

Case Nos. 131026 & 131032 (Consolidated)**IN THE
SUPREME COURT OF ILLINOIS**

CONCERNED CITIZENS & PROPERTY OWNERS, ILLINOIS AGRICULTURAL ASSOCIATION a/k/a ILLINOIS FARM BUREAU, CONCERNED PEOPLE ALLIANCE, NAFSICA ZOTOS, and YORK TOWNSHIP IRRIGATORS,	)	
	)	
	)	
	)	
	)	
	)	
Respondents-Appellees,	)	
	)	
v.	)	On Petition for Leave to
	)	Appeal from the Appellate
	)	Court of Illinois, Fifth District,
	)	Appeal No. 5-23-0271
	)	
ILLINOIS COMMERCE COMMISSION, GRAIN BELT EXPRESS LLC, CLEAN GRID ALLIANCE, HANSON AGGREGATES MIDWEST, INC., GREYROCK, LLC, CITIZENS UTILITY BOARD, LEONARD BRAD DAUGHERTY, as TRUSTEE OF THE LEONARD DAUGHERTY TRUST DATED JULY 9, 2010, REX ENCORE FARMS LLC, and ILLINOIS MANUFACTURERS ASSOCIATION,	)	On appeal from the Illinois
	)	Commerce Commission,
	)	Docket No. 22-0499
	)	
	)	
	)	
	)	
Petitioners-Appellants.	)	

**RESPONSE BRIEF OF RESPONDENTS-APPELLEES,
CONCERNED CITIZENS & PROPERTY OWNERS (“CCPO”),
ILLINOIS AGRICULTURAL ASSOCIATION, a/k/a ILLINOIS FARM BUREAU
(the “FARM BUREAU”), CONCERNED PEOPLE ALLIANCE (“CPA”),
NAFSICA ZOTOS (“ZOTOS”), and YORK TOWNSHIP IRRIGATORS (“YTI”)
(CCPO, the Farm Bureau, CPA, Zotos and YTI are collectively referred to as the
“Landowner Alliance”) TO THE OPENING BRIEF OF RESPONDENT-
APPELLANT ILLINOIS COMMERCE COMMISSION (the “ICC”)**

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ORAL ARGUMENT REQUESTED

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ISSUES PRESENTED FOR REVIEW

Whether Section 8-406(b-5) of the Public Utilities Act (“PUA”) is unconstitutional under the Illinois Constitution of 1970 as Special Legislation, violative of Equal Protection, or violative of Separation of Powers clauses?

STATUTES INVOLVED

Due to the length of the statutes involved, they have been set out in their entirety in the Appendix at pages A-1 through A-15. The citations are as follows:

220 ILCS 5/8-406 [A1-A5]
 220 ILCS 5/8-406.1 [A6-A9]
 220 ILCS 5/8-503 [A10]
 220 ILCS 5/8-509 [A11]
 735 ILCS 30/5-5-5 [A12-A15]

STATEMENT OF FACTS

The Statement of Facts presented in the Landowner Alliance’s Response Brief to GBX’s Opening Brief is incorporated herein by reference, including defined terms.

Additionally, the Statement of Facts presented by the ICC in its opening brief (the “ICC Opening Brief”) is unsatisfactory to the extent the ICC mischaracterizes the PUA and this Court’s opinion in *Illinois Landowners All., NFP v. Illinois Com. Comm’n* to hold that “only” public utilities can apply for a CPCN under Section 8-406, leading to the enactment of Section 8-406(b-5). This is not accurate, however, as neither Section 8-406 nor the holding of *Illinois Landowners All., NFP v. Illinois Com. Comm’n* limit CPCN applicants to “only” public utilities. *See* 220 ILCS 5/8-406; *Illinois Landowners All., NFP v. Illinois Com. Comm’n*, 2017 IL 121302, ¶ 32. Through this characterization, the ICC contends that the legislature enacted Section 8-406(b-5) as a means of modifying Section 8-406 to allow non-public utility entities, like GBX, to apply for a CPCN. The ICC’s framing of the legislative intent behind the enactment

of Section 8-406(b-5) ignores the possibility GBX could have pursued a CPCN at any time by applying under Section 8-406 but instead opted to utilize Section 8-406(b-5).

ARGUMENT

I. THE LANDOWNER ALLIANCE INCORPORATES BY REFERENCE ITS ARGUMENTS RAISED IN RESPONSE TO CERTAIN ARGUMENTS MADE BY GBX IN GBX’S OPENING BRIEF

The ICC raises arguments in the ICC Opening Brief attempting to justify GBX’s failure to present any evidence demonstrating it was capable of financing the Project pursuant to 220 ILCS 5/8-406.1(f)(3) (“Section 8-406.1(f)(3)”). This argument was also raised by GBX, and the Landowner Alliance responded to this argument in its response to GBX’s opening brief (the “GBX Opening Brief”).

Similarly, the ICC erroneously argues in the ICC Opening Brief the Court must defer to the ICC’s interpretation of Section 8-406.1(f)(3) based on *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). GBX also made this argument in the GBX Opening Brief. In response, the Landowner Alliance posits this Court should adopt the reasoning articulated by the United States Supreme Court in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overturned *Chevron* and reaffirmed the judiciary’s constitutional role as the final and independent arbiter of statutory interpretation.

