

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Grain Belt Express Clean Line LLC )  
)  
Application for an Order granting Grain )  
Belt Express Clean Line LLC a Certificate )  
of Public Convenience and Necessity )  
pursuant to Section 8-406.1 of the Public )  
Utilities Act to Construct, Operate and ) Docket No. 15-0277  
Maintain A High Voltage Electric Service )  
Transmission Line and To Conduct a )  
Transmission Public Utility Business in )  
Connection Therewith and Authorizing )  
Grain Belt Express Clean Line Pursuant to )  
Sections 8-503 and 8-406.1(i) of the Public )  
Utilities Act to Construct the High Voltage )  
Electric Transmission Line )

**INITIAL BRIEF OF  
THE LANDOWNERS ALLIANCE OF CENTRAL ILLINOIS, NFP**

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**I. Introduction**

A. Overview and Summary of Position of Landowners Alliance of Central Illinois

Landowners Alliance of Central Illinois, NFP (“LACI”) is an Illinois non-profit entity formed to oppose the Application of Grain Belt Express Clean Line LLC (“GBX”) in this proceeding for a certificate of public convenience and necessity (“CPCN” or “Certificate”) and an order under § 8-503 of the Public Utilities Act (“PUA”). Over 120 landowners or persons with real property interests located along or in the vicinity of the proposed project route are members. LACI contends that the Illinois Commerce Commission (“Commission”) lacks jurisdiction and authority to grant the relief requested in this proceeding. LACI also believes that, even assuming jurisdiction does lie with the Commission to consider the Application in the manner filed, the Commission should not grant a Certificate for the reasons stated hereinbelow in this Initial Brief.

B. Description of Grain Belt Express and the Project

On April 10, 2015, GBX filed its Verified Application<sup>1</sup> for a CPCN for the Grain Belt Express transmission project (“Project”) and prepared direct testimony and exhibits of its witnesses. The Application requests a CPCN to construct, operate and maintain a proposed high voltage direct current (“HVDC”) electric transmission line and related facilities for the Illinois portion of the Project. The Project will originate at an AC-to-DC converter station in western Kansas, cross Kansas and Missouri to an interconnection point with the Midcontinent Independent System Operator (“MISO”) grid on the Ameren system in Missouri, and then proceed east to the Mississippi River where the line will enter Illinois. The Illinois portion would extend from a Mississippi River crossing point approximately 6.5 miles west of New Canton in Pike County, eastwardly to a DC-to-AC converter station in Clark County, and then proceed farther east as an AC line to cross the Illinois-Indiana border. The Project would terminate approximately 1.6 miles into Indiana at Sullivan/Breed Substation in Sullivan County, Indiana where the transmission line will connect with American Electric Power’s 345 kv electric transmission system, and deliver electricity into the PJM Interconnection, LLC (“PJM”) grid. The total length of the transmission line will be approximately 780 miles, including approximately 206 miles in Illinois.

GBX’s stated objective of the Project is to provide direct transmission access for wind generation plants that can be built in western Kansas (“Resource Area”) to access electricity markets in the MISO and PJM regions. The Project would be capable of

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<sup>1</sup> Verified Application of Grain Belt Express Clean Line LLC for a Certificate of Public Convenience and Necessity to Construct, Operate and Maintain a High Voltage Electric Transmission Line and Operate a Transmission Public Utility Business and Authorizing Grain Belt Express Clean Line to Construct the Electric Transmission Line, filed April 10, 2015 (“Application”).

providing access for over 4,000 MW of wind generating capacity in western Kansas and delivering up to 500 MW of electricity into the MISO grid in Missouri and up to 3,500 MW into the PJM grid.

The Application and direct testimony and exhibits provide information to show FBX's compliance with the notice, filing and other procedural and cost requirements specified in PUA §8-406.1, including providing a proposed route and a distinct alternate route for the transmission line in Illinois.

C. Procedural History

GBX filed its April 10, 2015 Application to the Commission for an order (1) granting GBX a Certificate of Public Convenience and Necessity ("Certificate" or "CPCN") pursuant to §8-4-6.1 of the PUA, 220 ILCS 5/8-406.1, to construct, operate and maintain a high voltage electric transmission line and related facilities and to operate a transmission public utility business in connection therewith; (2) authorizing GBX, pursuant to §8-503 and §8-406.1(i), to construct the high voltage electric transmission line and related facilities; and (3) granting GBX certain other relief in connection with operations ("Application"). Section 8-4-6.1 requires, among other things, that the Commission enter its Order granting, in part, or denying the Application within 150 days following the filing date of the Application 220 ILCS 5/8-406.1(g). Commission staff filed a motion on April 14, 2014, to extend the 150 day period by 75 days, averring that good cause exists to do so. On May 6, 2015, the Commission granted the Staff's motion, making the deadline for an Order November 21, 2015.

Petitions for leave to intervene were filed by Concerned Citizens and Property Owners ("CCPO"), Landowners Alliance of Central Illinois, NFP ("LACI"), Ameren Illinois

Company, Rex Encore Farms, LLC, Illinois Agricultural Association (“Farm Bureau”), Mary Ellen Zotos (“Zotos”), Rex Encore Properties LLC (together with Rex Encore Farms, “Rex Encore”), Illinois Central Railroad Company (“IC Railroad”), Rockies Express Pipeline LLC (“REX Pipeline”), Brown Branch LLC and JAR Branch LLC (together, “Branch Properties Parties”), The Building Owners and Managers Association of Chicago (“BOMA/Chicago”), Environmental Law and Policy Center, Infinity Wind Power (“Infinity”), International Brotherhood of Electrical Workers Locals 51 and 702, AFL-CIO (“IBEW”), Wind on the Wires (WOW”) and BNSF Railway Company. All of said petitions were granted.

GBX filed a motion for entry of a protective ruling on April 23, 2015, which had attached as Attachment A GBX’s proposed Terms Governing Protection of Confidential Information. Following a response and reply, and certain modifications to the original Terms, the motion was granted on May 15, 2015.

Pursuant to notice, a prehearing conference was held at the Commission’s offices in Springfield, Illinois before an Administrative Law Judge on May 5, 2015, and status hearings were held on June 23 and July 1, 2015. A scheduling ruling was entered on May 15, 2015, with certain requested revisions to the schedule made via the ALJ’s Ruling dated July 9, 2015.

On May 18, 2015, CCPO, Farm Bureau and LACI each filed a motion to dismiss. The motion challenges GBX’s right to file, and the Commission’s authority to process, the Application under the so-called expedited procedure alternative provided by PUA §8-406.1. Rex Encore filed a motion to strike GBX’s Application and dismiss the proceeding. The Branch Parties moved to join the motions. On June 3, 2015, GBX and the

Commission Staff each filed a response to the Motion. Staff asserted that the Application should be dismissed in part because §8-406.1 requires an applicant to be a public utility at the time of the application. LACI, Rex Encore and Staff also argued that §8-406.1, unlike §8-406 does not include language authorizing the applicant to transact or conduct business as a public utility. In its response, GBX disagreed that §8-406.1 prohibits it, as an entity that is not currently a public utility, from filing its Application under that section, and that it does not need separately to seek authority under §8-406(a) to operate as a public utility. Lastly, GBX requested that, if movants' motions were granted, that the case be allowed to continue as a combined §8-406/§8-503 proceeding. Following replies, and the ALJ's recommendation that the Commission grant GBX leave to file an amended application under §8-406 and §8-503, the Commission voted 3-2 to deny the motions.

CCPO, LACI and the Farm Bureau filed motions to reconsider the denial of the motions to dismiss. Intervenors REX Pipeline and Zotos filed responses in support of the motions to reconsider, and the Branch Properties Parties moved to join the motions. GBX filed its response to the motions to reconsider, as well as a reply to the responses of the Branch Properties Parties, Zotos and REX Pipeline. GBX filed a reply to the responses of the Branch Properties Parties, Zotos and REX Pipeline. CCPO and LACI filed replies to GBX's response. The Commission denied all motions for reconsideration.

Public Forums were held on July 28, 2015, in Pittsfield; July 29 in Pana; and July 29 in Marshall, Illinois. Chairman Sheahan, Commissioner Rosales, ALJ Von Qualen and other Commission Staff members attended the forums. While some voiced support for the proposed Project, most attendees spoke in opposition.

Evidentiary hearings were held at the Commission's Springfield offices on August 17-21, 2015. GBX presented the testimony and exhibits of its witnesses, as follows:

Michael Skelly – President and CEO  
Wayne Galli – Executive Vice President  
Robert Cleveland – Consultant  
Karl McDermott – Consultant  
David Loomis – Consultant  
Robert Zavadil – Consultant  
Mark Lawlor – Director of Development  
Timothy Gaul – Consultant  
Lee Jones – Consultant  
Stanley Blazewicz – Vice President, National Grid USA  
David Berry – Executive Vice President  
Richard Roddewig – Consultant

The Commission Staff presented the testimony and exhibits of its witnesses: Yassir Rashid, Richard Zuraski, and Mark Hanson. Staff also presented the verified statement of Janis Freetly. LACI presented the testimony and exhibits of its members Dennis Sagez and Kendra Kleinik Davis. CCPO offered the testimony and exhibit of its members Joseph Gleespen, Sheryl Slightom, Ervil Fisher Jr., Kendall Cole, Michael Buchanan, Natalie Locke, and Don Hennings. Landowner Mary Ellen Zotos presented her testimony. REX Pipeline withdrew the testimony of its witness David Schramm and, instead, filed a stipulation with GBX. Rex Encore presented the testimony and exhibits of Chad Brigham. The Branch Parties presented the testimony and exhibit of Tom Rodgers. IC Railroad presented the testimony of Arthur Spiros. Boma/Chicago presented the testimony of Michael Cornicelli. IBEW presented the testimony of James Bates. Infinity presented the testimony of Matt Langley. WOW presented the testimony and exhibits of Michael Goggin, employed by the American Wind Energy Association ("AWEA"). Consultant Michael Proctor's testimony and exhibits were presented by LACI, Farm

Bureau, CCPO and Zotos. Consultant Michael Severson's testimony and exhibits were presented by Zotos, CCPO, LACI and the Branch Properties Parties.

Although not filed in this proceeding, intervenors LACI, Farm Bureau, CCPO and Zotos filed a joint Motion for Leave to file Complaint for an Order of Prohibition with the Illinois Supreme Court on August 17, 2015. This Motion and related filings made with the Court are described below in Section III of this Initial Brief.

D. D. Legal Standards

PUA Section 8-406.1

Sec. 8-406.1. Certificate of public convenience and necessity; expedited procedure states (in pertinent part):

(a) A public utility may apply for a certificate of public convenience and necessity pursuant to this Section for the construction of any new high voltage electric service line and related facilities ....

...

(f) 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:

(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 customer 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.

(g) The Commission shall issue its decision with findings of fact and conclusions of law granting or denying the application no later than 150 days after the application is filed. The Commission may extend the 150-day deadline upon notice by an additional 75 days if, on or before the 30<sup>th</sup> day after the filing of application, the Commission finds that good cause exists to extend the 150-day period....

(i) Notwithstanding any other provisions of this Act, a decision granting a certificate under the Section shall include an order pursuant to Section 8-503 of the 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

Sec. 3-105. Public utility (in pertinent part) states:

(a) "Public utility" means and includes, except where otherwise expressly provided in this Section, every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in:

(1) the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communications purposes;...

