Thence deflecting Easterly approximately 1.57 miles (8,274 feet) along the center of Sections 33 and 34 in T5S R4W to a point approximately 1,269 feet east of the West quarter-corner of Section 35 in T5S R4W.

Thence deflecting Southeasterly for approximately 0.25 miles (1,319 feet) to a point approximately 2,610 feet North and feet South and 4,887 feet West of the SE corner of Section 35 in T5S R4W.

Thence deflecting Easterly for approximately 1.20 miles through Section 35 in T5S R4W to a point approximately 2,787 feet South and 1,186 feet West of the NE corner of Section 36 T5S R4W.

Thence extending Northeasterly approximately 0.86 miles (4,567 feet) through Section 36 of T5S R4W and Section 31 T5S R3W to a point approximately 2,463 feet east of the SW corner of Section 30 T5S R3W.

Thence deflecting Easterly approximately 1.76 miles through Sections 30 and 29 to a point approximately 1,460 feet East of the SW corner of Section 28 T5S R3W.

Thence extending Southeasterly approximately 0.21 miles (1,321 feet) through Section 28 in T5S R3W to a point approximately 118 feet South and 2,449 feet West of the NW corner of Section 33 T5S R3W.

Thence deflecting Easterly approximately 2.96 miles along the northern boundaries of Sections 33, 34, and 35 to a point approximately 200 feet South and 2,923 feet East of the NW corner of Section 36 T5S R3W.

Thence extending Northeasterly approximately 0.84 miles (4,412 feet) through Section 36 in T5S R3W to a point approximately 145 feet South and 2,376 feet West of the NE corner of Section 31 in T5S R2W.

Thence deflecting Southeasterly approximately 0.24 miles (1,242 feet) to a point approximately 600 feet South and 1,231 feet West of the NE corner of Section 31 in T5S R2W.

Thence extending Southeasterly approximately 0.98 miles (5,197 feet) through Section 31 in T5S R2W to a point approximately 1,381 west of the NE corner of Section 6 in T6S R2W.

Thence deflecting Southerly approximately 1.51 miles through Section 6 in T6S R2W to a point approximately 2,663 feet North and 1,362 feet West of the SE corner of Section 7 T6S R2W.

Thence deflecting Easterly approximately 1.25 miles through Sections 7 and 8 in T6S R2W to a point approximately 2,499 feet South and 83 feet East of the NW corner of Section 9 T6S R2W.

Thence Southeasterly approximately 0.22 miles (1,186 feet) to a point approximately 1,254 feet East of the West quarter-corner of Section 9 in T6S R2W.

Thence deflecting Easterly approximately 1 mile to a point approximately 1,478 feet East of the West quarter-corner of Section 10 in T6S R2W.

Thence deflecting Northeasterly approximately 0.22 miles (1,171 feet) to a point approximately 2,569 feet South and 2,412 feet West of the NE corner of Section 10 in T6S R2W.

Thence deflecting Easterly approximately 0.21 miles (1,129 feet) to a point approximately 2,569 feet South and 1,283 feet West of the NE corner of Section 10 in T6S R2W.

Thence deflecting Southeasterly approximately 0.23 miles (1,229 feet) to a point approximately 60 feet West of the East quarter-corner of Section 10 in T6S R2W.

Thence deflecting Easterly approximately 0.91 miles (4,784 feet) through Section 11 in T6S R2W to a point approximately 360 feet West of the East quarter-corner of Section 11 in T6S R2W.

Thence deflecting Southeasterly approximately 0.59 miles (3,100 feet) to a point approximately 207 feet North and 1,587 feet East of the SW corner of Section 12 in T6S R2W.

Thence deflecting Easterly approximately 0.88 miles (4,625ft) through Section 12 in T6S R2W in Pike County, IL, crossing the 4th Principal Meridian, and into Section 29 in T13N R13W in Scott County, IL to a point approximately 2,312 feet South and 1,159 feet West of the NE corner of Section 29 in T13N R13W.

Thence deflecting Southeasterly approximately 0.48 miles (2532 ft) to a point approximately 1,369 feet East and 2,550 feet South of the NW corner of Section 28 in T13 N R13W.

Thence deflecting Easterly approximately 1.65 miles through Sections 28 and 27 in T13N R13W to a point approximately 2,579 feet South and 70 feet East of the NW corner of Section 26 in T13N R13W.

Thence deflecting Southeasterly approximately 0.21 miles (1,122 feet) to a point approximately 2,648 feet North and 1,186 feet East of the SW corner of Section 26 in T13N R13W.

Thence deflecting Easterly approximately 1.40 miles to a point approximately 2,586 feet North and 1,344 feet West of the SE corner of Section 25 in T13N R13W.

Thence deflecting Southeasterly approximately 0.43 miles through Section 25 of T13N R12W to a point approximately 2,275 feet north and 961 feet East of the SW corner of Section 30 in T13N R12W.

Thence deflecting Easterly approximately 0.64 miles (3,396 feet) to a point 2,240 feet North and 578 feet west of the SE corner of Section 30 in T13N R12W.

Thence Southeasterly approximately 0.78 miles (4,109 feet) through sections 30 and 29 of T13N R12W to a point approximately 1,414 feet South and 1,325 feet east of the NW corner of Section 32 in T13N R12W.

Thence deflecting Easterly approximately 0.25 miles (1,322 feet) to a point approximately 1,450 feet South and 2,512 West of the NE corner of Section 32 in T13N R12W.

Thence deflecting Southerly approximately 0.23 miles (1,232 feet) to a point approximately 2,501 feet west of the Eastern quarter-corner of Section 32 in T13N R12W.

Thence deflecting Easterly approximately 1.14 miles through Section 32 to a point approximately 2,567 feet North and 1,380 feet West of the SE corner of Section 33 in T13N R12W.

Then deflecting Southerly approximately 6.33 miles through Section 33 in T13N R12W in Scott County, IL, and Sections 4, 9, 16, 21, and 28 to a point approximately 943 feet North and 1,207 feet West of the SE corner of Section 33 T12N R12W, in Greene County, IL.

Thence extending Southwesterly for approximately 0.22 miles (1,149 feet) through Section 33 in T12N R12W to a point approximately 220 feet South and 1,229 feet West of the NE corner of Section 4 in T11N R12W.

Thence deflecting Southerly approximately 1.99 miles through Sections 4 and 9 in T11N R12W to a point approximately 82 feet South and 1,235 feet West of the NE corner of Section 16 T11N R12W.

Thence extending Easterly approximately 1.85 miles along the Northern boundary of Sections 16 and 15 in T11N R12W to a point approximately 1,535 feet West of the NE corner of Section 14 in T14N R12W.

Thence deflecting Southeasterly approximately 0.96 miles (5,059 feet) through Sections 14 and 13 in T11N R12W to a point approximately 2,562 feet North and 2,387 feet West of the SE corner of Section 13 in T11N R12W.

Thence extending Easterly approximately 4.10 miles through Section 13 in T11N R12W and Sections 18, 17, 16 and 15 in T11N R11W to a point approximately 2,582 feet North and 466 feet West of the SE corner of Section 15 in T11N R11W.

Thence deflecting Southeasterly approximately 0.29 miles (1,531 feet) through Sections 15 and 14 in T11N R11W to a point approximately 2,352 feet North and 1,066 feet East of the SW corner of Section 14 in T11N R11W.

Thence deflecting Northeasterly approximately 0.37 miles (1,953 feet) to a point approximately 2,590 feet North and 1,967 feet West of the SE corner of Section 14 in T11N R11W.