The Landowner Alliance incorporates herein the arguments advanced in its response to the GBX Opening Brief as and for its response to the arguments raised by the ICC in Sections I and II of the ICC Opening Brief.

II. THE CONSTITUTIONAL ARGUMENTS RAISED BY THE ICC AND ADOPTED BY GBX SHOULD FIRST BE ADDRESSED BY THE APPELLATE COURT

As an initial matter, the ICC asserts numerous constitutional arguments in anticipation of constitutional challenges raised by the Landowner Alliance. The Landowner Alliance challenged the 2023 ICC Order on state constitutional grounds before the Appellate Court. Because the Appellate Court order of August 8, 2024 (the “Appellate Court Order”) was issued on non-constitutional grounds, the Appellate Court concluded it did not need to reach or decide any constitutional questions. Such an approach is mandated by this Court’s opinion in *People v. Hampton*, 225 Ill. 2d 238, 244-45 (2007).

Moreover, this Court has confirmed only issues decided by the appellate court are properly before this Court. For example, in *Williams v BNSF*, 2015 IL 117444, at ¶ 55, this Court declined to review issues not addressed by the appellate court since reviewing such issues “would in effect constitute the allowance of a direct appeal to this court in contravention of the statute.” *See also, Boatmen’s National Bank of Belleville v. Direct Lines, Inc.*, 167 Ill.2d 88, 107 (1995) (this Court reversed an appellate court’s judgment which had not addressed certain issues raised by a party, yet this Court declined to address those issues and remanded the case back to the appellate court for consideration of the remaining issues).

This Court’s opinion in *People ex rel. Hahn v. Hurley*, 9 Ill.2d 74 (1956) is instructive of this procedural principle. In the *Hurley* case, two temporary sign hangers for the city of Chicago were discharged because they failed an eligibility test for permanent employment. *Id.* at 76. They brought a mandamus lawsuit in the Circuit Court of Cook County contending (1) that the Cities Civil Service Act was violated

because the competitive examination did not include physical and health tests, and (2) that the examination was not practical and did not fairly test the relative capacities of the applicants in accordance with requirements of the Cities Civil Service Act. *Id.* The appellate court sustained the first contention, holding tests of physical qualifications and health must be included in the examination. *Id.* The appellate court found it unnecessary, therefore, to decide the question whether the examination lacked practicality. On appeal to this Court, the parties argued about the practicality of the test.

This Court held:

The parties have argued in this court the further contention that the subject matter of the competitive examination was not practical in character and did not fairly test the relative capacities of the applicants to discharge the duties of the position. The Appellate Court expressly declined to consider or pass upon this point, in view of its conclusion on the question of physical examinations. It is well settled that argument of counsel on questions other than the one decided by the Appellate Court is not properly directed to this court until they have been decided by that court.

Id. at 79.

In accordance with this Court's binding precedent, the Appellate Court declined to rule on the constitutional challenges raised by the Landowner Alliance. Thus, these issues are not properly before this Court. If, however, this Court seeks to address the constitutional issues, the Landowner Alliance makes the following arguments.

III. SECTION 8-406 (b-5) IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE SPECIAL LEGISLATION, THE EQUAL PROTECTION, AND THE SEPARATION OF POWERS CLAUSES OF THE ILLINOIS CONSTITUTION OF 1970

A. Section 8-406(b-5) Constitutes Special Legislation in Violation of Article IV, Section 13 of the Illinois Constitution of 1970, in that It Confers a Special Benefit or Exclusive Privilege Upon GBX and Excludes Others that are Similarly Situated

1. Introduction

a. The Applicable Law

The special legislation clause of the Illinois Constitution prohibits the legislature from enacting a “special or local law when a general law is or can be made applicable” Ill. Const. 1970, Art. IV, Sec. 13. A general law applies to all people and entities in the same situation; a special law does not. *Board of Education of Peoria v. Peoria Federation of Support Staff*, 2013 IL 114853, ¶ 48. Laws are considered “general” when alike in their operation upon all persons in like situations. Laws are “special” if they impose a particular burden or confer a special right, privilege, or immunity upon only a portion of the people of our State. *Moline Sch. Dist. v. Quinn*, 2016 IL 119704, ¶ 21. Determining whether a law runs afoul of the special legislation clause requires a two-part analysis. The first question concerns whether the statutory classification discriminates in favor of a particular person or group, and second, if it does, whether the classification is arbitrary. *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶ 34. “Arbitrary” means whether it is rationally related to a legitimate state interest. *Moline School District v. Quinn*, 2016 IL 119704, ¶ 26.

b. The General Legislative Scheme of the PUA Prior to the Enactment of Section 8-406(b-5)

The General Assembly has “created a comprehensive scheme for the regulation of public utilities generally.” *Commonwealth Edison v. City of Warrenville*, 288 Ill.App.3d 373, 378 (2nd Dist. 1997). More specifically, the PUA gave the ICC the responsibility for determining when a construction project will promote the PUA’s goal of ensuring adequate, reliable, efficient, and least-cost electrical service to the State’s citizens. *Id.*

Prior to the enactment of Section 8-406(b-5), the comprehensive regulatory scheme began with the classification of an entity as a “public utility.” 220 ILCS 5/3-105. Section 3-105 defines a “public utility” as a company “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” the production, transmission, delivery or furnishing of electricity. 220 ILCS 5/3-105(a)(1) and (b)(9). Thus, except for GBX, every non-public utility applicant and public utility must meet the public-use test and offer services for public use in a non-discriminatory manner. This means “all persons must have an equal right to use the utility, and it must be in common, upon the same terms, however few the number who avail themselves of it.” *Palmyra Tel. Co. v Modesto Tel. Co.*, 336 Ill 158, 164 (1929).