220 ILCS 5/3-105

Sec. 8-503 Additions, improvements and new structures; joint construction or other action (in pertinent part) states:

Whenever the Commission, after a hearing, shall find that ... a new structure or structures is or are 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, the Commission shall make and serve an order authorizing or directing that 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

Sec. 8-406 Certificate of public convenience and necessity (in pertinent part) states:

(a) No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, 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.

(b) 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. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customer, and is the least cost means of satisfying those objectives; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers ...

II. **Grain Belt Express' Compliance with Section 8-406.1 Pre-Filing Meeting and Notice, Application Content, and other Section 8-406.1 Requirements**

LACI does not address this section.

III. **Grain Belt Express' Right to Utilize Section 8-406.1 as an Entity that is not a Public Utility**

Stated bluntly, GBX had no right to file its Application under PUA Section 8-406.1; and this Commission erred in permitting and processing this mis-filed Application, which the Commission sustained over the strenuous objections of LACI, other intervenors, and the Commission's own trial staff. The Commission also went against the recommendation of the ALJ assigned to preside over this proceeding. On top of what on its face is a confounding ruling, the Commission offered no reasoning or support for its permitting such an apparently wrongful procedural maneuver by GBX. It simply voted, 3-2, to deny the several motions to dismiss or to strike GBX's Application.

Whether a non-public utility such as GBX may file a Certificate application under the recently-enacted alternative of § 8-406.1 (rather than under § 8-406) is not a harmless, academic issue. The issue's outcome has real, practical significance, not only in this proceeding but in the future when other non-traditional project sponsor providers that are not public utilities seek approval for energy projects that require a certificate of public convenience and necessity, and utilize § 8-406.1 based on the precedent set in this case.

Intervenors, and Staff, were prejudiced in at least two significant ways. First, § 8-406.1 provided GBX a decided procedural advantage in the form of an expedited schedule. GBX had many months, if not years, to prepare for, and to prepare and then file, its Application and direct testimony, on a date entirely of its own choosing. Staff and other interested parties then were put under significant pressure to read, analyze, organize and determine a course of action, under a procedural schedule, unique to PUA § 8-406.1, that left precious little time. Even with the 75 day extension, based on Staff's motion, the 225 day maximum schedule dictated by § 8-406.1 to litigate and have an

order entered in such a large and significant electric transmission line case, proposed by a non-traditional (a non-“public utility”) project sponsor. The expedited schedule has shortened the time for discovery, cut short the full rounds of prepared written testimony that are customary in major transmission line cases, shortened the briefing schedule, and for those and other reasons has severely prejudiced many of the other parties in the case. The second important way this misuse of § 8-406.1 is prejudicial to Staff and intervenors is that a favorable (to the applicant) § 8-503 order must accompany the Certificate awarded under § 8-406.1. The Commission has no power to grant a Certificate but withhold outright, or even delay, the grant of a § 8-503 order. This factor takes on added significance in light of the Commission’s previous grant of a Certificate under § 8-406 to Rock Island Clean Line LLC (ICC Docket 12-0560), GBX’s sister project company, but withholding an order under § 8-503, which Rock Island had also requested as part of the same project approval application. Certificates granted under § 8-406, which is the more traditional statutory alternative utilities have used, and which Rock Island used, do not carry the automatic § 8-503 grant. A favorable order under § 8-503 is critical to the project applicant because it is a prerequisite to an eminent domain enabling authorization under PUA § 8-509. There can be no eminent domain without a § 8-509 order, and there can be no § 8-509 order without a § 8-503 order. Due to the likelihood of one or more landowners along the planned, and approved route, for the transmission line, refusing to grant an easement or other right of way to the applicant, the power to condemn such right of way becomes necessary to the applicant’s ability to site and construct the transmission line along its entire planned length.

GBX's claimed need for a quick order in this proceeding rings hollow in light of the Missouri Public Service Commission's denial of regulatory approval for the Missouri portion of the Project. *In the Matter of Grain Belt Express Clean Line LLC*, File No. EA-2014-0207 (Mo. Pub. Svc. Comm'n July 1, 2015), *reh'g denied*, *In the Matter of Grain Belt Express Clean Line LLC*, File No. EA-2014-0207 (Mo. Pub. Svc. Comm'n Aug. 12, 2015). Regardless of the comparative benefits and detriments to GBX and the other parties, however, the statute simply and clearly does not allow a non-"public utility" to utilize it. Section 8-406.1 of the PUA begins, "A public utility may apply for a certificate of public convenience and necessity pursuant to this Section for the construction of any new high voltage electric service line and related facilities." 220 ILCS 5/8-406.1(a) (emphasis added). No party disputes that GBX is not a "public utility." Consequently, there is no credible or legally cognizable basis upon which to conclude that GBX may nevertheless file its Application and have the Commission process it under this statutory alternative.

Another significant issue is presented by GBX's Application filed under § 8-406.1. Nowhere in this section does the applicant gain the right to conduct or transact business in this State as a public utility. This is in contrast to § 8-406. Section 8-406.1 authorizes the grant of a Certificate to construct a transmission line, but nothing more; consequently, even if GBX is granted a Certificate to construct its proposed Project, it will be left without legal authority to operate it or otherwise to transact business. This argument was presented thoroughly by several parties in the motions to dismiss or to strike and other related filings in this proceeding and referenced below in this section of LACI's Initial Brief.

After having its protestations turned down by the Commission twice, first in the denial of its Motion to Dismiss and subsequently in its Motion for Reconsideration, on

August 17, 2015, LACI joined with several other intervenors in filing with the Illinois Supreme Court a Motion for Leave to file a Complaint for an Order of Prohibition, in which the movants are seeking to have the Court prohibit the Commission from processing GBX's Application under § 8-406.1. Following responses by GBX and the Commission, and a Reply (which the movants filed with a Motion for Leave to File Reply), the matter is pending before the Supreme Court.

Rather than repeating its entire argument on the § 8-406.1 issue in this Initial Brief, LACI incorporates by reference the arguments contained in its Motion to Dismiss (filed May 18, 2015), its Reply in Support of Motion to Dismiss (filed June 12, 2015), its Motion for Reconsideration (filed July 15, 2015), and its Reply to Responses to Motion for Reconsideration (filed July 20, 2015). LACI also adopts and incorporates by reference the arguments contained in the following corresponding motions to dismiss and to strike, and responses and replies: Motion to Dismiss of the Illinois Agricultural Association (filed May 18, 2015); Motion to Dismiss for Want of Jurisdiction of CCPO (filed May 18, 2015); The Rex Encore's Motion to Strike the Verified Petition and Dismiss the Docket Without Prejudice (filed May 20, 2015); Staff of the Illinois Commerce Commission Response to Motions to Dismiss (filed June 3, 2015); Reply in Support of the Illinois Agricultural Association's Motion to Dismiss (filed June 11, 2015); Reply of CCPO to Responses of GBE and Staff to Motions to Dismiss (filed June 11, 2015); The Rex Encore Parties' Reply in Support of Their Motion to Strike the Verified Petition and Dismiss this Docket Without Prejudice (filed June 11, 2015); and Rockies Express Pipeline LLC's Reply Supporting Motions to Dismiss Without Prejudice (filed June 12, 2015).

LACI further incorporates by reference in this Initial Brief the arguments contained in (a) the Motion for Leave to file Complaint for an Order of Prohibition, accompanied by Complaint for Writ of Prohibition (filed jointly with the Illinois Supreme Court (no case number) on August 17, 2015, by LACI, the Illinois Agricultural Association (Farm Bureau), CCPO and Zotos); and (b) the Motion for Leave to File Reply to Illinois Commerce Commission's Response in Opposition and Objections of Grain Belt Express Clean Line LLC to Motion for Leave to File a Complaint for Order of Prohibition *Instanter*, accompanied by Reply to Illinois Commerce Commission' Response in Opposition and Objections of Grain Belt Express Clean Line LLC to Motion for Leave to File a Complaint for Order of Prohibition (filed jointly with the Illinois Supreme Court (no case number) on September 8, 2015, by LACI, the Illinois Agricultural Association (Farm Bureau), CCPO and Zotos). Inasmuch as the foregoing documents, as well as responses filed GBX and the Commission, were not filed with the Commission and are not part of the record in this proceeding, LACI is providing as an appendix to this Initial Brief a copy of the above-named documents, as well as the Response in Opposition to Motion for Leave to File a Complaint for Order of Prohibition by the Commission (filed August 24, 2015), and the Objections of Grain Belt Express Clean Line LLC to Motion for Leave to File Complaint for Order of Prohibition (filed August 24, 2015). All of the documents referenced in this paragraph (other than Exhibits 1 – 7 to the Complaint, which are documents that are already part of the record in this proceeding) are together attached to this Initial Brief as Appendix A.

IV. **Section 8-406.1(f) Criteria for a Certificate**

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

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

1. *Necessary to Provide Adequate, Reliable, Efficient Service*
2. *Promote the Development of an Effectively Competitive Electricity Market*
3. *Least Cost*

This section of LACI's Initial Brief will combine discussion of the public convenience and necessity standard under PUA § 8-406.1(f) with discussion of necessity of the Project for reliability or to promote competition along with the requirement that the Project be least cost, all as required under § 8-406.1(f)(1). The factors relevant to such standards and requirements are similar and overlap, and thus lend themselves to a combined discussion and argument.

"Necessity" in the context of an application for a certificate of public convenience and necessity has been interpreted by the appellate court. In *King v. ICC*, 39 Ill. App. 3d 648, 653 (4<sup>th</sup> Dist. 1976), the court stated that necessity requires that the service be "needful and useful to the public." The determination of necessity is within Commission's discretion, and permits broad range of factors. *ComEd v. ICC*, 295 Ill. App. 3d 311, 317 (2<sup>nd</sup> Dist. 1998). Necessity is to be determined from a "consideration of all the circumstances." *Wabash, Chester & Western R.R. Co. v. Illinois Commerce Comm'n*, 309 Ill. 412, 141 N.E. 212 (1923).

### **GBX Application**

At pages 14-29 of its Application,<sup>2</sup> GBX lists the factors and reasons why it believes the Project is necessary for reliability and to promote competition, is the least cost means

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<sup>2</sup> Verified Application of Grain Belt Express Clean Line LLC for a Certificate of Public Convenience and Necessity to Construct, Operate and Maintain a High Voltage Electric Transmission Line and Operate a

to satisfy said objectives, and otherwise promotes the public convenience and necessity. GBX asserts that the demand for new renewable generation is growing due to renewable portfolio Standard (“RPS”) requirements, the election by utilities to include renewable resources in their supply mix, requirements by municipal aggregators that a portion of the electric supply be from renewable resources, and recent and project retirements of coal-fired generating plants.

GBX contends that the renewable electricity supply in Illinois and other MISO and PJM states falls short of the large demand for the same. A need exists for renewable resource growth, and transmission system expansion, to bring renewable generation from other areas into PJM and MISO markets.

GBX contends Illinois has insufficient wind generation sites, and that western Kansas has some of the country’s best wind resources but suffers from a lack of wind development due to inadequate transmission capacity. GBX cites to several industry sources to support its contention that a need exists for new transmission to enable renewable electricity supply. GBX continues by asserting that transmission needs to be constructed first, before the wind generation that would utilize the transmission.