Thence extending Easterly approximately 0.25 miles (1,306 feet) to a point approximately 2,592 feet North and 661 feet West of the SE corner of Section 14 in T11N R11W.

Thence deflecting Northeasterly approximately 1.42 miles through Sections 14, 13 and 12 in T11N R11W to a point 2,490 feet North and 223 feet West of the SE corner of Section 12 in T11N R11W.

Thence extending Easterly approximately 2.48 miles through Section 12 in T11N R11W and Sections 7 and 8 in T11N R10W to a point approximately 2,349 feet North and 2,076 feet West of the SE corner of Section 9 in T11N R10W.

Thence deflecting Northeasterly approximately 0.39 miles (2,077 feet) to a point approximately 2,475 feet North of the SE corner of Section 9 in T11N R10W.

Thence extending Easterly approximately 0.24 miles (1,256 feet) to a point approximately 1,246 feet east of the West quarter-corner of Section 10 R11N R10W.

Thence Southeasterly approximately 0.18 miles (947 feet) to a point approximately 2,362 feet north and 2,212 feet east of the SW corner of Section 10 T11N R10W.

Thence Northeast approximately 0.22 miles (1,139 feet) to a point approximately 1,706 feet West of the East quarter-corner of Section 10 T11 R10W.

Thence deflecting generally Easterly approximately 5.54 miles through Sections 10, 11 and 12 in T11N R10W of Greene County, IL, and Sections 7, 8, and 9 in Macoupin County, IL to a point approximately 2,569 feet west of the East quarter-corner of Section 10 in T11N R9W.

Thence deflecting Southerly approximately 1.50 miles through Sections 10, 15 and 22 in T11N R9W to a point approximately 2,640 feet East of the NW corner of Section 22 in T11N R9W.

Thence deflecting Easterly approximately 2.16 miles along the Northern edge of Sections 22, 23 and 24 to a point approximately 1,175 feet West of the NE corner of Section 24 in T11N R9W.

Thence deflecting Southeasterly approximately 0.51 miles (2,714 feet) through Section 24 T11N R9W and Section 19 in T11N R8W to a point approximately 1,350 feet South and 1,213 feet East of the NW corner of Section 19 in T11N R8W.

Thence deflecting Easterly approximately 1.42 miles through Sections 19 and 20 in T11N R8W to a point approximately 1,325 feet South and 1,205 feet West of the NE corner of Section 20 in T11N R8W.

Thence deflecting Southeasterly approximately 0.24 miles (1,254 feet) to a point approximately 1,489 feet South of the NE corner of Section 20 in T11N R8W.

Thence deflecting Southerly approximately 1.72 miles along the Eastern boundary of Sections 20 and 29 T11N R8W to a point approximately on the SE corner of Section 29 in T11N R8W.

Thence deflecting generally Easterly approximately 2.47 miles along the Northern boundary of Sections 33, 34 and 35 in T11N R8W to a point approximately 1,927 feet West of the NE corner of Section 35 in T11N R8W.

Thence deflecting Southeasterly approximately 0.25 miles (1,325 feet) to a point approximately 118 feet South and 608 feet West of the NE corner of Section 35 in T11N R8W.

Thence deflecting Northeasterly approximately 0.24 miles (1,259 feet) through Sections 35 and 36 in T11N R8W to a point approximately 643 feet East of the NW corner of Section 36 in T11N R8W.

Thence deflecting Easterly approximately 2.72 miles along the Northern boundary of Section 36 in T11N R8W and Sections 31 and 32 in T11N R7W to a point approximately on the NE corner of Section 32 in T11N R7W.

Thence deflecting Southeasterly approximately 0.23 miles (1,234 feet) to a point approximately 110 feet South and 1,220 feet East of the NW corner of Section 33 in T11N R7W.

Thence deflecting generally Northeasterly approximately 2.57 miles through Sections 33, 34, 27 and 26 in T11N R7W to a point approximately 108 feet North and 155 feet West of the SE corner of Section 26 in T11N R7W.

Thence deflecting Northeasterly approximately 1.13 miles through Section 25 in T11N R7W to a point approximately 97 feet North and 2,482 feet West of the NE corner of Section 25 in T11N R7W.

Thence deflecting Easterly approximately 4.99 miles along the southern boundary of Section 24 in T11N R7W and Sections 19, 20, 21, 22 and 23 in T11N R6W to a point approximately 22 feet North and 1,094 feet West of the SE corner of Section 23 in T11N R6W.

Thence deflecting generally Southeasterly approximately 1.72 miles through Sections 26, 25 and 36 in T11N R6W in Macoupin County, IL to a point approximately 1,316 feet South and 110 feet East of the NW corner of Section 31 in T11N R5W in Montgomery County, IL.

Thence deflecting Easterly approximately 1.40 miles through Sections 31 and 32 in T11N R5W to a point approximately 1,283 feet South and 2,485 feet West of the NE corner of Section 32 in T11N R5W.

Thence deflecting Southeasterly approximately 0.79 miles (4,160 feet) through Sections 32 and 33 in T11N R5W to a point approximately 2,679 feet North and 1,431 feet East of the SW corner of Section 33 in T11N R5W.

Thence deflecting Easterly approximately 2.80 miles through Sections 33, 34, 35 and 36 in T11N R5W to a point 2,620 feet South and 1,241 feet East of the NW corner of Section 36 in T11N R5W.

Thence deflecting Southeasterly approximately 0.98 miles (5,180 feet) through Section 36 in T11N R5W and Section 31 in T11N R4W to a point approximately 1,359 feet North and 1,264 feet East of the SW corner of Section 31 in T11N R4W.

Thence deflecting Easterly approximately 1.14 miles through Sections 31 and 32 in T11N R4W to a point approximately 1,439 feet North and 2,491 feet East of the SW corner of Section 32 in T11N R4W.

Thence deflecting Southerly approximately 1.52 miles through Section 32 in T11N R4W and Sections 5 and 8 in T10N R4W to a point approximately 1,324 feet South and 2,489 feet East of the NW corner of Section 8 in T10N R4W.

Thence deflecting Easterly approximately 3.79 miles through Sections 8, 9, 10, 11 and 12 in T10N R4W to a point approximately 1,329 feet South and 2,500 feet West of the NE corner of Section 12 in T10N R4W.

Thence deflecting Southerly approximately 1.26 miles through Sections 12 and 13 in T10N R4W to a point approximately 2,670 feet North and 2,490 feet West of the SE corner of Section 13 in T10N R4W.

Thence deflecting Easterly approximately 3.67 miles through Section 13 in T10N R4W and Sections 18, 17, 16 and 15 in T10N R3W to a point approximately 2,666 feet South and 2,508 feet East of the NW corner of Section 15 in T10N R3W.

Thence deflecting Southeasterly approximately 0.49 miles (2,563 feet) to a point approximately 2,443 feet North of the SE corner of Section 15 in T10N R3W.

Thence deflecting Northeasterly approximately 0.47 miles (2,494 feet) to a point approximately 2,662 feet South and 2,501 feet East of the NW corner of Section 14 in T10N R3W.

Thence deflecting Easterly approximately 3.07 miles through Sections 14 and 13 in T10N R3W and Sections 18 and 17 in T10N R2W to a point approximately 2,651 feet North and 1,262 feet West of the SE corner of Section 17 in T10N R2W.

Thence deflecting Northeasterly approximately 0.86 miles (4,548 feet) through Sections 17 and 16 in T10N R2W to a point approximately 183 feet South and 2,471 feet West of the NE corner of Section 16 in T10N R2W.