The ICC then has to determine that a proposed construction project will promote the public convenience and necessity and will do so only if the utility demonstrates the construction is necessary to provide adequate, reliable, and efficient service to its customers, that it is the least-cost means of satisfying the service needs of

its customers or that it will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives. 220 ILCS 5/8-406(b). In addition, the applicant must demonstrate it is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof. *Id.* Lastly, the applicant must show it is capable of financing the proposed construction without significant adverse financial consequences on the utility or its customers. *Id.*

The comprehensive legislative scheme also provides for an expedited procedure (referred to as the “rocket docket”) under Section 8-406.1, which is reserved for public utilities seeking to construct new transmission lines. 220 ILCS 5/8-406.1. The rocket docket is not a complete replacement for approval under Section 8-406, as it does not provide a means for a non-public utility to seek authorization to conduct business as a public utility under 8-406(a). *See id.*

Prior to its acquisition by Invenergy and name change from Grain Belt Express Clean Line, L.L.C. to Grain Belt Express, LLC, GBX was unable to establish the Project met the requirements of Sections 3-105, 8-406 or 8-406.1 of the PUA for the GBX Clean Line 2015 Application. Although it tried to satisfy the original general legislative scheme set out above, GBX failed the most elementary hurdle of being a “public utility.”

c. *Concerned Citizens v. ICC*, 2018 IL App (5th) 150551

In *Concerned Citizens v. ICC*, 2018 IL App. (5th) 150551, ¶ 23, Grain Belt Express Clean Line, L.L.C., n/k/a Grain Belt Express LLC, applied for a CPCN even

though it did not own, control, operate and manage within the State of Illinois, for public use, any facilities for the transmission of electricity as was required by 220 ILCS 5/8-406, but only had an option to purchase property. GBX argued that under the expedited Section 8-406.1, it did not have to be a “public utility” nor own, control, operate and manage property in Illinois. GBX planned the route for the Project through the Illinois Counties of Pike, Scott, Green, Macoupin, Montgomery, Christian, Shelby, Cumberland and Clark, the same counties covered in Section 8-406(b-5). *Concerned Citizens*, 2018 IL App. (5th) 150551, ¶ 4. It argued “new entrants” can request and obtain a CPCN under Section 8-406, so the expedited Section 8-406.1 could not have been meant to preclude it.

The Court of Appeals in *Concerned Citizens* pointed out that this Court had clarified the importance of a “public utility” in *Illinois Landowners Alliance, NFP v. Illinois Commerce Commission*,¹ 2017 IL 121302, by holding that when the ICC grants a CPCN, the central question remains: Does it even qualify as a public utility under Illinois law so as to be eligible for such a certificate? *Concerned Citizens*, 2018 IL App. (5th) 150551, ¶ 15 (citing *Illinois Landowners Alliance*, 2017 IL 121302, ¶ 36). The *Concerned Citizens* Court noted this Court indicated that a new entrant was required to present ownership of utility infrastructure assets to qualify as a “public utility” “at the

¹ The proposed transmission line at issue in *Illinois Landowners Alliance* was owned by Rock Island Clean Line (“Rock Island”), which was an affiliate/sister company of GBX. After the Commission approved a CPCN for Rock Island, it was reversed on appeal because Rock Island could not meet the definition of a public utility under the PUA, and because the proposed transmission line did not devote assets for public use without discrimination. *Ill. Landowners Alliance, NFP v. Ill. Commerce Comm’n*, 2016 IL App (3d) 150099, ¶¶ 41-47. As noted above, the Illinois Supreme Court affirmed the ruling by the Appellate Court in *Illinois Landowners Alliance, NFP v. Illinois Commerce Commission*, 2017 IL 121302, ¶ 40.

time it seeks certification by the ICC.” *Concerned Citizens*, 2018 IL App. (5th) 150551, ¶ 16.

In *Concerned Citizens*, GBX argued the expedited process of Section 8-406.1 was an alternative and more expeditious process for obtaining a CPCN and, therefore, it did not have to show a preexisting ownership of utility assets. *Id.* at ¶ 20. The Court of Appeals pointed out Section 8-406.1 provides a process by which a “public utility” may apply for a CPCN. Therefore, the Court concluded Section 8-406.1 was not intended for the expedited review process to be an available avenue for nonpublic utility entities. *Id.* at ¶ 23. As a result, the Court of Appeals found “the applicant must meet the ownership test at the time of application, the same prerequisites found in Section 8-406, and the ICC must make this finding before issuance of a CPCN.” *Id.* The Court of Appeals reasoned that if a nonpublic utility were allowed to utilize Section 8-406.1, the ICC would be without jurisdiction to enforce the project. *Id.* at ¶ 24. The Court of Appeals held “the ICC was without authority to grant GBX a [CPCN] under section 8-406.1 of the [PUA].” *Id.*

d. The Enactment of Section 8-406(b-5)

After this Court and the Court of Appeals rejected the proposed projects for Rock Island and GBX, the parent organization of GBX sold the company to Invenergy Transmission via a Membership Interest Purchase Agreement dated November 9, 2018. (C. 4424-4518). Rather than change its business plan or proposed project to comply with the PUA, GBX set out to change the law and obtain special legislation for its sole direct benefit. GBX lobbied the Illinois legislature for the changes to the PUA set forth in Section 8-406(b-5). (C. 29-30; R. 233-35). In the transcripts of the Illinois House

debates on the legislation before it was adopted, the Project was identified during a debate between Representative Holbrook and Representative Harris that the proposed legislation was confined to the nine counties at issue herein, and was specifically for GBX, which they identified as a non-public utility private company. 102nd Gen. Assem. House Proceedings, Sept 9, 2021 at 62.