GBX asserts that the Project will deliver large amounts of renewable energy into Illinois and other markets. Significant interest exists by potential customers that are developing new wind facilities in the western Kansas Resource Area. GBX references its 2014 Request for Information and its early 2015 solicitation in support of its assertions of large demand for the Project.

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Transmission Public Utility Business and Authorizing Grain Belt Express Clean Line to Construct the Electric Transmission Line, filed April 10, 2015 (“Application”).

GBX contends the Project will reduce loss of load expectations in Illinois, increase the load carrying capability, and thereby increase system reliability in Illinois. By incorporating Kansas wind resources into the renewable supply mix, the Project brings diversity of supply and promotes a more stable power supply in Illinois.

HVDC technology, according to GBX, has lower line losses than AC transmission, better stability, controllable energy flows, fewer conductors and smaller structure footprints, no outage propagation, and lower cost than potential AC transmission alternatives.

GBX contends the Project, combined with new Kansas wind generation, will have a lower levelized cost of energy and a lower present value revenue requirement, compared to: (i) new Illinois wind generation; (ii) new natural gas-fired generation; or (iii) purchasing electricity from renewables in the existing market.

GBX next contends its Proposed Route for the Project is optimal compared to alternative routes considered. GBX states it took into account route selection criteria, as listed in its Application, and concludes the route is least cost.

GBX contends the Project will lower locational marginal prices and demand costs for electricity in Illinois, exerting downward pressure on electricity prices in Illinois and surrounding states; and it will increase wholesale electricity competition, benefitting retail electricity consumers.

GBX contends the Project also will promote the public convenience and necessity by providing environmental and economic benefits.

### **Summary of Selected Portions of GBX's Direct Evidence**

In further support of its position on the issues in this section of LACI's Initial Brief, GBX presented the testimony and exhibits of several witnesses pertaining to public convenience and necessity, reliability, competition and least cost and related factors.

Robert Zavadil, with EnerNex, a power system engineering consulting firm, testified concerning the potential reliability impact of the Project. He provided the results of a Loss of Load Expectation ("LOLE") analysis, which he explained calculates the probability that generating units or other supply sources are insufficient to meet an expected electricity demand level. Zavadil, Dir., GBX Ex. 6.0, ll. 62-65. Based on his study, Mr. Zavadil concluded that injection of wind energy from the Project into PJM will positively impact Illinois resource adequacy and electric reliability. *Id.*, ll. 263-265.

Robert Cleveland, who is with Leidos Engineering, a consultant to GBX, performed an economic and environmental impact analysis of the Project. Mr. Cleveland utilized a PROMOD production cost model to simulate the energy market for two study years - 2020 and in 2024. Cleveland, Dir., GBX Ex. 3.0, ll. 56-59. He performed simulations across four future market scenarios, each with and without the Project, for each study year. Each scenario reflected specific assumptions as to natural gas prices, demand, new wind generation, and other relevant factors. The four scenarios reflected in his analysis were Business as Usual, Slow Growth, Robust Economy and Green Economy. His base case was one without the Project. The other case included the Project and expected resulting new wind generation. He received wind generator hourly profiles from GBX witness David Berry. *Id.*, ll. 74-88. Mr. Cleveland's model combined the Project and new wind generation, as they depend on each other. *Id.*, ll. 91-94.

Mr. Cleveland performed a benefits analysis whereby his model compared results with and without the Project, for each study year and each of the four scenarios. Mr. Cleveland presented the results of his study consisting of the outputs of the PROMOD simulations he ran, in his direct testimony and exhibits. GBX Ex. 3.0, 3.3, 3.4. One of the outputs of Mr. Cleveland's modeling was projected locational marginal prices ("LMPs"), which is the cost of the next increment of energy needed to meet the demand, taking into account impacts of transmission congestion and electrical losses. *Id.*, II. 109-115. Mr. Cleveland gathered operating and cost data from Ventyx, which compiles data from public sources and combines the data with market research, which serve as inputs into his simulation models. *Id.*, II. 193-195. Inputs include recently approved transmission projects. Also, the models assume Illinois receives electricity from both delivery points for the Project. The PROMOD model outputs include:

- Annual demand cost – the hourly demand in MWh x hourly LMP at each bus
- Annual average energy cost based on LMPs
- Annual production cost – variable generation costs to meet annual demand for the eastern U.S.
- Annual emissions production

*Id.*, II. 220-230.

Karl McDermott, a Phd economist and also a consultant to GBX, took Mr. Cleveland's model results and analyzed the impact of the Project on wholesale electricity costs and market competitiveness. McDermott, Dir., GBX Ex. 4.0, II. 438-439. Dr. McDermott concluded the Project will increase the supply side of the market competing to serve load and open the Illinois market to lower cost generation resources. *Id.*, II. 49-51. According to Dr. McDermott, the Project will produce a benefit to Illinois consumers in the range of \$256-\$726 million on a net present value basis. *Id.*, II. 64-65. It would

increase the capacity competing to serve load in Illinois up to 6.1% of total economic capacity. *Id.*, ll. 816-818. Illinois consumers would benefit through low marginal production cost renewable resources; a hedge against volatile electricity prices resulting from increased renewable energy supply; and positive competitive effects on the market for renewable energy credits (“RECs”). *Id.*, ll. 145-165. Dr. McDermott analyzed the Project by determining first whether it would result in lower average wholesale electricity prices, and, secondly, whether it would serve to increase the level of lower-cost generation resources to compete in the Illinois market. Dr. McDermott concluded that, together, these two factors show that the Project would promote competition in the Illinois wholesale electricity market. *Id.*, ll. 183-191. He then concluded it would be equitable to all customers based on its impact on the wholesale markets for electricity and RECs. *Id.*, ll. 87-96. In his analysis of wholesale electricity prices, Dr. McDermott focused on short-run, spot and day-ahead markets run by RTOs, and not futures markets, i.e., NYMEX, and bilateral trading, both of which are long run. *Id.*, ll. 215-222. Citing the Commission’s order in Docket 13-0657 (Commonwealth Edison Company Grand Prairie Gateway Project), he stated that the Project may be said to promote competition if it is shown to promote or develop a change that results in additional efficiencies to the market. He continued by stating that the efficiencies must be shown to be needful and useful to the public in order to justify the project’s cost. “Change” promoted by the Project in this context may be shown, according to Dr. McDermott, by how market prices for electricity and RECs are affected by an increase in renewable electricity supply, or by how access to the market is opened up by the Project. *Id.*, ll. 336-350. Dr. McDermott further explained his analytical technique. Upon receiving the 2020 and 2024 results from Mr. Cleveland, he analyzed

the effect of the Project on the competitiveness of Illinois energy markets. *Id.*, ll. 430-432. He then analyzed the extent to which the Project would expand the set of generators able to compete to serve Illinois load. *Id.*, ll. 461-463.

Dr. McDermott noted that the costs of the Project are to be recovered, under GBX's merchant model, through sales of transmission service to shippers; and that GBX assumes the risk that energy and REC revenues are sufficient to cover the costs of the Project and all connected generation. Dr. McDermott offered that the market payments to wind generators connected to the Project are the only costs related to the Project for which the Illinois public must pay. *Id.*, ll. 517-525.

Mr. Berry, who, as an employee of Clean Line Energy Partners LLC, is Executive Vice President of GBX, performed certain economic analyses, using as inputs the following results of Mr. Cleveland's analysis; annual energy costs, based on LMPs; variable costs of generation; and LMPs for western PJM nodes for 2020 under the Business as Usual Scenario, both with and without the Project. Berry, Dir., GBE Ex. 11.0, ll. 1259-1266. Mr. Berry's analysis showed that the Project plus Kansas wind has a lower levelized cost of energy than either Illinois wind generation or combined cycle gas plants. He also determined that the Project is the least cost alternative under a present value revenue requirements analysis, including a no-build alternative and buying power from the market. *Id.*, ll. 842-849.

GBX also presented testimony of David Loomis, an economics professor and consultant. Loomis, Dir., GBX Ex. 5.0. Dr. Loomis performed a study of the economic impact of the Project on the Illinois economy, in terms of jobs, labor earnings, and fiscal impacts. His analysis included studying the impact of the transmission line itself as well

as the impact of wind farms constructed to use the line. He measured effects both of initial construction and ongoing operations. *Id.*, ll. 41-60. Dr. Loomis also included the effect of higher income tax revenues to the State, and sales taxes, resulting from construction of the Illinois portion of the Project. *Id.*, ll. 94-96.

### **Summary of Staff's Direct Evidence**

Yassir Rashid, Staff Electrical Engineer, testified for the Staff. Rashid, Sir., Staff Ex. 1.0. One of his conclusions was that GBX had not provided evidence that the Project is necessary to maintain the reliability of the electrical system in this State, that no adverse effects would result from the Project not being built. Rashid, Dir., Staff Ex. 1.0, ll. 62-65, 189-199. Also, Mr. Rashid pointed out that evidence is lacking that any improvements in reliability justify the \$2.2 million cost of the Project. *Id.*, ll. 197-199.

Richard Zuraski also provided testimony for Staff. Zuraski, Dir., Staff Ex. 3.0. He addressed the public convenience and necessity standard and promotion of competition requirement under PUA § 8-406.1. Zuraski, Dir., ll. 45-52. Mr. Zuraski stated that, based on GBX-supplied cost estimates, the expected cost of the Project and new interconnected Kansas wind farms would be less than the expected cost of new Illinois wind farms or new Illinois natural gas combined cycle generators. *Id.*, ll. 71-75. He testified further that, again based on cost estimates and electricity market price projections provided by GBX, new wind farms that would connect to the Project could be expected to make a profit due to their average cost being below electricity market prices. *Id.*, ll. 75-78. He went on to state it is reasonable to expect GBX to be able to attract enough subscribers for transmission capacity to enable GBX to retain the support of its current owners and attract additional capital to complete the Project. Mr. Zuraski also stated that, by providing load

serving entities in Illinois and elsewhere access to lower cost electric supply, which could lead to lower retail prices, the Project would promote the public convenience and necessity. He further stated that the Project could lower the cost of complying with RPS imposed by states, as well as help states comply with expected new federal carbon dioxide emissions regulations. *Id.*, ll. 78-90. Mr. Zuraski explained that the Project may not serve the public convenience and necessity, if it is not built or, once built, is underutilized. He noted, however, that based on its merchant status most of the cost of failure would fall on the investors. He also recited the requirement, to which GBX agrees, that before recovering any costs of the Project from Illinois retail ratepayers through regional cost allocation, GBX will obtain the Commission's permission in a new proceeding. *Id.*, ll. 105-133.

Mr. Zuraski, while agreeing with Dr. McDermott that the Project (if built) would promote increased competition and exert downward pressure on wholesale electricity and REC prices, stated a concern. He stated that the Project could trigger electric plant retirements that GBX's studies have not accounted for, as well as postponement or cancellation of other new electric generation projects. As such, the energy price declines from the Project touted by GBX could be only temporary. *Id.*, ll. 144-164. In addressing whether the Project satisfies the least cost requirement, Mr. Zuraski noted that GBX examined several alternatives and alternative designs, finding all to be generally more costly; and that he is not aware of any other alternatives that would be less costly. *Id.*, ll. 197-202.