Thence deflecting Easterly approximately 1.27 miles through Sections 16 and 15 in T10N R2W to a point approximately 143 feet South and 778 feet West of the NE corner of Section 15 in T10N R2W.

Thence deflecting Southeasterly approximately 1.16 miles through Sections 15 and 14 in T10N R2W to a point approximately 2,598 feet South and 161 feet West of the NE corner of Section 14 in T10N R2W.



Thence deflecting Easterly approximately 7.30 miles through Sections 14 and 13 in T10N R2W, Sections 18, 17, 16, 15, 14 and 13 in T10N R1W in Montgomery County, IL, and Section 18 in T10N R1E in Shelby County, IL to a point approximately 2,627 feet South and 1,861 feet West of the NE corner of Section 8 in T10N R1E.

Thence deflecting Northeasterly approximately 0.64 miles (3,368 feet) through Section 18 and 17 to a point approximately 100 feet North and 100 feet East of the SW corner of Section 8 in T10N R1E.

Thence deflecting Northerly approximately 1.0 mile along the Western boundary of Section 8 in T10N R1E to a point approximately 133 feet North and 100 feet East of the SW corner of Section 5 in T10N R1E.

Thence deflecting Easterly approximately 0.98 miles (5,187 feet) along the southern boundary of Section 5 in T10N R1E to a point approximately 100 feet North and 327 feet east of the SW corner of Section 4 T10N R1E.

Thence Northeasterly approximately 0.49 miles (2,575 feet) to a point approximately 2,633 feet North and 844 feet East of the SW corner of Section 4 T10N R1E.

Thence deflecting Easterly approximately 2.65 miles through Sections 4 and 5 to a point approximately 100 feet West of the East quarter-corner of Section 2 T10N R1E.

Thence deflecting Northerly approximately 0.64 miles (3,378 feet) along the East boundary of Section 2 T10N R1E to a point approximately 841 feet North and 110 Feet west of the SE corner of Section 35 T11N R1E, in Christian County, IL.

Thence deflecting Easterly approximately 0.95 miles (5,012 feet) through Sections 35 and 36 in T11N R1E to a point approximately 856 feet North of the SE corner of Section 36 in T11N R1E.

Thence deflecting Southeasterly approximately 0.67 miles (3,546 feet) into Shelby County, IL through Section 31 in T11N R2E and Section 6 in T10N R2E to a point approximately 1,390 feet South and 1,364 feet West of the NE corner of Section 6 in T10N R2E.

Thence deflecting Easterly approximately 0.95 miles (5,016 feet) through Sections 6 and 5 in T10N R2E to a point approximately 1,395 feet South and 1,293 feet West of the NE corner of Section 5 in T10N R2E.

Thence deflecting Southeasterly approximately 0.66 miles (3,460 feet) through Sections 5 and 4 in T10N R2E to a point approximately 1,575 feet North and 1,200 feet East of the SW corner of Section 4 in T10N R2E.

Thence deflecting Easterly approximately 1.40 miles through Sections 4 and 3 in T10N R2E to a point approximately 1,430 feet North and 1,230 feet West of the SE corner of Section 3 in T10N R2E.

Thence deflecting Northeasterly approximately 0.55 miles (2,918 feet) through Sections 3 and 2 in T10N R2E to a point 2,700 feet North and 1,404 feet East of the SW corner of Section 2 in T10N R2E.

Thence deflecting Easterly approximately 3.70 miles through Sections 2 and 1 in T10N R2E and Sections 6, 5 and 4 in T10N R3E to a point 2,677 feet South and 1,172 East of the NW corner of Section 4 in T10N R3E.

Thence deflecting Northeasterly approximately 0.53 miles (2,811 feet) to a point 1,359 feet South and 1,235 feet West of the NE corner of Section 4 in T10N R3E.

Thence deflecting Easterly approximately 0.56 miles (2,980 feet) through Section 4 in T10N R3E to a point 1,353 feet South and 1,741 feet East of the NW corner of Section 3 in T10N R3E.

Then Southeasterly approximately 0.14 miles (716 feet) to a point approximately 1,476 feet South and 2,448 feet East of the NW corner of Section 3 in T10N R3E.

Then Northeasterly approximately 0.23 miles (1,214 feet) to a point approximately 1,357 feet south and 1,278 feet West of the NW corner of Section 3 T10N R3E.

Then Easterly approximately 2.29 miles through Sections 3, 2, and 1 of T10N R3E to a point approximately 1,340 South and 927 feet East of the NW corner of Section 6 T10N R4E.

Then deflecting Southeasterly approximately 0.21 miles (1,090 feet) to a point 1,570 feet South and 2,021 feet East of the NW corner of Section 6 T10N R4E.

Thence deflecting Southeasterly approximately 0.55 miles (2,885 feet) to a point 1,684 feet North and 1,241 feet West of the SE corner of Section 6 in T10N R4E.

Thence extending Easterly approximately 0.53 miles (2,811 feet) though section 6 T10E R4E to a point 1,685 feet North and 1,575 feet East of the SW corner of Section 5 in T10N R4E.

Thence Northeasterly approximately 0.26 miles (1,363 feet) to a point in Section 5 T10N R4E approximately 2,519 feet East of the West quarter-corner of Section 5 T10N R4E.

Thence extending Southeasterly 1.90 miles through Sections 5, 4 and 3 in T10N R4E to a point 2,461 feet West and 1,183 feet North of the SE corner of Section 3 in T10N R4E.

Thence extending Southeasterly approximately 7.91 miles through Sections 3, 2, 11 and 12 in T10N R4E and Sections 7, 8, 17, 16, 15, 14, 13 and 24 in T10N R5E to a point 613 feet South of the North quarter-corner of Section 24 in T10N R5E.

Thence extending Southeasterly approximately 0.60 miles (3,145 feet) to a point 2,625 feet North of the SE corner of Section 24 in T10N R5E.

Thence deflecting Easterly approximately 0.81 miles (4,722 feet) to a point 2,662 feet South and 506 feet West of the NE corner of Section 19 in T10N R6E.

Thence Southeasterly approximately 0.36 miles (1,896 feet) through section 19 in T10N R6E to a point approximately 1,091 feet North and 534 feet East of the Southwest Corner of Section 20 T10N R6E.

Thence deflecting Easterly approximately 0.97 miles (5,123 feet) through Section 20 T10N R6E to a point approximately 982 feet North and 710 feet East of the SW corner of Section 21 T1N R6E.

Thence deflecting Southeasterly approximately 1.81 miles through Sections 21, 28, and 27 in T10N R6E to a point 1,988 feet South and 139 feet West of the SW corner of Section 25 in T10N R6E.

Thence extending Southeasterly approximately 1.20 mile through Sections 27 and 26 in T10N R6E to a point 2,150 feet North and 1,208 feet East of the SW corner of Section 25 in T10N R6E.

Thence extending Southeasterly approximately 0.24 miles (1,260 feet) to a point 1,040 feet North and 1,799 feet East of the SW corner of Section 25 in T10N R6E.

Thence deflecting Easterly approximately 0.85 miles through Section 25 in T10N R6E in Shelby County, IL and Section 30 in T10N R7E in Cumberland County, IL to a point 1,019 feet North and 1,288 feet East of the SW corner of Section 30 in T10N R7E.

Thence deflecting Southeasterly approximately 0.23 miles (1,219 feet) to a point 877 feet North and of the South quarter-corner of Section 30 in T10N R7E.

