

**IN THE SUPREME COURT
OF THE STATE OF ILLINOIS**

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

**BRIEF OF *AMICI CURIAE* NATURAL RESOURCES DEFENSE COUNCIL,
ENVIRONMENTAL LAW AND POLICY CENTER, SIERRA CLUB, AND
CITIZENS UTILITY BOARD IN SUPPORT OF PETITIONERS**

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INTEREST OF THE *AMICI CURIAE*

The Natural Resources Defense Council (NRDC), Environmental Law and Policy Center (ELPC), Sierra Club, and Citizens Utility Board (CUB), have strong interests in seeing the Illinois Supreme Court accept this case. Amici are nonprofit organizations that advocate for clean and affordable energy systems and for more transmission to bring clean energy from where it is produced to the people who need it. These organizations have all supported the Grain Belt Express LLC (GBX) project, which will bring enough clean energy to power millions of homes in the Midwest, deliver billions of dollars in energy cost savings, and improve the reliability of the electrical grid for everyone who depends on it.

NRDC is an international, not-for-profit environmental and public health membership organization that works to ensure the rights of all people to clean air, clean water, and healthy communities. NRDC has over 16,000 members in Illinois and an office in Chicago. NRDC has long worked in Illinois, the Midwest, and across the nation to highlight discriminatory barriers and other challenges to expanding renewable energy and transmission infrastructure and to develop consensus-based solutions. NRDC has supported legislation and regulatory reforms to advance clean energy and promote sustainable and resilient power grids, especially the Illinois Climate and Equitable Jobs Act (CEJA), which seeks to address the urgent need for more large-scale transmission like the GBX project. Since 2017, NRDC has advocated for the GBX project, including by writing public commentary and building coalitions, to highlight the project's potential benefits for clean energy expansion and regional economic development.

ELPC is a not-for-profit sustainable energy and environmental organization based in Chicago with members, contributors, and offices throughout the Midwest. Among

other things, ELPC advocates before federal and state regulatory authorities for building smart transmission systems as a key tool to reduce ratepayer bills and improve environmental outcomes. ELPC frequently appears before the Illinois Commerce Commission (Commission) to advocate for clean, affordable energy and smart grid investments, such as grid-enhancing technologies. ELPC has advocated in favor of the GBX project in prior proceedings before the Commission.

Sierra Club is a non-profit membership organization based in the United States with over 662,000 members nationally and over 20,000 members in Illinois. As an organization dedicated to educating and enlisting humanity to protect and restore the quality of the natural and human environment for over 130 years, addressing the climate crisis is a top issue for Sierra Club. With its Beyond Coal Campaign, Sierra Club has been a leading actor in helping the United States shift toward a clean electric sector based on renewable and other non-emitting resources. This transition will help protect the world from climate disaster, protect public health, and provide equitable access to low-cost, clean electricity. In Illinois, Sierra Club has been a leading voice in advocating for clean energy policies, including the passage of CEJA. Sierra Club's members share these goals and drive action at the organization, especially at the state chapter level. Sierra Club has advocated for the GBX project, including being an active party in the Missouri Public Service Commission's review of the project.

CUB was created by the Citizens Utility Board Act, 220 ILCS 10, for the purpose of advocating on behalf of utilities ratepayers in Illinois. CUB has a significant interest in ensuring that ratepayer dollars are invested cost-effectively to the benefit of ratepayers.

The potential benefits of transmission investments, including cost savings, are of concern to CUB and its members.

NRDC, ELPC, Sierra Club, and CUB support the petitions for leave to appeal the Illinois Appellate Court, Fifth District's decision reversing the Commission's March 8, 2023 Order granting GBX a certificate of public convenience and necessity.

INTRODUCTION

This case presents the Court with a question of great consequence: Should a transmission line that would deliver significant environmental, public health, and economic benefits to millions of people in Illinois, the Midwest, and across the United States be permitted to proceed? This question arises at a critical moment when Illinois has committed to using 100% clean energy by 2050, but is currently burdened with an outdated transmission system that does not have the capacity to meet this mandate. Today's grid is reliant on costly, dirty fossil fuels that pollute the air people breathe and spur on climate change. Under this transmission system, Illinois will fail to transition to clean energy in time and residents will continue to face rising energy costs and the severe impacts of extreme weather events, all of which will compromise grid reliability and endanger the well-being of Illinoisans.