As a result of these lobbying activities, the General Assembly enacted the new subpart to that Section, Section 8-406(b-5), which took effect on May 27, 2022. This new subpart allows the ICC to issue a CPCN to a “qualifying direct current applicant,” defined as “any entity” that “seeks to provide direct current bulk transmission service for the purpose of transporting electric energy in interstate commerce.” 220 ILCS 5/8-406(b-5). Significantly, the new Section 8-406(b-5) states:

Notwithstanding any other provision of this Act, a qualifying direct current applicant . . . may file an application on or before December 31, 2023 with the Commission pursuant to this Section or Section 8-406.1 for, and the Commission may grant, a certificate of public convenience and necessity to construct, operate, and maintain a qualifying direct current project. The qualifying direct current applicant may also include in the application requests for authority under Section 8-503.

Id. (emphasis added).

Additionally, if the qualifying direct current applicant has a “qualifying direct current project,” the certificate can be issued “without the taking of additional evidence on these criteria” *Id.* A “qualifying direct current project” is defined as “a project of high voltage direct current electric service line that crosses at least one Illinois border . . . physically located within the region of Midcontinent Independent System Operator, Inc. . . . and runs through the counties of Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark” (the “Enumerated Counties”). *Id.* The new

law gutted the requirements of the statute and replaced them with meaningless qualification requirements, such as if you connect your transmission line into the electric transmission grid then a project is immediately deemed to be for the public use. The requirements and the required evidence for issuance of a CPCN under GBX's special legislation (which only GBX can satisfy) are completely different for "qualified direct current applicants," as opposed to applicants pursuing a certificate under Sections 8-406 and 8-406.1. 220 ILCS 5/8- 406; 220 ILCS 5/8-406.1.

After securing the special legislation, GBX filed its Application with the ICC and obtained the 2023 ICC Order at issue herein. The project proposed (and ultimately rejected) in 2015 and the one approved in the 2023 ICC Order are the same. The only difference is the category created by Section 8-406(b-5) that was specially designed to ensure the approval of the Project. 220 ILCS 5/8-406(b-5).

2. Section 8.406(b-5) Arbitrarily Discriminates in Favor of GBX

The legislature customed wrapped Section 8-406(b-5) for GBX. Indeed, there was no subtlety on the part of the legislature in tailoring this bespoke legislation for GBX following the Court of Appeals, and this Court's rulings in *Illinois Landowners Alliance* and *Concerned Citizens*. As stated above, during the legislative debates, representatives specifically referred to the GBX project as the motivation to pass Section 8-406(b-5). By tailoring this legislation for GBX, the General Assembly arbitrarily discriminated in favor of GBX in several ways.

Section 8-406(b-5) relieved GBX of the burden of going forward with evidence that the Project satisfies the criteria of Section 8-406(b)(1)², an obligation required for every other entity or utility. Section 8-406(b-5) essentially states GBX does not need to meet the requirements of Sections 3-105, 8-406(b), or 8-406.1(f)(1), and does not need to meet the public use requirement to offer services in a non-discriminatory manner. Moreover, the legislature said if a qualifying direct current project (GBX) *demonstrates in its application* that the project crosses at least one Illinois border, and is located within either PJM or MISO's territory, then the proposed project shall be deemed to be, and the ICC shall find it to be, for public use. 220 ILCS 5/8-406(b-5). The legislation deemed the Project to be for the public use based upon special terms applicable only to GBX. Every other applicant seeking to build a transmission line must meet the public use requirement. This is an absurd fallacy which must be declared unconstitutional under the Special Legislation Clause. *Frye v. Partridge*, 82 Ill. 267, 274 (1876).

The ICC argues the Landowner Alliance offered no evidence GBX was the only entity to benefit from Section 8-406(b-5). (ICC Opening Brief, p. 47). Of course, this is asking the Landowner Alliance to prove a negative. The ICC admits in its opening brief the legislature enacted Section 8-406(b-5) in response to the appellate court's ruling in *Concerned Citizens & Prop. Owners v. Ill. Com. Comm'n*, 2018 IL App (5th) 150551, holding GBX was not a "public utility" under the PUA because it did not own,

² This Section requires 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 customers, and is the least cost means of satisfying those objectives. 220 ILCS 5/8-406. These same requirements are set forth in Section 8-406.1(f)(1). 220 ILCS 5/8-406.1.

control, or operate any plant, equipment, or property used for electricity transmission in the State. *Id.* at ¶¶ 15-26. Additionally, the representatives engaged in the House debates specifically stated Section 8-406(b-5) was being passed for the GBX Project. 102nd Gen. Assem. House Proceedings, Sept 9, 2021 at 62. It is disingenuous of GBX and the ICC to pretend Section 8-406(b-5) was not enacted solely for the benefit of GBX.