**Expert Witness Michael Proctor**

**Direct Testimony.** Michael Proctor was retained to provide expert testimony on behalf of intervenors LACI, the Farm Bureau, CCPO and Zotos. Proctor, Dir., LACI Ex. 3.0 He is a PhD Economist and former Chief Economist of the Missouri Public Service Commission. He has more recently consulted for RTOs on matters of transmission planning, cost allocation and markets. Proctor, Dir., LACI Ex. 3.0 Rev, ll. 5-10. Dr. Proctor testified for a group of landowners in the regulatory proceeding in which GBX requested approval for the Missouri portion of the Project. *Id.*, ll. 17-18. Dr. Proctor's testimony in the Missouri proceeding focused on the extent to which Kansas wind generation transported through the GBX proposed line to an AC convertor station in Missouri was needed and economically feasible. He presented an alternative levelized cost analysis to the analysis presented by GBX's Mr. Berry. Dr. Proctor's analysis showed that Kansas wind was not the lowest cost alternative for meeting either the capacity and energy needs, or renewable energy requirements, for Ameren Missouri. *Id.*, ll. 21-27. Dr. Proctor testified as to the alternative levelized cost analysis he performed for this proceeding, featuring comparisons of Kansas wind, Illinois wind and advanced natural gas combined cycle generation, with the results shown in LACI Ex. 3.2 Rev. Dr. Proctor also reviewed and commented on the impact of the Project on wholesale electricity markets as presented by GBX witnesses Mr. Cleveland and Dr. McDermott. *Id.*, ll. 42-44.

Dr. McDermott made several adjustments to GBX assumptions used in its levelized cost analysis. First, he used inflation rates from the Energy Information Administration ("EIA") for natural gas prices from 2012-2040. These rates were lower than the 2.5% rate used by GBX. *Id.*, ll. 57-66. Next he utilized a \$1,750/kW installed cost for new wind generation for both Kansas and Illinois, based on the 2013 Wind Technologies

Market Report., noting the significant effect of larger turbine sizes on lowering costs, and determining that recent lower actual costs in the interior region were likely due to larger turbine sizes. *Id.*, ll. 69-81. Dr. Proctor next corrected GBX's inflation rates applied to wind vs. combined cycle generation. GBX escalated combined cycle capacity costs at 2.5% but escalated wind at only a 1% rate. Dr. Proctor utilized a 1.31% rate for both based on the EIA information. *Id.*, ll. 84-89. Dr. Proctor next took issue with GBX's use of a 55% assumed capacity factor for Kansas wind. The higher the capacity factor, the more energy output per installed unit of capacity, and the lower the cost per unit of energy. Based on wind speed data for Kansas and other factors in GBX's own analysis, Dr. Proctor used a 52% capacity factor for Kansas wind. He used the same 40% capacity factor for Illinois wind that GBX used. Dr. Proctor noted that one GBX increased its assumed Kansas wind capacity factor based on impending improvements in turbine design, technology and size; but, as he stated, those same improvements, if applicable to Kansas wind, also should apply to Illinois wind. *Id.*, ll. 92-111. Dr. Proctor next added 20% to GBX's estimated DC transmission construction cost. He based this in part on the Southwest Power Pool's ("SPP", an RTO), finding that actual transmission project costs were 20% to 50% higher than preliminary cost estimates. Dr. Proctor used the lower end of the range, to GBX's benefit. *Id.*, ll. 114-119. Dr. Proctor then corrected GBX's treatment of property taxes applicable to Kansas wind, based on a recent change in law which ends the Kansas property tax exemption after year 10 for wind projects. Adding property taxes for years beyond the 10<sup>th</sup> increased the effective cost of Kansas wind. *Id.*, ll. 122-124.

The economic analysis that Dr. Proctor performed was a revenue requirements form of levelized cost analysis. He listed the major components of his analysis, stating

that the sum of these components results in the annual revenue requirements over the life of the asset, which is then transformed into a net present value. For the Kansas wind alternative, he also applied a similar cost analysis to the estimated Project cost. *Id.*, II. 126-144.

The results of Dr. Proctor's levelized cost analysis were as follows, first comparing Kansas wind (with the Project), Illinois wind, and natural gas combined cycle:

**Levelized Cost Comparisons**

Generation Type	Kansas Wind	Illinois Wind	Advanced CC
CF	52.00%	40%	87%
Capacity Costs	\$35.81	\$46.56	\$13.87
Property Taxes	\$2.15	\$10.81	\$2.99
Annual Expenses	\$7.90	\$10.26	\$65.65
Capacity Adder	\$21.56	\$28.03	\$0.00
DC Transmission	\$21.49	\$0.00	\$0.00
CO2 Adder	\$0.00	\$0.00	\$11.69
DC Losses	\$4.68	\$0.00	\$0.00
<b>Total Lev \$/MWh</b>	<b>\$93.59</b>	<b>\$95.66</b>	<b>\$94.20</b>

LACI Ex. 3.2 Rev

Combine cycle gas generation is only very slightly higher cost (0.65%) than Kansas wind, which in turn is slightly lower cost (2.1%) than Illinois wind.

The results in comparing only Kansas wind to Illinois wind were as follows:

Wind-on-Wind Comparisons

Generation Type	Kansas Wind	Illinois Wind
CF	52.00%	40.00%
Capacity Costs	\$35.81	\$46.56
Property Taxes	\$2.15	\$10.81
Annual Expenses	\$7.90	\$10.26
DC Transmission	\$21.49	\$0.00
DC Losses	\$3.54	\$0.00
<b>Total Lev \$/MWh</b>	<b>\$70.89</b>	<b>\$67.63</b>

LACI Ex. 3.2 Rev

Kansas wind, in a head-to-head comparison, is higher cost (4.8%) than Illinois wind. The capacity adder for Illinois wind was higher cost for Illinois wind, as shown in the first table above, because of the lower capacity factor for Illinois wind. When the capacity adder is removed from both alternatives, then, the reduction on cost for Illinois wind is greater than for Kansas wind, thereby resulting in a lower cost for Illinois wind compared to Kansas wind. LACI Ex. 3.2 Rev, p. 2. When all three alternatives are compared, a capacity adder is appropriate for the wind alternatives in order to make them reasonably comparable to the gas combined cycle alternative, which is dispatchable and thus provides capacity to the market. LACI Ex. 3.2 Rev, p. 1. Being an intermittent, non-dispatchable resource, wind generation provides no capacity to the market, and thereby receives no related consideration. Consequently, additional investment to provide the capacity that the wind generation does not provide is required. Proctor, Dir., LACI Ex. 3.0 Rev, ll. 156-162. The wind-on-wind comparison is relevant when considering the lesser cost alternative for Illinois market participants purchasing RECs to meet RPS requirements. *Id.*, ll. 202-203, 212-215.

Dr. Proctor next testified as to Mr. Cleveland's wholesale market analysis. It isn't enough, as Dr. Proctor pointed out, to just measure the wholesale market impact of adding the Project plus interconnected. Kansas wind. Rather, what is important is to determine the relative impacts of adding the Project/Kansas wind and alternative wind resources. *Id.*, ll. 217-226. What Mr. Cleveland should have done in his analysis is to produce comparable wholesale market impact results, first for the GBX Project, and then also for Illinois wind and natural gas combined cycle generation. Beyond that, Mr. Cleveland could have, and should have, included in his analysis other higher capacity wind generation within the MISO footprint, even if the latter alternative may be relatively more difficult to study. *Id.*, ll. 232-241. Similarly, Dr. McDermott in his analysis of the increase in competition from the Project should have included consideration of alternative generation, including Illinois wind. The wind-to-wind comparison would have shown that Illinois wind increases competition more than does Kansas wind when considering relative costs and prices. *Id.*, ll. 242-248.

**Rebuttal Testimony.** In his rebuttal, Dr. Proctor addressed the direct testimonies of Staff witness Mr. Zuraski, WOW witness Michael Goggin, and Infinity witness Matt Langley. LACI Ex. 5.0 Rev, ll. 7-8. As he noted, due to the compressed schedule in this proceeding, Dr. Proctor was unable to review fully analyses performed by Mr. Zuraski performed after, and not part of, Mr. Zuraski's direct testimony, but instead provided to LACI in response to data requests submitted to Staff. *Id.*, fn. 1.

First, Dr. Proctor pointed out that all three witnesses focused on wholesale markets driven by short-run costs. Effective competition, however, is driven by long-run costs, which include capacity and fixed costs. *Id.*, ll. 24-31. Another shortcoming of the analyses

and testimonies of Mssrs. Zuraski and Langley is that they did not independently review, but instead accepted on their face, the assumptions, inputs and analysis of GBX witnesses to determine least cost. As a result, neither witness considered various viable alternatives to meet Illinois RPS needs or needs for low-cost capacity and electricity, which is an appropriate factor in determining whether the GBX Project promotes the public convenience and necessity. *Id.*, ll. 42-54. Dr. Proctor also took issue with what these three witnesses had to say about the development of effectively competitive markets, which is part of the statutory standard under PUA § 8-406.1(f)(1). While impacts on wholesale electricity prices is part of the analysis, fixed-cost components have a more significant impact on the development of effectively competitive wholesale market prices. *Id.*, ll. 89-94. The real reason to show lower wholesale market prices is to provide an estimate of REC costs, as Dr. Proctor explained. *Id.*, ll. 97-105. Dr. Proctor further explained the impact of capacity costs and fixed expenses on power markets. Economics treats competition by considering and including long-run costs, where all inputs into the production process are measured. Short-run costs alone are insufficient determinants of whether a power market is effectively competitive. *Id.*, ll. 108-116. Dr. Proctor summarized this portion of his analysis by stating, “**effective competition** should be measured in terms of competition that will be sustained over the long-run rather than just in the short-run” (emphasis in original). *Id.*, ll. 137-139.

Dr. Proctor then addressed the three witness’ testimonies on “least cost.” What he found missing were two key factors. First, none of the witnesses performed an independent study of the assumptions, inputs and analysis of the costs of the GBX-developed alternatives. Secondly, they did not study the cost of wind from other locations

in Miso or in PJM. As a result, their endorsement of the Project combined with Kansas wind as least cost is meaningless. *Id.*, ll. 183-207.

Dr. Proctor critiqued the testimonies of the three witnesses addressing whether the Project promotes the public convenience and necessity. *Id.*, ll. 222-263. He took issue with Mr. Zuraski's points that go to the economic feasibility of the Project. Because gas combined cycle generation is nearly an equal cost alternative to Kansas wind with the Project for providing Illinois with capacity and energy, and Illinois wind is lower cost for meeting Illinois' RPS requirements, there is strong evidence that the Project will not be economically feasible. *Id.*, ll. 258-263. Dr. Proctor acknowledged that scenarios may exist in which combined cycle generation would not be a nearly equal cost alternative (to the Project/Kansas wind) for meeting the need for both capacity and energy; for example, if the CO<sub>2</sub> price increase is greater or the capacity adder cost is lower. In that event, though, the wind-on-wind comparison would still make Illinois wind the lower cost option for meeting Illinois' electric energy needs (\$67.63 (Ill.) vs. \$70.89 (Kan.) per MWh). *Id.*, ll. 269-277. In that situation, moreover, since other alternatives for capacity would be required in connection with either wind alternative, the capacity costs for either wind alternative would be the same, and the choice of the lowest cost capacity is independent of the choice for energy. *Id.*, ll. 281-287.