Moving away from fossil fuels and using more clean energy sources, like wind and solar, is an obvious, effective, and urgently needed response. The Illinois legislature has recognized that clean energy sources are more affordable and reliable, and can add plenty of power while reducing air pollution that drives climate change and harms communities' health. Building transmission infrastructure to connect new clean energy sources to the grid is an essential step toward increasing the use of clean energy.

The Grain Belt Express (GBX) project offers a promising renewable energy transmission solution for Illinois and the surrounding region. GBX proposes to construct a large transmission line that will connect multiple renewable energy sources to regional grids, boosting power capacity and affordability while facilitating the mandated phase out of Illinois fossil fuel plants starting in 2030. If this project does not go forward, Illinois residents will instead be stuck with aging transmission infrastructure, continued reliance on fossil fuels that pollute the air, and higher energy bills that strain households across the State.

This case also concerns the proper exercise of judicial deference with respect to the Commission's findings of fact. The appellate court disregarded the standard set forth in section 10-201(e) of the Public Utilities Act, 220 ILCS 5/10-201(e), which requires courts to ensure that the Commission's findings are based on "substantial evidence." The appellate court instead independently evaluated witness credibility, a clear departure from this Court's rule that "[a] reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses." *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006). The appellate court's de novo review in this case undermines the consistency and predictability of public utilities regulation in Illinois. Amici urge this Court to exercise its supervisory authority to ensure that appellate courts continue to afford the Commission appropriate deference. Ill. S. Ct. R. 315(a).

ARGUMENT

Without the necessary transmission infrastructure, Illinois will fall short of its mandate to phase out certain fossil fuel plants by 2030 and ultimately use 100% clean energy by 2050. And without the expansion of clean energy enabled by the GBX line, Illinois will be subjected to higher energy costs, substantial agricultural and economic

losses, and detrimental impacts to public health. In short, without the GBX line, the State will struggle significantly in its pursuit of a cleaner, more sustainable future.

This Court should also exercise its supervisory authority to make it clear that, when reviewing Commission orders, appellate courts should not usurp the Commission's factfinding role, but instead must consider the expert agency's findings of fact with appropriate deference. Even if this case did not implicate broader questions of great importance to Illinois, the court's disregard for the Public Utilities Act's deferential standard has far-ranging consequences for future investment in Illinois.

I. The Court should review this case because Illinois needs more clean energy now

Illinois urgently needs to use more clean energy and reduce its reliance on fossil fuels to strengthen its economy, protect public health, and ensure more affordable energy for its residents. By shifting from coal and gas-fired power plants to renewable sources like wind and solar, including from out-of-state sources, Illinois can significantly cut greenhouse gas emissions, mitigating the adverse impacts of climate change on the State's economy, agriculture, and public health. This shift will also reduce local air pollution, which causes respiratory and cardiovascular disease. Relying on polluting energy sources is increasingly unjustifiable, particularly as clean energy has become more cost-effective to produce than fossil fuel-powered energy in many regions, including Illinois.

The appellate court's overt skepticism of "clean energy" directly conflicts with the State's clear legislative mandate to expand clean energy. In passing Public Act 102-0662, or the Climate and Equitable Jobs Act (CEJA), the Illinois legislature found that "[t]o provide the highest quality of life for the residents of Illinois and to provide for a clean

and healthy environment, it is the policy of this State to rapidly transition to 100% clean energy by 2050.” 20 ILCS 3855/1-5(1.5). Given the critical importance of clean energy to Illinois, this Court should step in to assess whether the appellate court improperly halted the GBX project.

A. Illinois must use more clean energy to combat climate change

The transition from fossil fuels to clean energy is critical to mitigating the worst impacts of climate change. Greenhouse gas emissions drive climate change, and the power sector is responsible for a significant portion of domestic greenhouse gas emissions due to its use of fossil fuels like coal, natural gas, and oil. Illinois power plants emitted over 41 million short tons of carbon dioxide (CO₂) in 2023, fifth highest among twelve Midwest states. *See* U.S. Env’t Prot. Agency, *Clean Air Markets Program Data*, <https://tinyurl.com/2cs8hv34> (last visited Oct. 2, 2024) (using data query for annual state emissions in 2023). And the U.S. power sector accounted for approximately 25% of domestic CO₂ emissions in 2022. U.S. Env’t Prot. Agency, *Sources of Greenhouse Gas Emissions*, <https://tinyurl.com/29s7sy3j> (July 8, 2024).