Thence deflecting Southerly approximately 1.41 miles through Sections 30 and 31 in T10N R7E and Section 6 in T9N R7E to a point 1,321 feet South and 2,345 feet West of the NE corner of Section 6 in T9N R7E.

Thence deflecting Easterly approximately 6.81 miles through Sections 6, 5, 4, 3, 2 and 1 in T9N R7E and Sections 6 and 5 in T9N R8E to a point approximately 1,274 feet South and 991 feet West of the NE corner of Section 5 in T9N R8E.

Thence deflecting Northeasterly approximately 0.21 miles (1,096 feet) through Sections 5 and 4 in T9N R8E to a point 1,079 feet South and 94 feet East of the NW corner of Section 4 in T9N R8E.

Thence deflecting Southeasterly approximately 0.23 miles (1,187 feet) to a point 1,264 feet South and 1,260 feet East of the NW corner of Section 4 in T9N R8E.

Thence deflecting Easterly approximately 1.17 miles through Sections 4 and 3 in T9N R8E to a point 1,196 feet South and 2,428 feet East of the NW corner of Section 3 in T9N R8E.

Thence deflecting Northeasterly approximately 0.55 miles (2,913 feet) through Section 3 in T9N R8E and Section 34 in T10N R8E to a point 876 feet North and 378 feet West of the SE corner of Section 34 in T10N R8E.

Thence deflecting Easterly approximately 5.30 miles through Sections 34, 35 and 36 in T10N R8E and Sections 31, 32, 33 and 34 in T10N R9E to a point 685 feet North and 1,885 feet West of the SE corner of Section 34 in T10N R9E.

Thence deflecting Northeasterly approximately 3.27 miles through Sections 34, 35 and 36 in T10N R9E and Sections 31 and 32 in T10N R10E to a point 2,782 feet North and 1,904 feet West of the SE corner of Section 33 in T10N R10E.

Thence deflecting Easterly approximately 1.48 miles through Sections 32 and 33 in T10N R10E to a point 2,782 feet North and 1,903 feet West of the SE corner of Section 33 in T10N R10E.

Thence deflecting Southeasterly approximately 0.16 miles (827 feet) to a point 1,993 feet North and 1,615 feet West of the SE corner of Section 33 in T10N R10E.

Thence deflecting Easterly approximately 1.04 miles through Sections 33 and 34 in T10N R10E to a point 1,866 feet North and 1,211 feet West of the SE corner of Section 34 in T10N R10E.

Thence deflecting Northeasterly approximately 0.24 miles (1,271 feet) to a point 2,353 feet North of the SE corner of Section 34 in T10N R10E.

Thence deflecting Easterly approximately 2.62 miles through Sections 35 and 36 in T10N R10E and Section 31 in T10N R11E to a point 2,458 feet North and 271 feet West of the SE corner of Section 31 in T10N R11E.

Thence deflecting Southeasterly approximately 1.20 miles through Section 31 in T10N R11E in Cumberland County, IL, and Sections 31 and 32 in T10N 14W in Clark County, IL, crossing into the 2nd Principal Meridian to a point 1,866 feet North and 1,316 feet East of the SW corner of Section 32 in T10N R14W.

Thence extending Southeasterly approximately 0.53 miles (2,796 feet) to a point 673 feet North and 1,274 feet West of the SE corner of Section 32 in T10N R14W.

Thence deflecting Easterly approximately 1.87 miles through Sections 32, 33 and 34 in T10N R14W to a point 622 feet North and 1,477 feet West of the SE corner of Section 34 of said Township and Range.

Thence deflecting Southeasterly approximately 3.10 miles through Sections 34 and 35 in T10N and R14W, Sections 2 and 1 in T9N R14W, and Section 6 in T9N R13W to a point 775 feet North and 724 feet West of the SE corner of Section 6 in T9N R13W.

Thence extending Southeasterly approximately 0.22 miles (1,143 feet) through Sections 6, 7 and 8 in T9N R13W to a point 100 feet South of the NW corner of Section 8 in T9N R13W.

Thence deflecting Easterly approximately 0.34 miles (1,780 feet) to a point 96 feet South and 1,800 feet East of the NW corner of Section 8 in T9N R13W.

Thence deflecting Southeasterly approximately 2.26 miles through Sections 8, 9 and 10 in T9N R13W to a point 1,459 feet North and 1,953 feet West of the SE corner of Section 10 in T9N R13W.

Thence deflecting Easterly approximately 0.99 miles (5,213 feet) through Sections 10 and 11 in T9N R13W to a point 1,062 feet North and 1,809 feet West of the SE corner of Section 11 in T9N R13W.

Thence deflecting Southeasterly approximately 0.56 miles (2,949 feet) through Sections 11 and 14 in T9N R13W to a point 1,295 feet South of the NE corner of Section 14 in T9N R13W.

Thence extending Southeasterly approximately 1.05 miles through Sections 13 and 18 in T9N R13W to a point 1,368 feet North and 98 feet East of the SW corner of Section 18 in T9N R12W.

Thence deflecting Easterly approximately 2.37 miles through Sections 18, 17, 16 and 15 in T9N R12W to a point 780 feet South and 100 feet West of the NW corner of Section 15 in T9N R12W.

Thence extending Southeasterly approximately 0.60 miles (3,182 feet) to a point 1,302 feet South and 936 feet West of the NE corner of Section 15 in T9N R12W.

Thence extending Easterly approximately 2.48 miles through Sections 15, 14 and 13 in T9N R12W and Section 18 in T9N R11W to a point 1,312 feet South and 2,245 feet East of the NW corner of Section 18 T9N R11W.

Thence deflecting Northeasterly approximately 0.80 miles (4,198 feet) through Sections 18, 7 and 8 in T9N R11W to a point 569 feet North and 1,048 feet East of the SW corner of Section 8 in said Township and Range.

Thence deflecting Easterly approximately 0.52 miles (2,758 feet) to a point 591 feet North and 1,069 feet West of the SE corner of Section 8 in T9N R11W, terminating at the Clark County Converter station, which is described as:

That part of the Southeast  $\frac{1}{4}$  of Section 8, Township 9 North, Range 11 West of the second principal meridian described as follows: All of the Northeast  $\frac{1}{4}$  South of Mill Creek; The Eastern  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  lying South of Mill Creek; All of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  East of Mill Creek; The Eastern  $\frac{1}{2}$  of the Southwest  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$ .

and also

That part of the Northeast  $\frac{1}{4}$  of Section 9, Township 9 North, Range 11 West of the second principal meridian described as follows: All of the Northern  $\frac{1}{2}$  of the Northern  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$ , except for 6 acres in the western  $\frac{1}{2}$  of the Northern  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ ; All being situated in York Township, Clark County, Illinois; All being situated in York Township, Clark County, Illinois

## **Grain Belt Express Alternate Route Legal Description – AC Section**

The following is a legal description for the Grain Belt Express AC Section Alternate Route in Illinois, which is approximately 3.62 miles long, generally using a Right of Way that will vary between 150 and 200 feet.