In addition, Section 8-406(b-5) arbitrarily places a deadline of December 31, 2023, for qualifying direct current applicants to file an application with the ICC for qualifying direct current projects. Given GBX already conducted its due diligence and had previously applied to the ICC for a CPCN, GBX was the only transmission developer who could take advantage of the legislation based on this arbitrary deadline.

Apart from anything in GBX's witnesses' testimony, GBX devotes seven single-spaced pages of its Application enumerating the alleged benefits the Project will bring to Illinois. (C. 36-43). There can be no rational basis for legislation to obtain so vast a treasure-trove of alleged benefits while imposing December 31, 2023, as the deadline by which a developer must submit its application to the ICC, after which no other project can ever be a "qualified direct current project" under Section 8-406(b-5). Against so many alleged benefits, such a short expiration date goes beyond the arbitrary and verges on the malign – unless, of course, Section 8-406(b-5) contemplated no developer other than GBX. The ICC offers no explanation as to why Section 8-406(b-5) has an expiration date that bars any other utility or merchant line provider with a HVDC project from applying for a CPCN after December 31, 2023.

The question then arises whether there is a rational basis or a legitimate legislative purpose that is neither arbitrary nor unreasonable. It must be determined whether the classification created by the statute is based upon reasonable differences in kind or situation and whether the basis of the classification is sufficiently related to the evil to be obviated by the statute. *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶ 36, citing *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 394 (1997). There is no “evil” to be obviated by Section 8-406(b-5). The fact that GBX was unable and unwilling to meet the requirements of Sections 3-105, 8-406 and 8-406.1 of the PUA is not an evil. In the 2015 Application, the PUA worked as it was intended to work. Intervenorers that comprise the Landowners Alliance, however, are similarly situated in 2022 as those in 2015. The amendment benefits GBX at the expense of the Landowner Alliance.

3. Section 8-406(b-5) Arbitrarily Discriminates Against Landowners in the Enumerated Counties

Section 8-406(b-5) arbitrarily discriminates against landowners, including the Landowner Alliance, that own land within the Enumerated Counties, to the benefit of landowners that own real estate outside of the Enumerated Counties.

Before Section 8-406(b-5), GBX was required to submit two proposed routes (i.e., a primary route and an alternate) that the ICC and intervenors would evaluate under several factors, including least cost means. In turn, the staff engineer of the ICC and intervenors could propose alternate routes that, arguably, better satisfy those factors. There were no limitations on the proposed route’s location. Conversely, Section 8-406(b-5) requires *all* qualifying directed current projects to be routed through only the Enumerated Counties. There is no rational basis to route all qualifying direct current projects through the Enumerated Counties and only the Enumerated Counties.

The ICC argues there is a rational basis for the legislature to mandate that all HVDC interstate projects be routed through the Enumerated Counties under Section 8-406(b-5) because the ICC “had reviewed extensive evidence regarding the route for an essentially identical transmission line project that ran between selected converter stations so as to interconnect to the PJM grid at the substation in Sullivan County, Indiana.” (ICC Opening Brief., p. 52). The ICC’s reasoning why the Project routing may be reasonable does not explain why every conceivable HVDC interstate project must be routed through the Enumerated Counties. The ICC may have heard evidence on the routing of GBX’s 2015 attempt to obtain ICC approval, but there was no finding that this routing was the only available routing for every conceivable HVDC interstate project, which is what Section 8-406(b-5) mandates. Moreover, there is no rational basis to set an application deadline of December 31, 2023.

The Special Legislation clause prohibits the passage of a special or local law when a general law is, or can be made, applicable. *Moline Sch. Dist. No. 40 Board of Educ. V. Quinn*, 2016 IL 119704, ¶ 22. Even if, *arguendo*, the legislature desired to benefit GBX by eliminating the public use requirements for the Project, there is no rational basis for the legislature then to mandate all HDVC interstate projects run through the Enumerated Counties. Stated more simply, there was no reason for the legislature to pass special legislation regarding the routing of the Project when the general legislation already in existence applied to GBX’s application.

Section 8-406(b-5), however, arbitrarily and unfairly subjects the landowners within the Enumerated Counties to the possibility of a transmission line traversing their properties without the same level of review by the ICC that is afforded landowners in

non-Enumerated Counties. Section 8-406(b-5) imposes a series of intrusive and unsightly transmission line wires and towers on a group of landowners in the Enumerated Counties without consideration of possible routing locations outside the Enumerated Counties. In summary, Section 8-406(b-5) violates the Special Legislation Clause, and this Court should overturn the 2023 ICC Order pursuant to this unconstitutional statute for the reasons stated above.