Extreme weather events, such as more frequent and intense storms, are a direct consequence of climate change and pose significant threats to human life and power reliability by damaging infrastructure and disrupting electricity supply.¹ *See* Aaron B. Wilson et al., *Fifth National Climate Assessment*, at 24–17, 23-24 (A.R. Crimmins et al.

¹ For recent examples of the serious impacts of extreme weather on electric grids and human life, *see* Sean Wolfe, *Days later, scope of Helene damage becomes more clear*, Powergrid Int’l (Oct. 2, 2024), <https://tinyurl.com/yctjwrwa>; Jaclyn Diaz, *Texas officials put the final death toll from last year’s winter storm at 246*, NPR (Jan. 3, 2022), <https://tinyurl.com/28bvypxj>; Max Blau et al., *Entergy Resisted Upgrading New Orleans’ Power Grid. Residents Paid The Price*, NPR (Sept. 22, 2021), <https://tinyurl.com/mrymh5mn>.

eds., 2023), <https://tinyurl.com/ymx4z3pz> (last visited Oct. 2, 2024). Illinois and the Midwest are no exception—storms like Winter Storm Elliott have already caused rolling blackouts in the region, *see* Meghan Hassett, *A Tale of Two Capacity Auctions—and Still Too Much Coal*, NRDC (July 10, 2023), <https://tinyurl.com/yc24me26>, and more powerful storms are projected, *see* Donald Wuebbles et al., The Nature Conservancy, *An Assessment of the Impacts of Climate Change in Illinois* 4, 48 (2021), <https://tinyurl.com/mrxbxj7v> (last visited Oct. 2, 2024). Increased drought and flooding also threaten agriculture in the Midwest and have already caused corn yields to significantly decline in some locations. *See* Wilson et al., *supra*, at 24–7. Agriculture is crucial for Illinois’s economy and will be especially vulnerable to climate change impacts, with the State likely facing billions of dollars in yield losses by the end of the century. *See* Wuebbles et al., *supra*, at 4-5, 9, 83-84, 99.

Continued reliance on fossil fuels exacerbates this vicious cycle by contributing to emissions that drive climate change and intensifying extreme weather patterns, while failing to provide reliable power during such weather. *See* Wuebbles et al., *supra*, at 10; Hassett, *supra* (noting that “40 percent of MISO grid’s coal fleet” was “offline during [Winter Storm] Elliott.”). More clean energy, on the other hand, is essential to reducing these emissions and the climate-related harms they cause. *See* Hassett, *supra*. This is exactly why the legislature has made clear that the “health, welfare, and prosperity of Illinois residents require that Illinois take all steps possible to combat climate change.” 50 ILCS 65/15-5(1).

B. Renewable energy reduces health risks associated with fossil fuel power

Renewable energy offers major health benefits to Illinois residents. By reducing reliance on fossil fuels, increased use of clean energy decreases harmful air pollution, which in turn significantly improves public health in our communities. *See* Nicholas A. Mailloux et al., *Nationwide and Regional PM_{2.5}-Related Air Quality Health Benefits From the Removal of Energy-Related Emissions in the United States* 1 *GeoHealth* (2022), <https://tinyurl.com/595x4brr> (last visited Oct. 2, 2024). Research has demonstrated that decreasing power sector pollution improves air quality and reduces related illnesses. *See id.*

More renewable energy can especially improve public health outcomes for environmental justice communities near fossil fuel plants. Coal- and gas-fired power plants generate pollution that cause asthma, heart disease, and even premature death, disproportionately impacting nearby residents.² CEJA mandates the retirement of fossil fuel plants in Illinois, including prioritizing high-emitting plants within three miles of environmental justice communities, which must phase out by 2030. 415 ILCS 5/9.15(i)(1); Ill. Commerce Comm'n, *Illinois Renewable Energy Access Plan* 25 (May 30, 2024), <https://tinyurl.com/mup8j4k6>. A shift to renewable energy sources would help to reduce demand for fossil fuels and facilitate the retirement of these plants, in accordance with state law, thus improving air quality for these communities.