### **Legal Description**

Beginning at a point in Section 8 T9N R11W, Clark County, that is approximately 258 feet West and 1,480 feet North of the SE corner of Section 8 in T9N R11W, at the Eastern boundary of the Clark County converter station property, which is described as:

That part of the Southeast  $\frac{1}{4}$  of Section 8, Township 9 North, Range 11 West of the second principal meridian described as follows: All of the Northeast  $\frac{1}{4}$  South of Mill Creek; The Eastern  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  lying South of Mill Creek; All of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  East of Mill Creek; The Eastern  $\frac{1}{2}$  of the Southwest  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$ ;

and also

That part of the Northeast  $\frac{1}{4}$  of Section 9, Township 9 North, Range 11 West of the second principal meridian described as follows: All of the Northern  $\frac{1}{2}$  of the Northern  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$ , except for 6 acres in the western  $\frac{1}{2}$  of the Northern  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ ; All being situated in York Township, Clark County, Illinois; All being situated in York Township, Clark County, Illinois

Thence extending Easterly approximately 3.62 miles through Sections 8, 9, 10, 11 and 12 of T9N R11W and terminating at the Indiana/Illinois border approximately 1,099 feet North and 3,879 feet East of the SW corner of Section 12 in T9N R11W.

## Revised Financing Condition

Grain Belt Express will not install transmission facilities for Phase II of the Project on easement property until such time as Grain Belt Express has obtained commitments for funds in a total amount sufficient to finance the anticipated total project cost. For the purposes of this condition:

“install transmission facilities” shall mean to affix permanently to the ground transmission towers or other transmission equipment, including but not limited to bases, poles, towers and structures, such wires and cables as Grain Belt shall from time to time suspend therefrom, foundations, footings, attachments, anchors, ground connections, communications devices and other equipment, accessors, access roads and appurtenances, as Grain Belt may deem necessary or desirable in connection therewith, but shall not include (A) preparatory work such as surveys, soil borings, engineering and design, obtaining permits and other approvals from governmental bodies, acquisition of options and easements for right-of-way, and ordering of equipment and materials, and (B) site preparation work and procurement and installation of equipment and facilities on property owned in fee by Grain Belt Express including the converter station sites;

“easement property” shall mean property on which Grain Belt Express has acquired an easement to install transmission facilities;

“has obtained commitments for funds” shall mean (A) for loans and other debt commitments that Grain Belt Express has entered into a loan agreement(s) with a lender(s) and has received the loan funds or has the right to draw down the loan funds on a schedule that is consistent with the need for funds to complete the Project, and (B) for equity, that Grain Belt Express or its parent company has a combination of sufficient cash on hand, funds received from the equity investors, or commitments from the equity investors to provide funds on a schedule that is consistent with the need for funds to complete the Project; and

“total project cost” shall mean the total estimated remaining cost for Phase I and Phase II of the Project, at the time that Grain Belt Express is prepared to begin to install Phase II transmission facilities, for the following: engineering, manufacturing and installation of converter stations; transmission line engineering; transmission towers; conductor; construction labor necessary to complete the Project; right of way acquisition costs; and other costs necessary to complete the Project. For reference, the estimated total project cost as of July 18, 2022 is \$4.95 billion not including estimated costs for network upgrades.

To allow the Commission to verify its compliance with this condition, Grain Belt Express shall submit the following documents to the Director of the Financial Analysis Division and the Director of the Public Safety & Reliability Division at such time as Grain Belt Express is prepared to begin to install Phase II transmission facilities:



- a) On a confidential basis, documents sufficient to demonstrate equity and loan or other debt financing agreements and commitments entered into or obtained by Grain Belt Express or its parent company for the purpose of funding the Project that, in the aggregate, provide commitments for funds for the total project cost;
- b) An attestation certified by an officer of Grain Belt Express that Grain Belt Express has not, prior to the date of the attestation, installed Phase II transmission facilities on easement property; or a notification that such installation is scheduled to begin on a specified date;
- c) A statement of the total project cost, broken out by the components listed in the definition of "total project cost," above, and reviewed by an officer of Grain Belt Express, along with a reconciliation of the total project cost in the statement to the total project cost as of July 18, 2022 of \$4.95 billion (not including estimated costs for network upgrades); and
- d) A reconciliation statement, certified by an officer of Grain Belt Express, showing that the agreements and commitments for funds provided in (a) are equal to or greater than the total project cost provided in (c).

NOTICE

Decision filed 08/08/24. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2024 IL App (

NO. 5-23-0271

NOTICE

This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

CONCERNED CITIZENS & PROPERTY OWNERS;  
ILLINOIS AGRICULTURAL ASSOCIATION, a/k/a  
Illinois Farm Bureau; CONCERNED PEOPLE  
ALLIANCE; NAFSICA ZOTOS; and YORK  
TOWNSHIP IRRIGATORS,

Petitioners-Appellants,

v.

ILLINOIS COMMERCE COMMISSION; GRAIN  
BELT EXPRESS CLEAN LINE LLC; CLEAN GRID  
ALLIANCE; HANSON AGGREGATES MIDWEST,  
INC.; GREYROCK, LLC; CITIZENS UTILITY  
BOARD; LEONARD BRAD DAUGHERTY, as  
Trustee of the Leonard Daughtery Trust Dated  
July 9, 2010; REX ENCORE FARMS LLC; and  
ILLINOIS MANUFACTURERS ASSOCIATION,

Respondents-Appellees.

Appeal from the  
Illinois Commerce  
Commission.

ICC Docket No. 22-0499

JUSTICE MOORE delivered the judgment of the court.  
Justices Barberis and McHaney concurred in the judgment.

**ORDER**

¶ 1 *Held*: The Illinois Commerce Commission's granting of a CPCN to a company seeking to build an interstate high voltage direct current transmission line was against the manifest weight of the evidence where the company failed to prove the required criteria that it is capable of financing the project.

¶ 2 The petitioners, Concerned Citizens & Property Owners, *et al.*, are appealing the Illinois Commerce Commission's (Commission) granting of Grain Belt Express, L.L.C. (GBX) a

certificate of public convenience and necessity (CPCN) pursuant to sections 8-406(b-5), 8-406.1, and 8-503 of the Public Utilities Act (Act) (220 ILCS 5/8-406(b-5), 8-406.1, 8-503 (West 2022)) (Final Order) on March 8, 2023. It is the contention of the petitioners on appeal that, *inter alia*, the Commission improperly found that GBX proved the elements necessary for issuance of a CPCN, that the Commission misinterpreted the newly enacted section 8-406(b-5), and that section 8-406(b-5) is unconstitutional. For the following reasons, we reverse the Commission's Final Order granting GBX a CPCN.

¶ 3

### I. BACKGROUND

¶ 4 This is not GBX's first time seeking a CPCN in Illinois. On April 10, 2015, GBX, then known as Grain Belt Express Clean Line, LLC, filed an application with the Commission pursuant to section 8-406.1 for a CPCN to construct, operate, and maintain a high voltage direct current (HVDC) transmission line and to operate a transmission public utility business, and to construct the transmission line pursuant to section 8-503. At the time of that application, GBX was owned by a different parent company. The transmission line proposed in the 2015 application was substantially similar to that for which GBX seeks a CPCN in this matter.

¶ 5 On November 12, 2015, after the review of evidence and a hearing, the Commission granted GBX the CPCN for the proposed transmission line. Subsequently, the intervenors in that matter, many of which are the same here, sought review of the 2015 order through an appeal filed with this court. On April 17, 2018, in *Concerned Citizens & Property Owners v. Illinois Commerce Comm'n*, 2018 IL App (5th) 150551, we reversed the 2015 order (and the CPCN granted thereunder) on the basis that GBX was not a "public utility," which we deemed a prerequisite to obtaining a CPCN under the Act. Specifically, we relied on the supreme court decision in *Illinois Landowners Alliance, NFP v. Illinois Commerce Comm'n*, 2017 IL 121302, which had addressed

a similarly proposed HVDC transmission line project in another part of the state, which was being operated by GBX's sister company, Rock Island Clean Line, LLC. We found that because GBX did not own, control, operate, or manage, within this state, directly or indirectly, for "public use," any plant, equipment or property to be used for or in connection with the transmission of electricity at the time of its application, it could not meet the definition of "public utility" under section 3-105(a) of the Act.