B. Section 8.406(b-5) Denies Landowners in the Enumerated Counties Equal Protection of Law in Violation of Article II, Section 1 of the Illinois Constitution

The heart of the equal protection guarantee is that persons similarly situated shall be treated similarly. *Jacobson v. Department of Public Aid*, 269 Ill. App. 3d 359, 364 (2nd Dist. 1995). The equal protection clause provides a basis for challenging legislative classifications that treat one group of persons as inferior or superior to others, and for contending that general rules are being applied in an arbitrary or discriminatory way. *Panchinsin v. Enterprise Companies*, 117 Ill. App. 3d 441, 445-446 (1st Dist. 1983). While the equal protection clause does not prohibit the legislature from drawing proper distinctions in legislation among different categories of people, it does prohibit the legislature from doing so based on criteria wholly unrelated to the legislation's purpose. *In re M.A.*, 2015 IL 118049, ¶ 24. A threshold question is whether the individual claiming the violation is similarly situated to the comparison group. *Id.*

In considering this argument, a Court must consider a two-step analysis to determine whether a legislative classification deprives an individual of the equal protection of the laws. *Jacobson*, 269 Ill. App 3d at 365. First, the court must determine whether the statute in question affects a fundamental right or discriminates against a suspect class. *Id.* If so, strict scrutiny analysis applies; if not, the court would employ

the rational basis test. *Id.* When evaluating equal protection claims, the courts use the same standards for both the United States and the Illinois Constitutions. *Marsh v. Sandstone North, LLC*, 2020 IL App (4th) 190314, ¶ 99.

The guarantee of equal protection requires the government to treat similarly situated individuals “in a similar fashion unless the government can demonstrate an appropriate reason to treat them differently.” *Dotty’s Café v. Illinois Gaming Board*, 2019 IL App (1st) 173207, ¶ 31 (citing *In re Destiny P.*, 2017 IL 120796, ¶ 14). The application of the equal protection clause is limited to “instances of purposeful or invidious discrimination rather than erroneous or even arbitrary administration of state powers.” *Summers v. Illinois Commerce Commission*, 58 Ill.App.3d 933, 936 (4th Dist. 1978) (quotations omitted).

As to comparison groups, the Landowner Alliance are landowners in the State of Illinois. They are similarly situated to any other landowners in the State where a “public utility” is attempting to construct an electrical system through their properties.

After the failure of GBX’s effort in 2015 to qualify as a “public utility,” it secured passage of Section 8-406(b-5). 220 ILCS 5/8-406(b-5). Section 8-406(b-5) is a statutory amendment custom-tailored for GBX. The only governmental interest this Section shows is the Illinois legislature wants to give GBX a pass on having to present evidence to obtain a CPCN when the project involves certain specific counties in Illinois. If a “qualifying HVDC” developer wants to construct an HVDC transmission line through Illinois that does not traverse the Enumerated Counties, then the developer must make the evidentiary showings required under Section 8-406(b) of the PUA to obtain a CPCN from the ICC. 220 ILCS 5/8-406(b).

But if a qualifying HVDC developer's project crosses the Enumerated Counties, then the developer can get its CPCN from the ICC without having to make any evidentiary showings beyond the voltage and capacity of the transmission line. 220 ILCS 5/8-406(b-5). There is no rational basis for the legislature to single out the Enumerated Counties and declare that landowners in those counties have fewer legal rights than landowners in Illinois's 93 other counties. There is no rational reason to treat the landowners in the Enumerated Counties differently from those in any other county in Illinois in such circumstances. Yet, under the new legislation set forth in Section 8-406(b-5), landowners in the Enumerated Counties are deprived of their right to a full evidentiary hearing where all the requirements under the PUA that apply to every other transmission line developer are considered before a CPCN is granted.

The new category of "qualified direct current applicants," is a "false distinction." There is nothing unique about the route or about the area traversed in contradistinction to any other route or area in Illinois. The only distinction is the Project was already planned specifically for the Enumerated Counties, and no other entity could realistically seek a CPCN under 8-406(b-5). Under the prior version of Section 8-406, GBX loses; under the new version, with the new type of entity created by 8-406(b-5), GBX wins even though it lacks the proper evidence to establish itself as a "public utility." Every other entity seeking a CPCN must put on evidence to demonstrate it is a "public utility" and actually owns infrastructure in the State of Illinois. *Concerned Citizens*, 2018 IL App (5th) 150551, ¶¶ 19-24; 220 ILCS 5/8-406(b); 220 ILCS 5/8-406.1. All this adversely impacts the Landowner Alliance by taking away their only method of contesting the invasion of their property under eminent domain.

The legislature looked at the evidentiary requirements that GBX could not and/or did not want to prove at a hearing and specifically passed a statute to limit what was needed to allow GBX to obtain a CPCN. 220 ILCS 5/8-406(b-5). This purposeful discrimination for the benefit of GBX with no rational basis concerning the unequal treatment of the landowners in the Enumerated Counties requires that Section 8-406(b-5) be deemed unconstitutional and the 2023 ICC Order granted pursuant to this statute overturned. The Landowner Alliance also refers the Court to their argument on special legislation to supplement their argument on Equal Protection. These arguments may overlap so that the same arguments for special legislation can be made as for Equal Protection. *Stark v. Pollution Control Board*, 177 Ill. App. 3d 293, 297 (1st Dist. 1988) (although special legislation and equal protection often overlap, they are not co-extensive; however, the standards used to determine whether an enactment violates the equal protection clause are the same as those used for special legislation).

C. Section 8-406(b-5) violates the Separation of Powers Clause of the Illinois Constitution of 1970

Article II, Section 1 of the Illinois Constitution provides “[t]he legislative, executive and judicial branches [of Illinois government] are separate. No branch shall execute powers properly belonging to the other.”

The Clean Energy Jobs Act or CEJA, Public Act 102-662, effective September 16, 2021, amended the PUA by, among other things, adding subsection (b-5) to Section 8-406 of the PUA. 220 ILCS 5/8-406(b-5). The General Assembly's purpose in enacting subsection Section 8-406(b-5) was to expressly order the ICC to approve the Project and grant GBX a CPCN. 220 ILCS 5/8-406(b-5).