² Press Release, U.S. Env't Prot. Agency, Biden-Harris Administration Finalizes Suite of Standards to Reduce Pollution from Fossil Fuel-Fired Power Plants (Apr. 25, 2024), <https://tinyurl.com/yc7sf68z>; U.S. Env't Prot. Agency, *National Ambient Air Quality Standards (NAAQS) for PM – Rule Summary*, <https://tinyurl.com/4y6shtcc> (last visited Oct. 2, 2024).

C. Clean energy is a more cost-effective solution for Illinois

Renewable energy sources, especially wind and solar, have emerged as the most cost-effective forms of power generation.³ As a result, these clean energy technologies are becoming increasingly attractive due to their declining costs and price stability. *See* J.C. Kibbey, *Why Illinois Has a Power Supply Crunch, and How to Fix It*, NRDC (May 3, 2022), <https://tinyurl.com/yc299jbc>. The federal Inflation Reduction Act has further reduced the cost of renewable energy by offering tax credits and financial support. Press Release, U.S. Dep’t of Treasury, *How the Inflation Reduction Act’s Tax Incentives Are Ensuring All Americans Benefit from the Growth of the Clean Energy Economy* (Oct. 20, 2023), <https://tinyurl.com/t7fhhd9>. These advantages, coupled with the environmental benefits, have made renewable energy the preferred choice for new power generation capacity.

D. The advantages of clean energy have driven both Illinois and the U.S. to establish ambitious clean energy targets

Recognizing the harms of fossil fuels and the benefits of clean energy, both state and federal leaders have adopted goals to accelerate the transition to renewable energy. Illinois has set binding clean energy targets through CEJA, committing the State to phasing out fossil fuels starting in 2030 and achieving a 100% clean energy economy by 2050. 415 ILCS 5/9.15 (g)-(k), (f) (defining “electric generating unit” or “EGU”); 20 ILCS 3855/1-5-1.5. Specifically, CEJA requires that all private coal-fired and oil-fired electric plants eliminate carbon emissions by 2030, all municipal coal plants reduce

³ A recent analysis confirmed that onshore wind and utility-scale solar photovoltaic costs are lower than those of traditional fossil fuel sources like combined cycle natural gas and coal. *See* Lazard, *2024 Levelized Cost of Energy 9* (June 2024), <https://tinyurl.com/j38b7hnp> (last visited Oct. 2, 2024).

emissions by 45% by 2035 and by 100% by 2045, and all combined heat and power plants eliminate carbon emissions by 2045. 415 ILCS 5/9.15 (g)-(h), (k). It also requires that natural gas plants eliminate emissions by 2030-2045, with compliance dates determined by proximity to environmental justice communities and emission rates. *Id.* at 5/9.15(i)-(j).

As a signatory to the Paris Agreement, the United States has also pledged to contribute to global efforts aimed at limiting the rise in global temperatures to below 1.5°C. *See* United Nations, *The Paris Agreement*, <https://tinyurl.com/yasxmenu> (last visited Oct. 2, 2024); Press Release, U.S. Dep't of State, The United States Officially Rejoins the Paris Agreement (Feb. 19, 2021), <https://tinyurl.com/y3wk9v5s>. Moreover, the Biden Administration has set targets of 100% carbon-free electricity by 2035 and net-zero emissions economywide by 2050. Press Release, The White House, President Biden to Catalyze Global Climate Action through the Major Economies Forum on Energy and Climate (Apr. 20, 2023), <https://tinyurl.com/4cxw6xhb>.

II. More transmission is essential to developing more clean energy

If this Court does not grant the petitions for leave to appeal, the GBX line will not be approved, depriving Illinois of essential new transmission infrastructure needed to connect the State to numerous clean energy sources. Achieving clean energy goals is impossible without additional transmission, as renewable resources like wind and solar are often situated far from population centers. This transmission is crucial for efficiently transporting clean energy to high-demand areas like cities. The GBX line offers a prime example, as it would route clean energy from rural Kansas to densely populated areas in Illinois and beyond. *Infra* 12-13.