¶ 6 After the Illinois Supreme Court and this court rejected the proposed projects for Rock Island and GBX, the parent organization of GBX sold the company to Invenenergy Transmission, a company based in Chicago, Illinois, via a membership interest purchase agreement dated November 9, 2018. Rather than change its business plan or proposed project to comply with the Act, GBX set out to change the law and have new legislation enacted which would allow it to benefit from the Act in the same way a traditional "public utility" would benefit. GBX lobbied the Illinois legislature for the changes to the Act set forth in section 8-406(b-5). In response to the previously noted court decisions and after being lobbied by GBX and its parent company, Invenenergy, in 2021, the Illinois General Assembly enacted Public Act 102-0662, the Climate and Equitable Jobs Act (CEJA), which became effective September 15, 2021. The CEJA amended 17 separate acts. Relevant to this appeal is section 8-406(b-5), which modified the Act. In short, section 8-406(b-5), *inter alia*, created a new category of applicant eligible for a CPCN. Section 8-406(b-5) authorized a "qualifying direct current applicant" (QDCA) to file for and obtain a CPCN to construct, operate and maintain a "qualifying direct current project" (QDCP) without owning, controlling, operating, or managing any plant, equipment or property in Illinois at the time of the application filing or the issuance of the Commission order.

¶ 7 On July 26, 2022, GBX filed an application with the Commission seeking a CPCN pursuant to sections 8-406(b-5) and 8-406.1 of the Act. In its application, GBX sought to construct, operate, and maintain the Illinois portion of a HVDC transmission line and related facilities and to conduct a transmission public utility business in connection therewith. GBX also sought pursuant to sections 8-503 and 8-406.1(i) an order authorizing it to construct the transmission line and related facilities. GBX filed the application as a QDCA and the project as a QDCP under the newly enacted section 8-406(b-5). The application was accompanied by the prepared direct testimony and exhibits of 11 witnesses on behalf of GBX.

¶ 8 No parties to this appeal contend that the GBX or its project do not meet the definition of a QDCA or QDCP as outlined in section 8-406(b-5). The project is an interstate project which will originate in Ford County, Kansas, then traverse the remainder of Kansas into Missouri, cross Missouri into Illinois, travel approximately 207 miles through Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark Counties, where it will ultimately, cross into Indiana. The transmission line's approximate length is expected to be 800 miles and interconnect multiple regional electric grids including Southwest Power Pool (SPP), Midcontinent Independent System Operator (MISO), Associated Electrical Cooperative, Inc. (AECI), and PJM Interconnection, LLC (PJM). The origination point in Kansas is a planned, but not yet constructed, windmill farm and possible other renewable energy projects which will supply the "clean energy" that will then be transmitted in bulk over the HVCD transmission lines.

¶ 9 GBX states that it intends to construct the project in two phases. Phase I will comprise the portion of the transmission line starting in Ford County, Kansas, and ending at the points of interconnection in Missouri. Phase 2 is anticipated to comprise the portion of line starting at the

converter station in Missouri, traveling through Illinois, and ending at the AEP Sullivan Substation in Sullivan County, Indiana.

¶ 10 Regarding project funding, as a merchant transmission company (in contrast to legacy electric utilities) GBX and Invenergy has indicated they will not finance infrastructure costs through ratepayers in the form of tariffs, but instead GBX plans to utilize a “project finance basis” to build this infrastructure in two separate phases as discussed above, drawing on alleged significant market demand for renewable energy infrastructure. GBX and Invenergy have also indicated on the record that they will not seek regional cost allocation to retail customers using the transmission cost allocation process of PJM or MISO.

¶ 11 GBX and Invenergy contend that when the project reaches an advanced stage of development, GBX will enter into project-specific financing arrangements with investors and lenders to secure the financing necessary to complete the project. They contend that this is typical of projects of this type. In light of the foregoing, the Commission adopted a Revised Financing Condition, which prohibits GBX from “install[ing] transmission facilities for Phase II [including Illinois infrastructure] of the Project on easement property until such time as [GBX] has obtained commitments for funds in a total amount sufficient to finance the anticipated total project cost.”

¶ 12 Ultimately, the Commission, after reviewing witness testimony and exhibits, issued its March 8, 2023, order. Relevant to this disposition, the Commission made the following findings after a hearing and reviewing dozens of witness testimony and exhibits.

¶ 13 The Commission determined that GBX “is a qualifying direct current applicant [QDCA]” and the project “is a qualifying direct current project [QDCP] as defined in Section 8-406(b-5) of the Act.” As GBX was seeking a CPCN pursuant to sections 8-406(b-5) and 8-406.1, the

Commission found that GBX “does not need to request authorization under Section 8-406(a) of the Act.”

¶ 14 The Commission found that “the proposed transmission project has a capacity of at least 1,000 MW and a minimum voltage level of 345kV, [thus,] Sections 8-406(b) and 8-406.1(f)(1) are deemed satisfied” under the criteria mandated by section 8-406(b-5). Further, the Commission found that section 8-406.1(f)(1) was satisfied by this showing “without requiring any additional evidence” under section 8-406(b-5).

¶ 15 The Commission then addressed the specific criteria of section 8-406.1(f)(1)-(3). It held that (f)(1) was satisfied by record evidence in that GBX “has demonstrated that there is a need to address a lack of adequate transmission service to move electricity from the resource area of western Kansas to the MISO and PJM markets, including Illinois,” and that the project would provide substantial reliability and resiliency benefits by interconnecting these regions, including benefits for Illinois residents. It also found that the project would provide efficient electric transmission service and was the least-cost means of doing so, compared with other transmission alternatives reviewed in the record, including alternating current (AC) configurations.

¶ 16 The Commission found that section 8-406.1(f)(2) was satisfied and no parties challenged or took issue with this portion of the Commission’s Final Order.

¶ 17 The Commission then turned to the (f)(3) requirement and found GBX “capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.” It drew on the evidence of GBX’s plan to use a “project financing approach.” On this point, the Commission credited GBX and Staff testimony “that the project financing approach is commonly used in the energy and infrastructure industries,” and noted there “is ample evidence of the need for the project and the interest of renewable energy developers to

support the conclusion that [GBX] will be able to enter into sufficient transmission contracts to support the project financing.”

¶ 18 The Commission then addressed its adoption of a Revised Financing Condition and its place within the statutory criteria of section 8-406.1(f)(3), the Commission stated:

“The Commission concurs with Staff that with [GBX] agreeing to be bound by the Revised Financing Condition, the Applicant has satisfied this section of the statute. Section 8-406.1(f)(3) must be considered in its entirety: that the applicant ‘is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.’ The Commission notes that the applicant must be capable of raising the necessary capital without adverse financial consequences. The Commission points out that this type of financing condition has been approved by the Commission in the past. The Revised Financing Condition prevents adverse financial consequences, specifically, that [GBX] would commence construction but be unable to complete it due to insufficient funding. If [GBX] were unable to satisfy the Revised Financing Condition and therefore fails to construct the project, the only parties experiencing adverse financial consequences would be [GBX] investors. The Commission notes GBX’s commitment that if the Project is terminated, all easements that have been acquired will be released.”