GBX's reducing the price for transmission service is not a feasible alternative to sustain economic feasibility. To do so without reducing costs commensurately would, at the very least, provide substandard returns to investors, thereby making it more difficult to attract additional capital for the Project, if needed. *Id.*, ll. 288-294; see *also*, Berry, Tr. 936:15 – 939:20.

Dr. Proctor next demonstrated why he disagreed with Mr. Langley and Mr. Goggin that Kansas wind with the Project is the only alternative for meeting Illinois' needs for low-cost renewable energy. Neither witness considered other wind alternatives within MISO or PJM. As shown in LACI Ex. 5.1 Rev, Dr. Proctor demonstrated that MISO wind, at a 48% capacity factor, is lower cost, by \$14.51/MWh, compared to Kansas wind with the Project; and still \$10.79/MWh cheaper taking out the 20% increase in the installed cost of the Project. LACI Ex. 5.1 Rev, LACI Ex. 5.0, ll. 321-331. The comparison holds even assuming some level of transmission congestion, and resultant higher costs, for the MISO wind alternative. *Id.*, ll. 347-370. Dr. Proctor also explained, in terms of transmission, how market delivery differs from physical delivery of electricity. Market delivery reflects the ability to integrate electricity from a generation source into the wholesale market without violating power grid reliability standards. *Id.*, ll. 389-391. Actual physical, point-to-point ("PTP") delivery has decreased as RTO wholesale markets have grown and evolved; thus, market delivery has become dominant. *Id.*, ll. 416-428. Both Mr. Langley and Mr. Goggin provided incomplete descriptions and impacts of the delivery of electricity from wind. *Id.*, ll. 377-467. Dr. Proctor testified further as to meeting Illinois' RPS requirements. Under the Illinois RPS standards, RECs thrown off by MISO wind produced in Iowa, an adjoining state to Illinois, would easily qualify to help satisfy Illinois' RPS. This would be the case, moreover, whether or not the Iowa wind energy was actually delivered into Illinois. Dr. Proctor described transactions to demonstrate how it would actually work. *Id.*, ll. 483-522. Lastly, Dr. Proctor corrected Mr. Goggin's mischaracterization of the MISO transmission projects called Multi-Valued Projects ("MVPs"). Contrary to Mr. Goggin's testimony, the MVPs were not designed to enable delivery of enough wind generation to

“meet the total demand of MISO RPSs.” *Id.*, ll. 524-527. Rather, MISO recognized that, under any scenario within MISO’s planning, additional backbone transmission would be required. The GBX Project could impact MISO’s determination of the need for such additional backbone facilities. *Id.*, ll. 556-560.

### **Other Evidence and Argument**

The “least cost” standard was misinterpreted by GBX. During cross-examination, Dr. McDermott confirmed his prepared testimony on this point, stating that he considered only two factors – the route and the technology (HVDC) in concluding that the Project was least cost.

As Dr. Proctor testified, an evaluation of the Project, including whether it is least cost, demands a more expansive analysis and set of comparisons. In this regard, *Illinois Power Co. v. Illinois Commerce Comm’n*, 111 Ill. 2d 505, 490 N.E. 2d 1255 (1986), is relevant and instructive. There, Illinois Power Company had entered into an agreement with Mt. Carmel Public Utility whereby Illinois Power would acquire Mt. Carmel. Both were investor-owned Illinois public utilities. In the proceeding at the Commission whereby approval for the transaction was sought, another neighboring utility, Central Illinois Public Service (“CIPS”), intervened and opposed the transaction’s approval on the basis that a merger of Mt. Carmel with CIPS would be a better alternative than a merger with Illinois Power. The Commission sided with CIPS and held that the proposed transaction did not meet the “public convenience” standard. The circuit court to which the case was appealed affirmed the Commission’s order. Following a reversal by the appellate court, the Illinois Supreme Court reversed the appellate court’s decision and reinstated and affirmed the judgment of the circuit court. The Court favorably quoted the Commission’s conclusion

that, “[t]he question whether a merger is in the public interest can be meaningfully answered only within the context of possible alternative actions.” *Id.*, 111 Ill. 2d at 511. Adapting the Commission’s conclusion to this proceeding, “the question whether the Project promotes the public convenience and necessity, is necessary to promote competition, and is least cost can be meaningfully answered only within the context of possible alternatives.” No one other than Dr. Proctor attempted to develop and offer such comparisons (*e.g.*, other MISO wind), or at least a sufficient number of them.

Another shortcoming of GBX’s case was demonstrated by an examination of Dr. Loomis’ economic benefits study. His study ignored the impact the Project may have on the possible resulting shutdown of one or more existing Illinois electric generating plants. His study similarly ignored as well the adverse impacts of foregone economic benefits from other Illinois wind projects that would not be built if the GBX Project and Kansas wind are developed and constructed.

Sufficient evidence is lacking on which to base justification for the Project on improvements to Illinois electric system reliability. Mr. Rashid found this to be the case. Just as in the Rock Island Clean Line proceeding (Docket 12-0560), no transmission system operator studied the Project for reliability needs; and GBX provided no load flow studies. *Rock Island Clean Line LLC*, Docket No. 12-0560 (Nov. 25, 2014), Order at 116. While GBX witness Mr. Zavadil presented an analysis that he claimed was significantly different than the reliability-related analysis presented in the Rock island proceeding, he did not portray his study as a load flow study. And without any review by either MISO or PJM on this point, it may not be found that the Project is necessary for reliability purposes.

The other major factor that augurs against a grant of a Certificate to GBX is the denial by the Missouri Public Service Commission of GBX's request for approval in that state. *In the Matter of Grain Belt Express Clean Line LLC*, File No. EA-2014-0207 (Mo. Pub. Svc. Comm'n July 1, 2015), *reh'g denied*, *In the Matter of Grain Belt Express Clean Line LLC*, File No. EA-2014-0207 (Mo. Pub. Svc. Comm'n Aug. 12, 2015). The record is clear that, without governmental approval to construct the Missouri portion, GBX will not pursue construction of the Illinois portion of the Project. Consequently, a Certificate from this Commission would be useless in the face of the Missouri denial. See Section IV.F. below for argument that the Missouri PSC's denial renders any decision in the proceeding an advisory opinion and makes this proceeding moot.

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

The record demonstrates GBX has failed to show it is capable of supervising and managing the construction of the Project. The Project is but one of five major electric transmission projects Clean Line entities are trying to develop. Senior management of Clean line, including key senior officers Mr. Skelly, Dr. Galli, and Mr. Berry are responsible for all five projects. Four of the five are HVDC technology, a little-used type of transmission line in this country. Staff witness Rashid believes GBX does not have the ability to manage the Project, and the evidence supports him.

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

GBX has failed to show it is capable of financing the Project. The record shows Clean Line, GBX's indirect parent upon whom GBX is completely dependent for funding, is extremely thinly capitalized. There is evidence Clean Line has slowed its companion

project in Illinois and Iowa due at least in part to a shortage of development funding, based on the prolonged inactivity in Iowa by that project's entity, Rock Island Clean Line LLC. GBX has not described one other project similar to its Project which has successfully financed its construction based on a project finance strategy. No other example was given in which a merchant developer was able to achieve a majority of its financing through project financing from outside sources, where the transmission line was connecting to an undeveloped area, without generation in place to utilize the line. The CREZ project GBX cited as similar were different in at least one critical aspect. The CREZ projects were rate-regulated, not merchant. Without any sufficiently similar precedent transactions presented, which was GBX's burden to show to the satisfaction of the Commission, it may not be concluded that GBX has shown it is capable of financing the proposed construction. It therefore has fallen short of this portion of the required statutory showing.

Staff finance witness Janis Freetly performed no analysis whatsoever. She simply filed an affidavit in which she essentially stated that, to her, the financing condition satisfied GBX's statutory burden. Freetly Verified Statement, Staff Ex. 2.0. The lack of any review or analysis by Staff of the financial condition of GBX or Clean Line, or the viability of the project financing plan and strategy, falls far short of what is required; Staff's input, therefore, is of no use and should not be relied upon to any extent to support a finding of financing capability.

E. Proposed Conditions relating to Grant of the CPCN

1. *Financing Condition*

The financing condition may not legally substitute for the statutory requirement that GBX show it "is capable" of financing the proposed construction. Potential future

capability, especially based on the unique, speculative, nature of this Project and GBX's weak financial condition, is insufficient.

## 2. *Cost Allocation/Rate Recovery Condition*

GBX has offered as a condition, or requirement, to be imposed as part of the Commission's Order that Mr. Skelly included in his direct testimony. Skelly, Dr., GBX Ex. 1.0, ll. 348-358. Under that requirement, prior to recovering any Project costs from Illinois retail ratepayers through RTO regional cost allocation, GBX will obtain the Commission's permission in a new proceeding. Beside particular issues and problems brought out during the hearings, this requirement suffers from a legal infirmity. Under the Constitution's Supremacy Clause, and implementing federal legislation, wholesale electric rates are under the exclusive jurisdiction of the federal government, in this case the Federal Energy Regulatory Commission. In *Narragansett Electric Co. v. Burke*, 119 R.I. 559, 381 A.2d 1358 (1977), the Rhode Island Supreme Court reversed a decision by the Rhode Island Public Utilities Commission refusing to pass through to retail ratepayers wholesale power costs the utility had incurred. The Court held that federal preemption required that such costs, as reasonable operating expenses, be allowed to be passed through. Later, in *Nantahala Power & Light Co. v. Thornburg*, 106 S. Ct. 2349 (1986), the U.S. Supreme Court rules that state regulatory commissions lack the authority to even question the reasonableness of FPC [now FERC]-imposed wholesale rates for purposes of setting retail rates.

Based on such case precedent, it appears that, despite GBX's assurances, it, and this Commission, may have no control over the imposition of Project costs to Illinois retail

ratepayers once MISO and/or PJM agree to a cost allocation model in place of the merchant model.

F. Other Considerations Under Section 8-406.1

1. *Eminent Domain Considerations*

As explained above in Section III of this Initial Brief, the relief requested in its Application would, if granted, create a clear path to eminent domain authority. The many unique aspects of GBX and this proceeding, along with the substantially uncertain, if not speculative, nature of the proposed Project, demand a close examination of whether eminent domain is an appropriate tool to make available to GBX. LACI believes the Commission should strongly consider this factor in determining whether it is appropriate to grant GBX a Certificate to construct the Project, along with the accompanying, automatic § 8-503 order.

In reality, if GBX's position is adopted, private property owners along a 200-mile corridor in Illinois will be subject immediately to a cloud over their property rights – without due process and without compensation – all for an unknown period of time and for a speculative project that may never be built. Put simply, if GBX's position is adopted, the Commission's action will take and deprive one private party, the property owners, of property rights in favor of another private party, GBX.

The Commission's adoption of GBX's position would vest GBX, a private entity with a right to invoke expedited eminent domain proceedings with a rebuttable presumption by law in their favor under the Illinois Eminent Domain Act. Because GBX would have this right, the issuance of an order in favor of GBX raises a number of concerns. First, as possible and speculative future benefits do not constitute the tangible,

definable and plausible “public use” required by the U.S. and Illinois Constitution to take or injure a person’s property rights, action by the Commission in adopting GBX’s position would be an unlawful action. Second, since a plain reading of the applicable laws applies only to public utilities and GBX does not fall within that definition, any action by the Commission adopting GBX position that it is a public utility would be an “arbitrary” exercise of power contrary to the substantive due process rights of the landowners and citizens of the Illinois. Third, historically the Commission has carefully considered the circumstances under which it will grant a utility the ability to encumber private property for utility purposes and has limited its action to cases where the public interest is concrete, definite and plausible, the Commission should exercise no less consideration to deny adopting GBX’s position for its speculative proposed project offering no more with no than a “transmission line of dreams.”