The Illinois legislature recognized the need for more transmission in CEJA, which directed the Commission to “develop a plan to achieve transmission capacity necessary to deliver the electric output from renewable energy technologies . . . to customers in Illinois and other states in a manner that is most beneficial and cost-effective to customers.” 220 ILCS 5/8-512(b)(2). Pursuant to that directive, the Commission developed the Renewable Energy Access Plan, which outlines steps to meeting CEJA’s requirements, including planning and developing new transmission. Ill. Commerce Comm’n, *Illinois Renewable Energy Access Plan*, *supra*, at 23-24.

The federal government has also emphasized the importance of increasing transmission capacity, particularly large-scale interregional transmission.⁴ The U.S. Department of Energy has highlighted how a robust regional and interregional transmission network is key to effectively integrating renewable energy sources across geographic areas, leading to more efficient and reliable electricity delivery. *See* U.S. Dep’t of Energy, *National Transmission Needs Study* ii, vi-xi, 1, 9 (Oct. 2023), <https://tinyurl.com/ynaadyka>.

The prioritization of transmission at both state and federal levels underscores its critical role in meeting energy goals and unlocking numerous other benefits. Expanding transmission can significantly reduce power sector emissions to meet carbon reduction goals. Studies have shown that roughly doubling transmission capacity in the United States could reduce power sector emissions by up to 80% by 2030 by integrating more renewable resources, facilitating the replacement of fossil fuel plants. *See, e.g.*, Patrick

⁴ Interregional transmission refers to the high-voltage transfer of electricity between different regional grids or transmission networks, allowing energy to flow across large geographic areas.

Brown et al., *The Value of Inter-Regional Coordination and Transmission in Decarbonizing the US Electricity System* 130 (Joule 2020), <https://tinyurl.com/5n7456e6> (last visited Oct. 2, 2024). To achieve emissions reduction goals, the transmission system needs to expand rapidly. A Princeton University model to achieve a carbon neutral economy by 2050 found that transmission must at least double and perhaps even quintuple in size from 2021 levels. Eric Larson et al., *Net-Zero America: Potential Pathways, Infrastructure, and Impacts* 17, 27-29 (Oct. 29, 2021), <https://tinyurl.com/3jrypx2u>. Moreover, research has shown that the majority of the potential carbon emissions reductions of the Inflation Reduction Act by 2030 will be lost if transmission growth is limited to its recent low growth rate of 1% per year. Jesse D. Jenkins et al., *Electricity Transmission Is Key to Unlock the Full Potential of the Inflation Reduction Act*, Princeton University ZERO Lab 10-11 (Sept. 22 2022), <https://tinyurl.com/vtb6w2uk> (comparing reductions in emissions resulting from Inflation Reduction Act under different transmission growth scenarios, including 1% growth and unconstrained growth).

III. The Grain Belt Express transmission line is uniquely positioned to deliver key benefits to consumers and the grid

The GBX line is a crucial infrastructure project that has the potential to provide significant benefits to both consumers and the electrical grid. This transmission line will span nearly 800 miles across Kansas, Missouri, Illinois, and Indiana, and is designed to transport up to 5,000 megawatts of clean energy, *Grain Belt Express LLC*, Ill. Comm. Comm'n No. 22-0449, at 4-5 (Order-Final Mar. 8, 2023) (ICC Order), enough to power millions of homes. Grain Belt Express Home Page, <https://tinyurl.com/4pxjx44y> (last visited Oct. 2, 2024). If built, it will enable access to at least 2,500 megawatts of new

capacity and save Illinois consumers billions of dollars in energy costs. ICC Order at 29-30; PA Consulting Grp., *Analysis Summary: Impact of Grain Belt Express on Midwest Energy Consumer Costs and Emissions* 3, <https://tinyurl.com/2xb868p3> .