Thus, in light of the Revised Financing Condition, it found the section 8-406.1(f)(3) requirement satisfied.

¶ 19 The Commission noted GBX’s commitment to not recoup costs through regional transmission organization cost allocation processes as typically would be done by public utilities or other ratepayer recovery mechanisms, but instead through charges to the transmission service customers. The Commission adopted a “Cost Allocation Condition” which requires GBX to notify



the Commission if it ever seeks cost allocation from Illinois ratepayers. The Commission referenced its “authority to enforce the Cost Allocation Condition” as part of its “continuing jurisdiction over any CPCN that is granted and [thus] within the authority of the Commission, it may rescind a CPCN if a change in facts or circumstances warrants rescission.”

¶ 20 The Commission also addressed the terms of section 8-406.1(i), which it determined mandated that if the Commission granted a CPCN to a qualified applicant, it is required to include an order pursuant to section 8-503 of the Act authorizing or directing the construction of the HVDC line and related facilities as approved by the Commission and “ ‘in the manner and within the time specified in said [o]rder’ ” (quoting 220 ILCS 5/8-406.1(i) (West 2022)). On this basis, it granted GBX authority to construct the project in accordance with the conditions and requirements adopted in the order and “with construction on the Illinois portion of the Project to commence within five years (60 months) following the date of the Commission’s Order,” unless later modified.

¶ 21 Finally, the Commission declined to consider any of the constitutional claims as beyond the scope of its Act subject matter jurisdiction. Following the entry of the order, this timely direct appeal followed. Additional facts are recited below where relevant to our analysis.

## ¶ 22 II. ANALYSIS

¶ 23 The petitioners raise several issues in this appeal including challenging the constitutionality of section 8-406(b-5) and its interpretation by the Commission. Our supreme court has set in place and continuously reaffirmed the long-standing rule that “cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort.” (Internal quotation marks omitted.) *People v. Hampton*, 225 Ill. 2d 238, 243 (2007). Thus, we turn first to those issues raised by the petitioners that do not touch upon the constitutionality or construction of section 8-406(b-5).

¶ 24 The parties involved in this litigation, including the Commission, agree on very little about how this new legislation operates within the context of the Act and whether its goals are even aligned with the Act’s purpose. However, there is one thing that everyone does agree upon: that in order for GBX to receive a CPCN, GBX must meet certain criteria as outlined in section 8-406.1. So, we turn to that portion of the Commission’s determinations first.

¶ 25 Specifically, *inter alia*, the petitioners take issue with the Commission’s finding that GBX met its burden of proving that it is capable of financing the project as required under section 8-406.1(f)(3). 220 ILCS 5/8-406.1(f)(3) (West 2022). The petitioners also take issue with other portions of section 8-406.1 and 8-406(a) not being properly fulfilled by GBX; however, the Commission and respondents contend that those issues raised (that GBX failed to seek status as a “public utility” pursuant to section 8-406(a); whether section 8-406(b-5) eliminated the requirement that it make specific finding that the project promotes the public convenience and necessity; and/or provides a benefit to Illinois ratepayers) must be viewed in light of the new section 8-406(b-5) which assumes those requirements are met and no further evidence is necessary once a QDCA and QDCP are established. Because those arguments require interpretation of section 8-406(b-5) and its impact upon the Act, we reserve our ruling on those as discussed above to be reviewed only if other nonconstitutional matters are not dispositive. Thus, we first turn our attention to the issue of whether the Commission properly determined that GBX met the financing requirement articulated in section 406.1(f)(3). We find that it did not, and we find our determination on that issue is dispositive.

¶ 26 First, we consider our standard of review. In reviewing the Commission’s findings, pursuant to section 10-201(e)(iv), a court “may only reverse a Commission order if [it] conclude[s] that ‘[t]he findings of the Commission are not supported by substantial evidence based on the

entire record of evidence presented to or before the Commission.’ ” *Illinois Power Co. v. Illinois Commerce Comm’n*, 382 Ill. App. 3d 195, 201 (2008) (quoting 220 ILCS 5/10-201(e)(iv) (West 2002)). “Substantial evidence consists of evidence a reasoning mind would accept as sufficient to support the challenged finding; it is more than a scintilla of evidence but requires something less than a preponderance of the evidence.” (Internal quotation marks omitted.) *Adams County Property Owners & Tenant Farmers v. Illinois Commerce Comm’n*, 2015 IL App (4th) 130907, ¶ 30. In other words, issues relative to the findings of the Commission are reviewed on a manifest weight of the evidence standard. *Northern Moraine Wastewater Reclamation District v. Illinois Commerce Comm’n*, 392 Ill. App. 3d 542, 556 (2009). “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006). “A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn.” *Id.*

¶ 27 Now, turning to our analysis and as previously noted, the Commission found that section 8-406(b-5) removes several issues from its discretion and consideration because it was designed to simplify the process for GBX (a non-public utility) to obtain a CPCN for this project. However, everyone agrees that one of the criteria that was unchanged by the new legislation was the requirement that GBX demonstrate pursuant to section 8-406.1(f)(3) that it “is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.” 220 ILCS 5/8-406.1(f)(3).

¶ 28 Unfortunately, the record demonstrates that GBX failed to provide any evidence to meet the burden required by section 8-406.1(f)(3). To satisfy section 8-406.1(f)(3), the applicant must

show that it *is capable* of financing the construction of the proposed project. Therefore, GBX must prove that it has the capacity to finance the project prior to the Commission granting any CPCN. Stated differently, the applicant's capability of financing the project is a condition precedent to the Commission's issuance of a CPCN.

¶ 29 While appearing before the Commission, GBX did not claim that it had the capability of funding the project. Instead, GBX claimed that *it expects* to be able to obtain financing for the project once customer contracts are executed, supply agreements are executed, and site control is obtained in the future. But in addition to this, it also plans on heavily relying upon debt financing. It calls this method of speculative financing, the “project financing approach.” GBX stated that it anticipates financing approximately 65% to 80% of the project through debt, with the debt being funded largely through the Department of Energy grants or commercial banks. However, at the time of the Commission's decision, GBX had no customers for the project, no commitments from any financial institution, and had not been awarded any funding or debt commitments from the Department of Energy to provide financing for the project. What is even more concerning is that the wind farm and renewable projects in Kansas, for which this transmission line is supposedly necessary in order to distribute the “clean energy” these projects will produce and deliver to Illinois, do not exist. Quite simply, the projects had not been constructed at the time of the Commission's Final Order, and no evidence was put forth indicating that any commitments, contracts, or construction bids had been obtained or negotiated.

¶ 30 We recognize that GBX witnesses and Commission Staff gave testimony “that the project financing approach is commonly used in the energy and infrastructure industries.” However, GBX's simple plan of obtaining financing in the future after it enters into customer agreements, with unknown parties and unknown terms, with no certainty or commitments from any potential

customers or lenders does not satisfy the current financing capability criteria of section 8-406.1(f)(3). We note that the sister project in Northern Illinois which was overseen by Rock Island has allegedly been abandoned despite the contentions of GBX before the Commission of the necessity and market demand for such a project. Thus, GBX has not offered any evidence that it “is capable” of funding the project; it instead has only offered evidence of a future, and highly speculative, plan of possibly funding the project. It simply asked the Commission to broadly speculate, and to trust that many unknown variables will fall into place. It does not contend, “let us build it and they will come,” but instead, “give us approval, then we will finance it, and then we will build it.” This falls short of proving the financing capability required.