Once so approved, GBX may take private property by power of eminent domain pursuant to Section 8-509 of the PUA. 220 ILCS 5/8-509. The fact that GBX has not requested eminent domain authority in the underlying proceeding before the ICC is irrelevant. Once the ICC granted the CPCN through the 2023 ICC Order, Section 8-509 mandates the ICC shall enter an order on an eminent domain request within 45 days of the request. *Id.* Moreover, once the ICC grants a CPCN, the Illinois Eminent Domain Act creates a rebuttable presumption that the project has a public purpose. 735 ILCS 30/5-5-5. The General Assembly was well aware GBX could not complete a 200-mile-long project without having and/or exercising the power of eminent domain, and to that end, the General Assembly inserted into subsection (b-5) of 8-406 the following language:

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

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

Article I, Section 15 of the Illinois Constitution provides “[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.” It is well settled under Illinois law that “...the determination of whether a given use is a public use is a judicial function.” *People ex rel Tuohy v. Chicago*, 394 Ill. 477, 481 (1946) (citing *Limits Industrial Railroad Co. v. American Spiral Pipe Works*, 321 Ill. 101, 106 (1926) and *Zurn v. Chicago*, 389 Ill. 114, 127 (1945)). As this Court stated in *Tuohy*,

“any attempt to grant the right to take private property for private use is void.” 394 Ill. at 481. This principle was reaffirmed more recently in *Southwestern Ill. Dev. Auth. v. Nat'l. City Environmental, LLC*, 199 Ill. 2d 225, 248 (2002).

The portion of Section 8-406(b-5) quoted above violates Article II, Section 1 of the Illinois Constitution because, by arrogating to itself the power to declare something a public use, the General Assembly is exercising the judicial power to determine whether a particular use is public or private. The overarching principle of the cases cited above is the determination of whether, for purposes of exercising the power of eminent domain, a proposed use is a public use is a decision for the courts, not the legislature.

If the language quoted above in Section 8-406(b-5) is allowed to stand, the General Assembly will have acquired sole power to define what the term “public use” means in Article I, Section 15 of the Illinois Constitution. The General Assembly's eminent domain determination would be left unchecked because there would be no branch of government that could review its public use decisions. The General Assembly would have eminent domain power by fiat: it could merely declare something a public use to effect the involuntary transfer of private property from one party to another. As the cases cited above show, this has never been the law in the State of Illinois. Through the public use declaration in Section 8-406(b-5), the General Assembly unconstitutionally usurps the judicial branch's power.

Moreover, the General Assembly's declaration that the Project is a public use deprives the affected landowners of due process: the process that is due is a judicial one, namely, the opportunity for both condemnor and condemnee to be heard on the question of whether a proposed use is a public one before the latter is involuntarily

deprived of their property. A legislature by its very nature is not an impartial decision-maker, and it is incapable of affording any opportunity for adverse parties to be heard.

As now retired federal appellate judge Richard Posner has stated:

“... There is no presumption that legislation is enacted to protect the public interest. The characteristic product of a democratic legislative process is the unprincipled redistribution of wealth in favor of some politically effective interest group.”

R. Posner, *Economic Analysis of Law*, Sect. 25.1, at 498-501 (2nd ed. 1977). Judge Posner's observations are particularly relevant here because no reasonable person reading Section 8-406(b-5) can avoid concluding that GBX played a substantial role in ensuring the enactment of statutory provisions to its further financial success.

The Illinois Constitution is a contract between the State and its citizens, and the public use clause in Article I, Section 15 is the State's covenant to protect its citizens from precisely the kind of legislative action taken in Section 8-406(b-5).

CONCLUSION

For the foregoing reasons, the Landowner Alliance respectfully requests that this Court affirm the Appellate Court's decision in the Appellate Court Order. In the alternative, should this Court overturn the Appellate Court Order, the matter should be remanded to the Appellate Court to rule upon the constitutional law arguments.

Respectfully submitted,

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Nos. 131026 & 131032 (Consolidated)**IN THE SUPREME COURT OF ILLINOIS**

CONCERNED CITIZENS & PROPERTY	)	
OWNERS, ILLINOIS AGRICULTURAL	)	
ASSOCIATION a/k/a ILLINOIS FARM	)	
BUREAU, CONCERNED PEOPLE ALLIANCE,	)	
NAFSICA ZOTOS, and YORK TOWNSHIP	)	
IRRIGATORS,	)	
	)	
Respondents-Appellees,	)	
	)	On Petition for Leave to
v.	)	Appeal from the Appellate
	)	Court of Illinois, Fifth District,
	)	Appeal No. 5-23-0271
	)	
ILLINOIS COMMERCE COMMISSION,	)	On appeal from the Illinois
GRAIN BELT EXPRESS LLC, CLEAN GRID	)	Commerce Commission,
ALLIANCE, HANSON AGGREGATES	)	Docket No. 22-0499
MIDWEST, INC., GREYROCK, LLC,	)	
CITIZENS UTILITY BOARD, LEONARD	)	
BRAD DAUGHERTY, as TRUSTEE OF THE	)	
LEONARD DAUGHERTY TRUST DATED	)	
JULY 9, 2010, REX ENCORE FARMS LLC, and	)	
ILLINOIS MANUFACTURERS ASSOCIATION,	)	
	)	
Petitioners-Appellants.	)	

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) 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 25 pages.