This project is particularly important because it is a high-voltage direct current (HVDC) line. HVDC lines are more efficient and controllable, and therefore more reliable, than other types of transmission lines. Natalie McIntire, *MISO's Clean Energy Dreams Hinge on a State-of-the-Art Grid*, Sustainable FERC (Aug. 2, 2023), <https://tinyurl.com/48am9aux>; Dep't of Energy, *National Transmission Needs Study*, *supra*, at 63. The line's ability to move renewable energy across multiple regions makes it vital to reducing bottlenecks in existing grid infrastructure, mitigating energy price volatility, and improving energy security and reliability. *See* ICC Order at 28, 30, 36; McIntire, *supra*; Andre Pereira, *Connecting the Country with HVDC*, U.S. Dep't of Energy (Sept. 27, 2023), <https://tinyurl.com/y4eubtey>. This ability to share renewable energy between Illinois and neighboring states also supports grid reliability during fluctuations in renewable energy generation. *Id.*; Alexander MacDonald et al., *Future Cost-Competitive Electricity Systems and Their Impact on U.S. CO₂ Emissions* 1-2, 4 (Nature Climate Change 2016), <https://tinyurl.com/dar4j95r> (last visited Oct. 2, 2024). For example, if the wind is not blowing or the sun is not shining in Illinois, but renewable energy is being produced in Kansas, the GBX line will transport this clean energy from Kansas producers to Illinois consumers, reducing reliance on fossil fuel generation that would otherwise be needed to meet energy demands in Illinois. *See* ICC Order at 29. By ensuring that clean energy can flow to where it is most needed, expanded HVDC transmission networks like the GBX line can not only support the transition to clean

energy and achievement of statutory mandates, but also bolster grid reliability and resilience, reduce energy costs, and lower emissions.

Without the GBX line, grid congestion would worsen, particularly in regions where wind energy from the Midwest could not be efficiently transferred to high-demand areas in the East. This lack of transmission capacity limits the flow of renewable energy, contributing to higher congestion and reduced grid reliability, as noted by the U.S. Department of Energy. *National Transmission Needs Study, supra*, at v, vi-vii, ix, 2, 9, 36, 52-53. Limited availability of low-cost renewable energy would result in higher electricity costs for consumers, as regions would be forced to rely more heavily on more expensive fossil fuel generation or local resources. Zack Hale, *US DOE proposes long-awaited national-interest electric transmission corridors*, S&P Global (May 8, 2024), <https://tinyurl.com/yawd364d>.

Moreover, without integration of interregional transmission infrastructure like the GBX line, the grid would be more vulnerable to extreme weather events and operational stresses. The current inability to transfer electricity across regions during periods of high demand or weather disruptions, such as winter storms, has led to prolonged power outages, often with devastating consequences. *See supra* 6-7. Projects like GBX bolster grid resilience and reliability, decreasing the risk of prolonged power outages and economic disruptions. *Supra* 13; Jeff St. John, *Here's where the Biden admin wants to build new power lines — ASAP*, Canary Media (May 8, 2024), <https://tinyurl.com/5efc5f45>.

The U.S. Department of Energy has recognized that the GBX project will serve an area that is badly in need of increased transmission. The Department designates National

Interest Electric Transmission Corridors (Corridors) that have the potential to greatly expand clean energy capacity and deployment.⁵ U.S. Dep’t of Energy, U.S. Department of Energy Grid Deployment Office Initiation of Phase 2 of National Interest Electric Transmission Corridor (NIETC) Designation Process: Preliminary List of Potential NIETCs Issued Pursuant to Section 216(a) of the Federal Power Act 7-8 (May 8, 2024), <https://tinyurl.com/56pbuv9d>. The proposed Midwest-Plains Corridor, *id.* at 20-22, overlaps significantly with the GBX route. St. John, *supra*. In other words, the GBX project runs through an area that the Department has prioritized for increased transmission. As part of the proposed Midwest-Plains Corridor, the GBX line will play a key role in transferring wind energy from Kansas to Missouri, Illinois, and Indiana, helping to address congestion and reliability issues. *Supra* 12-14.

The GBX project will also reduce the State’s and region’s reliance on fossil fuels, contributing to the reduction of greenhouse gas emissions and other harmful air pollution. ICC Order at 30; PA Consulting Grp., *supra*, at 4-5. By facilitating the retirement of fossil fuel plants—including plants required to retire in Illinois under CEJA—the GBX project will help mitigate climate harms and improve air quality for Illinoisans, including in environmental justice communities. *Supra* 6-8. Conversely, the absence of the GBX line would significantly slow efforts to reduce greenhouse gas emissions and delay the public health and economic benefits of cleaner power.