Both the U.S. Constitution and the Illinois Constitution protect the rights of individuals to be free from certain actions that deprive them of private property. The Fifth Amendment “Takings Clause” of the U.S. Constitution prohibits action that takes private property “for public use, without just compensation”. U.S. Const. Amend. 5. Illinois Constitution, Article I, Section 15, prohibits action in which private property is “taken or damaged for public use without just compensation as provided by law.” The due process clause of the Fourteenth Amendment to the U.S. Constitution provides that no state shall “deprive any person of life, liberty, or property, without due process of law”. U.S. Const. Amend. 14 § 1. As noted by the above language, the takings provisions of the U.S. and Illinois constitutions include a concept of compensation while the due process clause of the U.S. Constitution does not.

As originally written, the Takings Clause of the Fifth Amendment applied only to the federal government, *Barron v. Mayor and City Council of Baltimore*, 32 U.S. 243, 250-51 (1833), and early challenges to takings and other actions by state entities were challenged under substantive due process concepts of the Fourteenth Amendment. *Chicago Burlington and Quincy R.R. v. City of Chicago*, 166 U.S. 226, 235 (1897). For many years, Supreme Court jurisprudence intertwined substantive due process and takings doctrines. See Robert G. Dreher, *Lingle's Legacy: Untangling Substantive Due Process from Takings Doctrine*, 30 Harvard Law Review 371 (2006). It was not until the 2005 decision in *Lingle v. Chevron USA Inc.*, 125 S. Ct. 2074 (2005), that Justice O'Connor untangled the concepts by explaining that if "government action fails to meet the 'public use' requirement or is so 'arbitrary' as to violate due process, that is the end of the inquiry. No amount of compensation can authorize such action." In the present case, the adoption of GBX's position by the Commission would fail on the two grounds articulated by Justice O'Connor: (1) such action would fail to meet the "public use" requirement of the takings clauses in the state and federal constitution and (2) such action would be so "arbitrary" as to violate due process clause of the federal constitution.

As examination of the record reveals no definite and plausible public use that will come to the citizens of Illinois upon Commission action. The only party that will benefit upon the issuance of a CPCN will be GBX, a private party with no utility operations in Illinois. While GBX has gone into great detail as to their plans that it hopes to achieve one day and the benefits it hopes it can provide, those plans are highly speculative and depend on a great many factors. GBX has put forth nothing more than a speculative plan based on a hope that if they are treated like a public utility and given a CPCN, investors

will spring forth giving them the millions they need in funding and wind customers will line at their doors ready to sign up – but those are only hopes. While it is possible to see where GBX will accrue some immediate benefits, any benefit to the citizens of Illinois would have to come much, much later, if at all. Thus, because there is no ‘public use’ for the immediate injury, damage and cloud to the property owners, any action by the Commission would be contrary to the protections granted to the citizens of Illinois, including the landowners.

The Illinois Supreme Court had occasion to examine the “public use” requirement in *Sw. Ill. Dev. Auth. V. Nat’l City Envtl., L.L.C.*, 768 N.E.2d 1 (2002). At issue in the case was whether the Southwestern Illinois Development Authority (SWIDA) established by the Illinois legislature could take property from one private party and transfer it to another private party pursuant to its legislatively granted power of condemnation. According to the Illinois Court, the essence of the case related “not to the ultimate transfer of property to a private party”, but rather, “the controlling issue is whether SWIDA exceeded the boundaries of **constitutional principles** and authority by transferring the property to a private party for a profit when the property is not put to a public use.” *Id.* at 7-8 (emphasis added). The Court held that the SWIDA exceeded its constitutional authority. *Id.* at 11. The Illinois Court rejected the contention of the SWIDA that the “wisdom” of the legislation and the “means of executing the project” are beyond scrutiny once a public purpose has been established. *Id.* The Illinois Court reasoned:

The Constitution and the essential liberties we are sworn to protect control. In its wisdom, the legislature has given SWIDA the authority to use eminent domain to encourage private enterprise and become involved in commercial projects that may benefit a specific region of the state. While we do not question the legislature’s discretion in allowing for the exercise of eminent domain power, the government does not have unlimited power to redefine property rights....”

*Id.* In this instant case, upon adoption of the GBX position, the only immediate benefit will accrue to GBX. There is nothing in the record to show that it is currently plausible that the public will ever receive a benefit. Instead, these landowners along the route will suffer an immediate injury by virtue of the cloud that will exist over their property. Accordingly, if the Commission adopts GBX's position, the commission will exceed the boundaries of constitutional authority.

In the case of *Kelo v. City of New London*, 545 U.S. 469 (2005), the Supreme Court explored whether a city redevelopment plan served a "public purpose" and therefore constituted a "public use". In *Kelo*, the city approved a redevelopment plan and authorized an agent to purchase property for the development and exercise eminent domain. *Id.* at 2658. The agent purchased most of the property, but others refused to sell. *Id.* The question before the court was whether the city's proposed disposition of the property qualified as a "public use" within the meaning of the Takings Clause. *Id.* The Court held the disposition qualified as a "public use." *Id.* at 2658-59. While the Petitioners argued that, without a bright-line rule holding that economic development did not qualify as a public use, nothing would keep a city from transferring citizen A's property to citizen B for the sole reason that citizen B would put the property to a more productive use, the court stated it could not address such a "one to one transfer outside the confines of an integrated development plan" as it was not presented in the instant case before them. *Id.* at 2666-67. In *Kelo*, the Court upheld the city action, but noted that their opinion did not preclude any States "from placing further restrictions on its exercise of the takings power." *Id.* at 2668. Justice Kennedy in his concurring opinion noted that while it "is not the occasion for conjecture as to what sort of cases might justify a more demanding

standard”, he did underscore the persuasive elements for him were the comprehensive nature of the plan prepared by the city and economic benefits that were more than de minimis. *Id.* at 2670. He further noted: “In sum while there may be a categories of cases in which the transfers are so suspicious, or the procedures employed so prone to abuse, or the purported benefits are so trivial or **implausible**, that courts presume an impermissible private purpose, no such circumstances are present in this case.” *Id.* at 2670-71 (emphasis added). Because the plan presented by GBX is not pursuant to a specific state statute authorizing the use of eminent domain for the development as was present in *Kelo* case, is not a comprehensive plan developed by a government agency or body created by the legislature, and describes purported benefits that are implausible given GBX’s current lack of funding, customers, and regulatory approvals, GBX’s position does not pass the constitutional muster as articulated in *Kelo*. The plan presented to the Commission is a private plan on which the legislature and Illinois citizens have not been allowed a full opportunity to consider and comment. The plan presented by GBX is not an integrated plan developed by the Commission, but rather a private plan by GBX put forth by GBX to increase its private profits and presents the type of case mentioned by the court in *Kelo*: a one to one transfer of valuable property rights outside of an integrated plan created by a governmental agency.

It is important to note just how important the Illinois public acting through their elected officials in the State legislature has taken the rights of private citizens to be protected from transfers of their property rights to another private party. As a response to *Kelo*, the Illinois legislature, like a number of other states, introduced more stringent requirements into their Eminent Domain Act. In May 2006, the Eminent Domain Act was

amended to require a higher standard of proof by a condemning authority if a taking is for private ownership and control. In the case of a taking for private ownership and control, the condemning authority would have to show by “clear and convincing” evidence that a proposed taking is primarily for the benefit, use and enjoyment of the public and necessary for a public purpose. 735 ILCS 30/5-5-5(c). The legislature has clearly spoken that a high standard should be required of “public use” before personal property rights can be damaged. Speculative future benefits proffered by GBX that may never come to fruition is certainly not clear and convincing and does not show to be primarily for the benefit, use, and enjoyment of the public nor necessary for the public. In this case, given the current stage of development, the only definable benefits accrue to GBX in the ability to attract additional investors, to continue its viability, to entice customers, etc. As GBX has made no “clear and convincing” showing of plausible benefits to the Illinois public, the Commission should not trample on the valuable rights of its citizens in favor of a private party, who at this time can really offer no more than a transmission line of dreams.

In addition, any Commission action based on or that includes GBX is a public utility would have to necessarily be considered so arbitrary as to violate the substantive due process rights of the property owners. Nothing in the Public Utilities Law allows the Commission the discretion to deem an entity that does not fit within the definition of a “public utility” under Public Utilities Act, to be a “public utility.” See 220 ILCS 5/3-105. Thus, holding GBX to be a public utility would necessarily require a tortured reading of the current Illinois Public Utilities Act by the Commission and would be contrary to a plain reading of the definition. The Commission is not the legislature, has not been elected by the citizens of Illinois, and does not have the authority to revise the clear definition set

forth in the Public Utilities Act. Accordingly, any such exercise of authority by the Commission to designate GBX a public utility and thereby cloud, impair and damage the rights of property owners would have to be construed as arbitrary and capricious and violate the substantive due process rights of the landowners.

Historically, the Commission has carefully considered the circumstances under which it will grant an entity, such as Ameren that is an operating public utility replete with the funding, the ability to encumber private property for utility purposes. See Ameren Illinois Co., Docket 13-0516, at 3 (Oct. 23, 2013). The commission has limited its action to cases where the public interest is concrete, definite and plausible and the Commission should exercise no less consideration to deny adopting GBX's position for its speculative proposed project offering at its essence no more with no than a "transmission line of dreams. Further, as noted in the above paragraphs describing the history of the Takings Clause and manner in which the Court and the Illinois legislature through the Eminent Domain Act has carefully scrutinized the circumstances under which action of one party can encumber the private property of another party, GBX has presented no public interest plausible and sufficient enough to justify the immediate cloud and deprivation of the property rights the landowners along this 200-mile route would experience for an unknown period of time.

V. **Proposed Route of the Project in Illinois and Land Acquisition**

GBX's routing choices affect Illinois landowners. Clearly, by selecting one route over another, GBX impacts different landowners in different manners. Accordingly, this Commission should analyze GBX's routing efforts closely. Upon doing so, the

Commission can only conclude that GBX gave Illinois landowners short shrift when routing the project.

The Missouri Public Service Commission acknowledged that it needed to weigh impacts to its state's residents against the alleged benefits of the GBX project. Report & Order, p. 26 *In the Matter of Grain Belt Express Clean Line LLC*, File No. EA-2014-0207 (Mo. Pub. Svc. Comm'n July 1, 2015) ("in this case the evidence shows that any actual benefits to the general public from the Project are outweighed by the burdens on affected landowners."). This Commission should do the same when it considers the project. Upon doing so, only one conclusion can be drawn. GBX's failure to adequately consider landowner impacts when routing tips the scales against awarding a GBX a CPCN and §8-503 Order.

GBX witnesses Lawlor and Gaul describe the route selection process in Illinois. Lawlor oversaw the siting process for this project. Lawlor, Dir., GBX Ex. 7.0, ll. 11-12. But Lawlor has never constructed a transmission line. *Id.*, ll. 16-21. Given, Mr. Gaul has experience in siting transmission lines. However, most of his work has been for utility companies. Gaul, Dir., GBX Ex. 8.0, ll. 25-28. He is biased. Both lack any education or experience in agriculture. It is no surprise, then, that GBX's routing seems to have went out of its way to excessively affect landowners.