¶ 31 Additionally, we recognize that GBX argues its parent company, Invenergy, will provide funding for the project until the expected future financing is secured. GBX contended that Invenergy Renewables Holdings is “an operating company with billions of dollars in assets” that has already invested \$60 million and has the ability to finance the project to a stage of viability. However, GBX failed to introduce any evidence, not even a balance sheet, to establish the financial health of either GBX or Invenergy Renewables Holdings.

¶ 32 GBX witness Rolanda Shine confirmed that Invenergy Renewables Holdings maintains financial documents such as annual profit and loss statement, a balance sheet, and a cash flow statement that would demonstrate the financial health of Invenergy and GBX as of December 31, 2021, but said financial evidence was not submitted by GBX in the underlying matter. Instead, GBX asked the Commission to simply take its word, and trust that it had the funding and financial stability it alleges. However, GBX has the burden of proof on that matter. The respondents argue that GBX’s witnesses were available for cross-examination, and thus, imply that we should construe that against the petitioners and suggest that fact somehow relieves GBX from its burden.

However, “[t]here is no presumption against a defendant for failure to call witnesses, when the plaintiff, carrying the burden of proof, has not made a *prima facie* case, and such presumption cannot be used to relieve the plaintiff from the burden of proving his case.” *Beery v. Breed*, 311 Ill. App. 469, 475 (1941). Moreover, GBX argues in its brief that

“evidence of financial documents would only be cumulative to the evidence of Invenergy Renewable Holdings’ commitment to the Project. A reasonably prudent person would not have produced such redundant evidence even if it benefited him. GBX, part of a privately held group of companies, had a reasonable basis for not providing the evidence. *Tuttle v. Fruehauf Corp.*, 122 Ill. App. 3d 835, 843 (1st Dist. 1987).”

¶ 33 This argument is not well-taken. GBX is seeking to obtain a CPCN through a process that, up until the passage of section 8-406(b-5), was restricted to “public utilities” that owned certain assets in Illinois. GBX seeks to benefit from the Act and CPCN advantages, as a private company. That is not an excuse to protect or hide its, or Invenergy’s, balance sheets which would indisputably prove that what GBX is contending is true. The petitioners do not have access to this information and cannot therefore prove a negative.

¶ 34 Ultimately, there was no showing that GBX as it was situated at the time of the Commission’s hearing and decisions was financially able to finance and construct the project. In fact, GBX acknowledged before the Commission that it had no customers for the project, had secured no bank commitments, no Department of Energy commitments, etc. It asked the Commission to speculate as to its future capability, and the Commission improperly obliged.

¶ 35 In further support of our finding that GBX failed to prove it was capable of financing the project, the Commission added a unique condition when it made its determination regarding section 8-406.1(f)(3) titled, “Revised Financing Condition” (RFC). According to the Commission,

the RFC was adopted to ensure that the project “is adequately financed and facilitates the merchant model with only investor money at risk.” The RFC prevents GBX from constructing any facilities or infrastructure in Illinois prior to the project being fully funded. Essentially, it appears to this court that the Commission recognized the speculative nature and the current inability of GBX to finance the project, and instead of properly denying the CPCN as required by the Act, it incorporated the RFC to attempt to extend to GBX more time to prove its capability to finance the project at a later date after a CPCN has already been issued.

¶ 36 The Commission all but concedes its own error in its order. When discussing the RFC and finding that GBX proved it was capable of financing the project, it stated, “The Commission concurs with Staff *that with [GBX] agreeing to be bound by the Revised Financing Condition, the Applicant has satisfied this section of the statute.*” (Emphasis added.) In other words, without the RFC, GBX did not adequately prove its capability to finance the project. However, the capability must be proven prior to a CPCN being issued, not after.

¶ 37 In its brief, the Commission attempts to argue that the RFC merely acts as an added layer of protection for the landowners from GBX commencing construction without adequate financing. The petitioners argue that this condition merely allows GBX to obtain a CPCN prematurely and place a cloud on the titles to their land. The Commission responds that this “ ‘cloud on the titles to their lands’ is purely speculative and not supported by any evidence.” However, we do not find it to be any more speculative than GBX’s prospects of obtaining commitments from the Department of Energy or entering into contracts with customers prior to completion of the project. Especially, when the “clean energy” projects that are going to produce the energy have not even been built in Kansas. This simply is a classic case of putting the cart before the horse.

¶ 38 Ultimately, there was not substantial evidence put forth to support the Commission's finding that GBX is capable of financing the project. The evidence put forward demonstrated that GBX lacked the funding at the time of the hearing, had no customers, contracts, government or bank commitments, and as a result failed to meet the (f)(3) criteria with anything more than speculation. The failure to satisfy the section 8-406.1(f)(3) requirement means that GBX has not carried its burden and has not met the condition precedent necessary to obtaining a CPCN. 220 ILCS 5/8-406.1(f)(3). Therefore, the Final Order entered by the Commission finding otherwise was made in error and requires reversal.

¶ 39 Because of GBX's failure to prove this required element and a CPCN cannot be issued without it, we need not address the other raised issues raised by the petitioners.

¶ 40 Finally, we note that the respondents have filed a joint motion to strike certain portions of the petitioner Nafsica Zotos's reply brief as improper. The portions complained of do not directly address or impact the issue analyzed above which was required for disposition of this appeal. Thus, because the complained portions are not relevant to our disposition of this matter, we deny the motion to strike.

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons, we reverse the Commission's March 8, 2023, order granting GBX a CPCN pursuant to section 8-406(b-5) and other related provisions.

¶ 43 Reversed.



IN THE  
SUPREME COURT OF ILLINOIS

CONCERNED CITIZENS & PROPERTY OWNERS; )  
ILLINOIS AGRICULTURAL ASSOCIATION a/k/a )  
Illinois Farm Bureau; CONCERNED CITIZENS )  
ALLIANCE; YORK TOWNSHIP IRRIGATORS; and )  
NAFSICA ZOTOS, )  
)  
)  
Respondents, ) On Petition for Leave to Appeal  
) from the Appellate Court of Illinois,  
vs. ) Fifth Judicial District,  
) Appeal No. 5-23-0271  
ILLINOIS COMMERCE COMMISSION; GRAIN BELT )  
EXPRESS LLC; CLEAN GRID ALLIANCE; HANSON )  
AGGREGATES MIDWEST INC.; GREYROCK, LLC; )  
CITIZENS UTILITY BOARD; LEONARD BRAD )  
DAUGHERTY, as Trustee of The Leonard Daugherty )  
Trust Dated July 9, 2010; REX ENCORE FARMS LLC; )  
and ILLINOIS MANUFACTURERS ASSOCIATION, )  
)  
)  
Petitioners. )

**NOTICE OF FILING**

To: Attached Service List

**PLEASE TAKE NOTICE** that on October 3, 2024, I electronically filed with the Illinois Supreme Court Clerk, through the Odyssey eFileIL system, the Petition for Leave to Appeal and Appendix of the Illinois Commerce Commission, a copy of which is hereby served upon you.

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**CERTIFICATE OF SERVICE**

I, Brian J. Dodds, state that on October 3, 2024, I initiated electronic service of the foregoing Notice of Filing, and the Petition for Leave to Appeal and Appendix of the Illinois Commerce Commission, through the Odyssey eFileIL system and caused the same to be served via email upon the persons listed in the attached Service List.

/s/ Brian J. Dodds

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein the Notice of Filing and Certificate of Service are true and correct.

/s/ Brian J. Dodds

## IN THE ILLINOIS SUPREME COURT

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