⁵ The Department of Energy designates Corridors to identify geographic areas where new transmission infrastructure is critically needed to improve reliability, reduce congestion, and facilitate the integration of renewable energy. The designation process involves assessing regional transmission needs and providing federal support, including streamlined permitting and financing, to expedite development of essential transmission projects.

IV. The Fifth District’s decision disregards the standard of review for the Commission’s factual conclusions

This Court should also grant the petitions for leave to appeal to ensure that appellate courts give the appropriate level of deference to the Commission’s conclusions of fact. The Public Utilities Act requires courts to pay great deference to the Commission’s factual findings in evidentiary hearings. 220 ILCS 5/10-201(d)-(e). While the Fifth District recites the correct standard of review, its legal analysis does not adhere to that deferential standard. Instead, the appellate court reaches its own conclusions about the evidence, including the credibility of witnesses on which the Commission relies. By substituting its judgment on those matters for that of the Commission, the appellate court undermines the stability and consistency of public utilities regulation in Illinois.

Section 10-201(d) of the Public Utilities Act states that, on appeal, “[t]he findings and conclusions of the Commission on questions of fact shall be held prima facie to be true and as found by the Commission.” 220 ILCS 5/10-201(d). This Court has explained that deference to the Commission recognizes the differing areas of expertise of courts and the Commission: “[s]imply put, we are judges, not utility regulators.” *People ex rel. Madigan v. Illinois Commerce Comm’n*, 2015 IL 116005, ¶ 22.

Section 10-201(e)(iv) establishes the standard of review on appeal, stating that a court may only reverse a Commission order if the court concludes that “[t]he findings of the Commission are not supported by substantial evidence based on the entire record of evidence presented to or before the Commission.” 220 ILCS 5/10-201(e). This Court has interpreted the “substantial evidence” standard to mean that “a reviewing court is limited to determining whether the findings of the Commission are against the manifest weight of the evidence.” *State ex rel. Pusateri v. Peoples Gas Light & Coke Co.*, 2014 IL 116844,

¶ 13 (quoting *United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 12 (1994)). This Court has found (and the Fifth District recognized) that “[a] finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” *Best*, 223 Ill. 2d at 350 (cited in *Concerned Citizens & Property Owners v. Illinois Commerce Comm'n*, 2024 IL App (5th) 230271-U, ¶ 26 (Fifth District Opinion)). Accordingly, “[a] reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn.” *Id.* at 350-51.

While the Fifth District’s opinion recites Section 10-201(e)(iv) and associated precedent, the opinion does not apply the standard of review set forth therein. Rather than treat the Commission’s finding that GBX is capable of financing the project as prima facie true, as the statute requires, the court assumes that the Commission’s conclusion is false and decides the case accordingly. Indeed, the court does not even discuss the Commission’s rationale for reaching its conclusion; instead, the court begins its analysis of the financing requirement by stating that “the record demonstrates that GBX failed to provide any evidence to meet the burden required by section 8-406.1(f)(3).” Fifth District Opinion ¶ 28. The court then incorrectly states that “[w]hile appearing before the Commission, GBX did not claim that it had the capability of funding the project.” Fifth District Opinion ¶ 29. In fact, GBX claimed exactly that in testimony before the Commission:

“Q: Is Grain Belt Express capable of financing the Project without significant adverse financial consequences to Grain Belt Express or its customers?”

A: Yes. Grain Belt Express is capable of financing the construction of the Project without significant adverse financial consequences to Grain Belt Express or its customers, as specified by § 8-406.1(f)(3) of the [Public Utilities Act].”

GBX Ex. 4.0 at 4 (Shine direct testimony).

The appellate court’s broader treatment of witness testimony is illustrative. The Commission’s Final Order credited witness testimony from Commission Staff and GBX regarding GBX’s project financing strategy:

“The Commission relies on the testimony of Grain Belt Express and Staff that the project financing approach is commonly used in the energy and infrastructure industries. There is ample evidence of the need for the Project and the interest of renewable energy developers to support the conclusion that Grain Belt Express will be able to enter into sufficient transmission contracts to support the project financing.”