A. Description and Development of the Proposed Route

GBX presents the proposed route in its Exhibit 8.3. GBX witness Gaul describes the process to create the route. Gaul, Dir., GBX Ex. 8.0, generally. There, we learn that the proposed routing in Missouri dictated routing in Illinois. That is, GBX first developed proposed routing in Missouri. *Id.*, ll. 135-136. This set the location for the crossing of the

Mississippi River. Thus, the rejected Missouri project dictates the impacts to Illinois landowners. The routing study is further flawed.

GBX acknowledges that parcel and section lines are linear opportunities in its routing study. GBX Ex. 8.2, p. 33. It recognized that farming operations extend to the end of these boundaries. *Id.* Other than this brief mention, GBX seems to have little consideration of its routing's impact to farming operations. It also fails to make use of this limited insight.

It is no surprise that GBX, never having constructed a transmission line, falls short of behavior this Commission should expect. For example, Ameren Transmission Company recently recognized that meeting participants for the the Spoon River project considered agricultural impact of utmost importance. ATXI Ex. 8.2, Pt. 2 of 2, p. 18, *In re Ameren Transmission Co.*, Docket 14-0514 (Ill. Commerce Comm'n filed Aug. 21, 2014). Yet, GBX fails to include any similar stakeholder input in its routing study. However, the sheer magnitude of intervenor testimony makes one thing clear. GBX should have considered agricultural uses of utmost importance to landowners in Illinois. It did not.

Despite noting line placement along property and section lines as preferential to avoid agricultural impacts, GBX shunned this goal. Even a cursory review of GBX's routes show incredible amounts of cross-country, non-paralleling line siting. See, e.g. GBX Ex.8.2, pp. 344, 345, 346, 384, 390, 392, and 393; See also, Davis, Dir., LACI Ex. 2.0, ll. 42-44 (describing where the proposed route splits her family's field).

Given, cutting across a field may be necessary at limited times. But GBX has gone too far. Its routing study inexplicably resulted in a proposed route that cuts diagonally through parcel after parcel. By shunning its goal of using linear opportunities, GBX seeks

permission to cause excessive impacts to landowners that otherwise might have been avoided.

- B. Selection of Proposed Route vs. Alternate Route
- C. Proposed Revisions to the Proposed Route (Rex Encore and Branch Properties Parties)
- D. Proposed Design Aspects of the Project

1. *Easement Widths*

GBX seeks a 200-foot wide easement. Galli, Dir., GBX Ex. 2.0, ll. 383-384. This easement is wider than other recent transmission projects in this state. For example, Commonwealth Edison only sought 120 feet wide easement for poles that could be used to support two 345 kV circuits and a 138 kV circuit. Order on Reh'g, p. 6, *In re Commonwealth Edison Co.*, Docket No. 13-0657 (Ill. Commerce Comm'n Apr. 8, 2015), *appeal pending*. In fact, ComEd was able to route two 345 kV circuits and one 138 kV circuit with room for a future set of two *more* 345 kV and one *more* 138 kV circuit – all within 135 feet of a roadway. Murphy, Tr. 274:12-17, *In re Commonwealth Edison Co.*, Docket No. 13-0657 (Ill. Commerce Comm'n Apr. 16, 2014); Kaup Dir., ll. 189-195, *In re Commonwealth Edison Co.*, Docket No. 13-0657 (Ill. Commerce Comm'n Dec. 12, 2013). GBX has provided no insight into how different methods of transmission would affect easement widths.

The ability of an experienced transmission company to fit an incredible number of circuits into 135 feet calls GBX's need for a 200-foot wide easement into question. Were there less burdensome methods for landowners? We do not know. GBX did not compare burdens to landowners in its decision to choose HVDC. It only compared costs to its bottom line. Accordingly, GBX has denied the Commission the opportunity to compare

the full cost (cost of construction plus impacts to landowners) of a 600kV HVDC line to the full cost of other methods of transmitting electricity.

Moreover, we do not know how much land GBX actually intends to burden. For example, GBX wishes to control activities outside the easement area permanently. Lawlor, Tr. 157:16-15:4. It refused to commit to limiting control of activities outside the easement area to those needed to meet NERC safety requirements. *Id.* at 159:3-5. Thus, the true extent of easement rights GBX seeks is unknown. The lack of certainty provided for a relatively basic element, *i.e.* easements, by the neophyte company is troubling.

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

GBX has acted curiously regarding its intended structures. It presented as a responsible utility-to-be. It portrayed itself as a company dedicated to using monopoles or lattice mast structures absent extreme circumstances. Galli, Dir., GBX Ex. 2.0, ll. 345-351. However, on cross, it became clear that its promise was subject to incredible discretion. In fact, the exception is so great that it completely swallows the rule. In reality, GBX is more, or less, free to use multi-footed lattice structures at its heart's desire.

GBX prefers multi-footed lattice structures even when monopoles are appropriate. Galli, Tr. 778:7-13. In its prepared testimony, GBX claimed it would use multi-foot lattice structures only for extreme circumstances such as "heavy angle turn[s]," "dead ends," and river crossings. Galli, Dir., GBX Ex. 2.0, ll. 349-350. It also touted the AIMA. But the AIMA hardly provides protection. It carves out an exception for "specific engineering and environmental challenges," providing GBX wide latitude to do as it pleases. GBX Ex. 7.15, § 3(A).

The exception does not prove the rule; it destroys the rule. GBX believes that angles as narrow as 15 degrees can entitle it to use the larger multi-footed lattice structures. Galli, Tr. 806:20-807:2. Given the proposed route of the project, large scale use of GBX's preferred multi-footed lattice structures is possible. Moreover, GBX refuses to commit to utilization of more robust monopoles for feasible angles at landowner's request. Galli, Tr. 817:7-13. This Commission cannot rely on the AIMA and GBX's promises to conclude that GBX will primarily use monopoles or lattice mast structures. There is evidentiary support for such a conclusion.

GBX's intentions are unclear to landowners. Given its refusal to commit to use of single-foundation structures and its incredibly expansive interpretation of the AIMA, landowners have every reason to be concerned. GBX is a profit driven company that makes its money by earning a margin, not a guaranteed rate of return. See, McDermott, Tr. 463:1-5 (explaining that GBX will pursue the least-costly method to maximize profits). GBX has every reason to use the cheapest transmission structures for the job and it prefers multi-footed lattice structures. Once it has a CPCN and § 8-503 order in hand it can force these structures on landowners under threat of a swift eminent domain proceeding. Finally, this Commission cannot even look to past conduct of GBX. It doesn't exist. Neither it, nor its sister companies, has ever built a transmission line. Rashid, Tr. 384:16-18.

E. Grain Belt Express's Approach to Land Acquisition (including issues relating to easement document)

Assuming this Commission grants GBX a CPCN and § 8-503 order, GBX will have too much power in negotiations. As explained in Section IV(F), approval of this project will already cloud the title of all affected landowners. Moreover, eminent domain authority is

all but guaranteed within 45 days of Grain Belt's request. Simply put, landowners will not have the opportunity to negotiate at arm's length with GBX.

In fact, it appears that GBX has a hard time putting a fair deal on the table. GBX's sister company, Rock Island, was only able to secure 15% of the easements it needed in Iowa without regulatory leverage. Skelly, Tr. 361:21-362:1. Curiously, once the Iowa Utilities Board required Rock Island to secure easements before getting a franchise (by denying its motion to bifurcate the proceedings), it gave up. Rock Island stopped obtaining easements after the denial of the motion to bifurcate. Id. 361:10-12. It stands to reason that GBX will also fail to present landowners with acceptable terms in Illinois.

F. Landowner Concerns about Impacts of Construction on their Properties (including AIMA provisions and proposed conditions relating to preventing/mitigating impacts)

GBX's transmission neophytes want to level substantial burdens on landowners for its speculative project. Given, all transmission projects cause some impact and some of that is mitigated by AIMA terms. However, GBX's lack of experience, failures, and excesses to date are more than concerning.

1. *Agricultural Concerns*

Mr. Sagez summed up the general concerns of LACI members. They are concerned about damages from construction and ongoing maintenance activities, compaction, damage to drainage tile, impacts to aerial application, impacts to GPS equipped devices, interference with the use of large farming equipment, and damages to forested areas and wetlands. Sagez, Dir., LACI Ex. 1.0,II. 25-39. These mirror the concerns raised by the Missouri Public Service Commission. The Missouri Public Service Commission expressed concern over many of the same impacts when it denied GBX's

application naming “soil compaction, interference with irrigation equipment, aerial applications to crops and pastures, and problems maneuvering large equipment around towers.” Report & Order, p. 17 *In the Matter of Grain Belt Express Clean Line LLC*, File No. EA-2014-0207 (Mo. Pub. Svc. Comm’n July 1, 2015).

As pointed out above, GBX’s proposed route engages in an inordinate amount of cross-country, non-paralleling, crossing of parcels. This would likely cause pole placements in the middle of fields. It will undoubtedly lead to compacted strips of land in the middle, rather than at the edge, of fields and severely hamper the use of aerial application. Davis, Dir., LACI Ex. 2.0, ll. 79-86. The line’s planned placement will cause farmers to spend more time planting and harvesting. *Id.* ll. 47-52. This will result in higher fuel costs, and less profits to farmers.

Construction will also impact the soil. Importantly, the soil layers will be disturbed. *Id.*, ll. 55-58. The use of heavy equipment will cause compaction. Also, it can be expected that construction will raise the soil pH level. *Id.*, ll. 69. These impacts, and others, will drastically lower the productivity of fields, depriving farming operations of income. *Id.*, ll. 60-77.

## *2. Impacts to forested areas and wildlife*

Impacts will not be limited to agricultural operations. Forested areas and wildlife will be also be severely impacted. GBX will cut down any trees within or encroaching the easement area. Lawlor, Tr. 157:21-15:4. CCPO witness Locke points out that her timberland provides not only recreational value but is intended to generate income through carbon credits and sawmill operations. Locke, Dir., CCPO Ex. 6.0, ll. 87-92, 102-104. Locke will see a loss of five acres of timber. *Id.* at 96-98.

As Ms. Davis explained her and her mother enjoy photographing wildlife. Davis, Dir., LACI Ex. 2.0, Il. 103-107. Kleinik Farms is lucky enough to have Bald Eagles on the property. Id. Timber is a habitat for wildlife. Locke, Dir., CCPO Ex. 6.0, Il. 349-350. Ms. Davis and her mother may see a loss of Bald Eagles and other wild life to photograph.

### *3. Property Values*

Property values will also suffer. See, e.g. Davis, Dir., LACI Ex. 2.0, Il. 122-124. As GBX's witness, Roddewig intimated, the value of land is what people will pay for it. Roddewig, Tr. 687:6-8. Farmers and others know what they will pay for land. Here they have uniformly indicated that that they would pay less for land impacted by a transmission line. See, e.g., Davis, Dir., LACI Ex. 2.0, Il. 122-124; Gleespen, Dir., CCPO Ex. 1.0, Il. 40-42; Slightom, Dir., CCPO Ex. 2.0, Il. 63-71. GBX has failed to refute landowners concerns about property values.