ICC Order at 49.

The record contains testimony from multiple witnesses regarding GBX’s and its parent company Invenergy’s ability to finance the project. For example, GBX witness Rolanda Shine testified that:

“Grain Belt Express has access to the necessary financial resources to carry out the necessary development work for the Project prior to engaging in project-specific financings for the construction of the Project. Invenergy Renewables has sufficient capital resources to provide the funding necessary to enable Invenergy Transmission and its subsidiaries to undertake the initial development and permitting work for the Project.”

GBX Exhibit 4.0 at 5 (Shine direct testimony).

Witness Shine further described Invenergy’s extensive experience developing transmission and its financial health, highlighting its financing relationships with multiple financial institutions. GBX Exhibit 4.0 at 5-6. Witness Shine’s testimony on these key points was subject to discovery and cross-examination through the contested hearing process.

Yet, the Fifth District’s opinion dismisses Commission Staff and GBX testimony regarding the project finance plan as “highly speculative.” Fifth District Opinion ¶ 30. The court does not identify any record evidence indicating that this industry-standard practice is highly speculative—it appears to be the Court’s own extra-record conclusion. Similarly, with respect to Invenenergy’s overall financial health, the court below dismisses the testimony on which the Commission relied by stating that “GBX asked the Commission to simply take its word.” *Id.* ¶ 32. Again, the court below does not identify record evidence that contradicts GBX’s testimony. Indeed, the court identifies no record evidence that is at odds with the Commission’s ruling or undermines the witnesses’ credibility. Instead, the court relies on its own independent skepticism of testimony that otherwise supports the Commission’s ruling.

This is simply not the deferential approach that the legislature established in Section 10-201(d). Applying the “substantial evidence” standard to the facts here, the court below had no basis to overturn the Commission’s conclusion that GBX “is capable of financing the construction” of the project. GBX offered testimony explaining the project finance approach and detailing why GBX and Invenenergy could obtain sufficient funding through that approach. Staff testimony supported GBX’s testimony, and no party provided evidence that undermined GBX’s testimony. Based on that record, it is impossible to maintain that the Commission’s finding is “unreasonable, arbitrary, or not based on the evidence presented.” *Best*, 223 Ill. 2d at 350.

The appellate court’s ruling threatens the consistency of public utilities regulation in Illinois. The standard of review that the legislature established ensures that a single, expert body—the Commission—decides complex technical issues relating to public

utilities in Illinois. By empowering one entity with that authority, the legislature created consistency across the State and afforded regulated utilities some predictability in future decisions. In contrast, a system in which appellate courts may supply their own analysis of complex factual records can lead to inconsistent approaches across judicial districts. It also means that utilities cannot safely rely on the Commission's approach to technical questions in past cases; instead, they also will need to try to anticipate how courts may view the evidence on appeal. Such uncertainty increases the risks associated with investing in Illinois. Accordingly, this Court should grant the petitions for leave to appeal to clarify the level of deference owed to the Commission's conclusions of fact.

CONCLUSION

For these reasons, Amici request that this Court grant Petitioners' petitions for leave to appeal the appellate court's decision.

Respectfully submitted,



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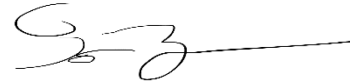
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5,784 words.

I further certify that this brief confirms to the requirements of Rules 315 and 345, and the length of the brief is under the limit of 6,000 words set forth in Rule 315(d).



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CERTIFICATE OF FILING AND SERVICE

I certify that on October 3, 2024, I electronically filed the foregoing Motion of the Natural Resources Defense Council, Environmental Law And Policy Center, Sierra Club, and Citizens Utility Board for Leave to File Brief *Amici Curiae* In Support of Petitioners, accompanied by the proposed Brief *Amici Curiae* of the Natural Resources Defense Council, Environmental Law and Policy Center, Sierra Club, and Citizens Utility Board in Support of Petitioners, with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that on October 3, 2024, an electronic copy of the foregoing motion and brief was served to counsel of record via email.

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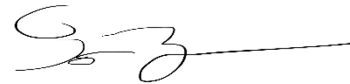
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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.



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