GBX produced a single property value witness, Mr. Roddewig. While lacking agricultural experience, he does admit that some studies show decreases in land values. Roddewig, Tr. 692:3-13; Roddewig, Reb., GBX Ex. 12.0, Il. 281. One purpose of his testimony was to attack landowner testimony as unsupported.

Mr. Roddewig rests on the fact that intervenors did not supply studies to back up their claims. Forgetting, for a moment, that the intervenors know what they will pay for land, he fails to acknowledge the procedural posture of this case. Because this case is inappropriately proceeding under § 8-406.1's expedited schedule, no landowner was able to supply those studies to satisfy his concerns.

Mr. Roddewig admits, "when determining the impact, if any, that transmission lines have on property values . . . great care must be taken in comparing one situation to

another.” Roddewig, Tr. 702:23-3. Yet, he failed to compare a single similar situation to the one at hand. His literature review was outdated and involved properties and transmission lines unlike those at hand. His comparison of metropolitan areas of Chicagoland to rural central Illinois likewise misses the mark. Even his paired sale review is patently distinguishable from the situation at hand.

Mr. Roddewig’s literature review is outdated and inapplicable to the situation at hand. At least one 40 plus year old study he relies upon was created prior to concerns about EMF and larger farm equipment. Roddewig Tr. 694:22-24, 696:11-17; Davis, Dir., LACI Ex. 2.0, ll. 52-54 (discussing increasing size in equipment). Those studies lacked similar poles, lacked similar pole placement, lacked uniform soil qualities, did not all have the same soil conditions as the project at hand, had different easement widths, and did not all involve the corn-soybean rotation typical in Illinois. Roddewig, Tr. 692:10-694:4. All in all, the studies are inapplicable to the situation at hand.

Likewise, his comparison of planned communities in suburban Chicago to rural, agriculturally dominated, land in Central Illinois also misses the mark. He compares the “metropolitan area” to the sparsely populated area impacted by the project. *Id.* Tr. 700:24-701:20. Mr. Roddewig even suggested that a transmission line might raise property values. While flying in the face of common sense, he provided several reasons that this might be the case. None are applicable here. Here, landowners may take a onetime payment. Roddewig, Tr. 691:2-4. Much of the land is used for agriculture, not recreation. *Id.* 691:4-7. And it can hardly be said that the land impacted is lacking in open space. *Id.* 691:8-12, 702:10-22.

Finally, Mr. Roddewig's study of Christian county sales is inappropriate. Mr. Roddewig considered only soil quality for the whole parcel, not the easement area. Roddewig, Tr. 698:7-18. His paired study analysis did not consider access issues that are important to farmers. *Id.* 699:3-15. He did not describe the transmission corridors. However, the map located on page 29 of GBX's Exhibit 12.1 shows considerably lower voltage lines. As noted above, 200-foot wide easements are extraordinary and not likely needed for these lower voltage lines. Moreover, one parcel on the ROW, parcel 19, appears to be outside the physical placement of any poles. GBX Ex. 12.1, p. 29. Despite these issues, Mr. Roddewig still found that properties impacted by these smaller transmission lines lost an average of 5.93% in value.

In the end, farmers know what they will pay for land. Mr. Roddewig's limited study lacks any discussion of the damage that an inexperienced transmission company can do. Even with its flaws, Mr. Roddewig's most relevant study shows an average of 5.93% loss in value.

#### *4. Health impacts*

Finally, many landowners expressed concern about perceived impacts of EMF on their crops and themselves. While these individuals are not scientists, they raised good points, supported with references to scientific articles. See, Locke, Dir., CCPO Ex. 6.0, II. 534-541. GBX provided no competent evidence to refute their concerns. Dr. Galli lacks the qualifications to discuss any impacts to the human body or plant life from any source. It goes without saying that you would not trust an electrical engineer with heart surgery simply because he has a Ph.D. In the end, the concern is real and GBX failed to make any reasonable effort to assuage that concern. Even their attempt to do so cited studies

older than those cited by the equally-qualified landowners. Compare, Galli, Reb., GBX Ex. 2.5-Revised, ll. 93 – 100 (studies ranging from thirteen to six years old) to Locke, Dir., CCPO Ex. 6.0, ll. 534-535 (study only three years old).

The project will cause indirect health effects as well. As Ms. Davis pointed out, she may lose the ability to alleviate her multiple sclerosis symptoms through horseback riding if the line is constructed. Davis, Dir., LACI Ex. 2.0, ll. 117-120. Health effects are numerous, unrefuted, and not included in GBX's costs.

#### *5. Decommissioning*

If the project is built there is always the chance that it may be decommissioned. The risk is higher because GBX is a speculative venture. GBX is a single purpose entity with no assets to speak of. The risk it could build the line and, for one reason or another, need to decommission it is real. If it did so, landowners would be stuck with giant metal structures on their land with no means to remove them and restore their land. A similar problem is present for wind farms, but they commonly post security. Skelly, Tr. 235:24-236:7.

Despite being aware of these concerns, GBX refuses to provide security for decommissioning. Skelly, Tr. 287:9-17. Accordingly, if GBX burdens land, builds the line, but then fails to make sufficient profit to justify operating the line, there is no guaranty that there will be money to remove it and restore the land.

#### G. Interactions with Pipelines and Railroads

##### *1. Rockies Express Pipeline*

##### *2. Illinois Central Railroad and BNSF Railroad*

#### VI. Request for Authority under Sections 8-503

The Commission in *Rock Island* declined to issue a § 8-503 order. The same bases for withholding such order there also apply at least as strongly here. The automatic § 8-503 relief granted to applicants for Certificates under § 8-406.1 drives home the inappropriateness of granting a Certificate to GBX here. Unlike established electric public utilities like ComEd, Ameren, and MidAmerican Energy, for which an automatic § 8-503 order may be appropriate, GBX is in a different category.

VII. **Grain Belt Express' Accounting-Related Requests**

- A. Use of the FERC Uniform System of Accounts
- B. Request to Maintain Books and Records Outside of Illinois
- C. Request for Proprietary Treatment of Certain Information

VIII. **Other**

- A. GBX Is Improperly Seeking an Advisory Opinion from this Commission

The project is an impossibility. Currently, GBX cannot construct it. It is not waiting for other regulatory approvals; rather, it has been denied those approvals. Grain Belt has applied for regulatory approval in Missouri. It was denied. Report & Order, p. 26 In the Matter of Grain Belt Express Clean Line LLC, File No. EA-2014-0207 (Mo. Pub. Svc. Comm'n July 1, 2015). It applied for rehearing and was, again, denied. Order Denying Applications for Reh'g, p. 26 In the Matter of Grain Belt Express Clean Line LLC, File No. EA-2014-0207 (Mo. Pub. Svc. Comm'n Aug. 12, 2015) As such, Grain Belt cannot construct the project.

During questioning, Mr. Lawlor stated that routing approval in Missouri is necessary to construct the project. Lawlor, Tr. 132:15-19. Yet, Mr. Skelly informed the

Commission that Grain Belt is not even considering its options until next year. Skelly, Tr. 291:22-24. Now Illinois landowners are spending thousands of dollars on an impossible project on Clean Line's back burner.

As a matter of law, these proceedings began seeking an advisory opinion when the Missouri Public Service Commission denied GBX's request for rehearing. The First District case of *Shifris v. Rosenthal* also involved an impossibility. 192 Ill. App. 3d 256 (1st Dist. 1989). There, a governmental body revoked a permit to build a home. More specifically, the defendants obtained a permit to build a home on a flood plain. *Id.* at 258. The plaintiffs, opposing the project, filed a declaratory action seeking rescission of the permit. *Id.* However, during the litigation, the permitting authority revoked the permit. *Id.* Accordingly, the trial court dismissed the matter as moot.

The Appellate Court agreed. It held that the controversy over the issuance of a permit ceased when the permit was revoked. *Id.* at 261. Specifically, the Court determined it had a "duty to decide actual controversies by rendering judgments which can be carried into effect, rather than rendering opinions upon moot questions and abstract propositions or deciding principles or rules of law which cannot affect the matter at issue in the case before it."

Here, even if the Commerce Commission were to render a decision on Grain Belt's application, the effect of the decision could not be "carried into effect." Much like *Shifris's* revocation of the building permit, the Missouri Public Service Commission denial renders the controversy moot.

Unlike the judicial system, though, there is a mechanism to obtain advisory opinions at the Commission. The Administrative Procedure Act allows administrative

bodies to create procedures for declaratory rulings. 5 ILCS 100/5-150. The Commission's Rules of Practice provide such a procedure at §200.220.

Once the Missouri Public Service Commission denied rehearing, GBX's project became an abstract proposition. The project cannot be built at this point. Accordingly GBX a more appropriate route for GBX would be to seek declaratory ruling. But even then, the project remains too abstract. The Securus Technologies case informs us of just that.

During Commission proceedings, Securus Technologies moved to dismiss a declaratory ruling petition filed, under § 200.220 of the Rules of Practice. Motion to Dismiss as Moot, In re Consolidated Communications Enterprise Services, Inc., Docket 12-0413 (Ill. Commerce Comm'n Apr. 8, 2013). The Commission never ruled on Securus's motion. Instead it simply entered an order granting the Petitioner's Consolidated petition. Order, Consolidated Communications Enterprise Svcs., Inc, Docket 12-0413 (Ill. Commerce Comm'n. Apr. 9, 2013). Securus eventually appealed. One of Securus's arguments on appeal was that the Commission lacked jurisdiction to enter the order. *Securus Techs., Inc. v. Ill. Commerce Comm'n*, 2014 IL App (1st) 131716, ¶ 28. The First District pointed out that the Administrative Procedure Act and the Rules of Practice failed to define declaratory ruling. Thus, the Court looked to *Messenger v. Edgar* to explain that declaratory actions "require[] a showing that the underlying facts and issues of the case are not moot or premature with the result that the court passes judgment upon mere abstract propositions of law, renders an advisory opinion, or gives legal advice concerning future events." *Securus Techs.*, at ¶ 33, citing, 157 Ill. 2d 162, 170 (1993).

The First District explained that Consolidated's petition sought a declaratory ruling on the application of a rule to an already completed bidding process. *Id.* at 39. Accordingly, the court determined that Consolidated's petition did not allege "any immediate or concrete set of facts regarding the future provision" of the services governed by the regulation and that it was unknown if Consolidated would ever win a bid to offer those services in the future. *Id.* at 40. Thus, the Court determined that the matter was abstract and conjectural.

Reaching this conclusion, the Appellate Court then determined that the Commission's order was not actually a declaratory ruling. *Id.* at 44. Thus, it ruled the Commission lacked the jurisdiction to enter the order. *Id.* at 47.

The Commission also lacks jurisdiction to enter an order in this case. In the Securus case, a bid process and subsequent lawsuit was lost – leading to the impossibility of Consolidated providing the services it inquired of in the declaratory judgment. Similarly, in the matter at hand, the Missouri Public Service Commission has denied GBX's application and its request for rehearing. Accordingly, this Commission lacks any authority to provide Grain Belt an Order of any type.

## **IX. Conclusion**

For all the reasons set forth in this Initial Brief, as well as in the Motions to Dismiss and related filings, and in the Motion and Complaint filed with the Illinois Supreme Court, LACI respectfully requests that the Commission either dismiss GBX's Application or deny GBX's request for a certificate of public convenience and necessity.

Respectfully submitted,  
LANDOWNERS ALLIANCE OF CENTRAL  
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