/s/ Brian R. Kalb

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2025, I electronically filed the foregoing with the Clerk of the Illinois Supreme Court, using the eFileIL system, and I hereby certify that a copy of the foregoing instrument was served upon:

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via electronic transmission on this 3rd day of September, 2025.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

/s/Brian R. Kalb

APPENDIX

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220 ILCS 5/8-406

§ 8-406. Certificate of public convenience and necessity.

(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 Public Act 84-617 goes into effect (January 1, 1986), 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. A certificate of public convenience and necessity requiring the transaction of public utility business in any area of this State shall include authorization to the public utility receiving the certificate of public convenience and necessity to construct such plant, equipment, property, or facility as is provided for under the terms and conditions of its tariff and as is necessary to provide utility service and carry out the transaction of public utility business by the public utility in the designated area.

(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 customers, 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.

(b-5) As used in this subsection (b-5):

“Qualifying direct current applicant” means an entity that seeks to provide direct current bulk transmission service for the purpose of transporting electric energy in interstate commerce.

“Qualifying direct current project” means a high voltage direct current electric service line that crosses at least one Illinois border, the Illinois portion of which is physically located within the region of the Midcontinent Independent System Operator, Inc., or its successor organization, and runs through the counties of Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark, is capable of transmitting electricity at voltages of 345 kilovolts or

above, and may also include associated interconnected alternating current interconnection facilities in this State that are part of the proposed project and reasonably necessary to connect the project with other portions of the grid.

Notwithstanding any other provision of this Act, a qualifying direct current applicant that does not own, control, operate, or manage, within this State, any plant, equipment, or property used or to be used for the transmission of electricity at the time of its application or of the Commission's order may file an application on or before December 31, 2023 with the Commission pursuant to this Section or Section 8-406.1 for, and the Commission may grant, a certificate of public convenience and necessity to construct, operate, and maintain a qualifying direct current project. The qualifying direct current applicant may also include in the application requests for authority under Section 8-503. The Commission shall grant the application for a certificate of public convenience and necessity and requests for authority under Section 8-503 if it finds that the qualifying direct current applicant and the proposed qualifying direct current project satisfy the requirements of this subsection and otherwise satisfy the criteria of this Section or Section 8-406.1 and the criteria of Section 8-503, as applicable to the application and to the extent such criteria are not superseded by the provisions of this subsection. The Commission's order on the application for the certificate of public convenience and necessity shall also include the Commission's findings and determinations on the request or requests for authority pursuant to Section 8-503. Prior to filing its application under either this Section or Section 8-406.1, the qualifying direct current applicant shall conduct 3 public meetings in accordance with subsection (h) of this Section. If the qualifying direct current applicant demonstrates in its application that the proposed qualifying direct current project is designed to deliver electricity to a point or points on the electric transmission grid in either or both the PJM Interconnection, LLC or the Midcontinent Independent System Operator, Inc., or their respective successor organizations, the proposed qualifying direct current project shall be deemed to be, and the Commission shall find it to be, for public use. If the qualifying direct current applicant further demonstrates in its application that the proposed transmission project has a capacity of 1,000 megawatts or larger and a voltage level of 345 kilovolts or greater, the proposed transmission project shall be deemed to satisfy, and the Commission shall find that it satisfies, the criteria stated in item (1) of subsection (b) of this Section or in paragraph (1) of subsection (f) of Section 8-406.1, as applicable to the application, without the taking of additional evidence on these criteria. Prior to the transfer of functional control of any transmission assets to a regional transmission organization, a qualifying direct current applicant shall request Commission approval to join a regional transmission organization in an application filed pursuant to this subsection (b-5) or separately pursuant to Section 7-102 of this Act. The Commission may grant permission to a qualifying direct current applicant to join a regional transmission organization if it finds that the membership, and associated transfer of functional control of transmission assets, benefits Illinois customers in light of the attendant costs and is otherwise in the public interest. Nothing in this subsection (b-5) requires a qualifying direct current applicant to join a regional transmission organization. Nothing in this subsection (b-5) requires the owner or operator of a high voltage

direct current transmission line that is not a qualifying direct current project to obtain a certificate of public convenience and necessity to the extent it is not otherwise required by this Section 8-406 or any other provision of this Act.

(c) As used in this subsection (c):

“Decommissioning” has the meaning given to that term in subsection (a) of Section 8-508.1.

“Nuclear power reactor” has the meaning given to that term in Section 8 of the Nuclear Safety Law of 2004.

After the effective date of this amendatory Act of the 103rd General Assembly, no construction shall commence on any new nuclear power reactor with a nameplate capacity of more than 300 megawatts of electricity to be located within this State, and no certificate of public convenience and necessity or other authorization shall be issued therefor by the Commission, until the Illinois Emergency Management Agency and Office of Homeland Security, in consultation with the Illinois Environmental Protection Agency and the Illinois Department of Natural Resources, finds that the United States Government, through its authorized agency, has identified and approved a demonstrable technology or means for the disposal of high level nuclear waste, or until such construction has been specifically approved by a statute enacted by the General Assembly. Beginning January 1, 2026, construction may commence on a new nuclear power reactor with a nameplate capacity of 300 megawatts of electricity or less within this State if the entity constructing the new nuclear power reactor has obtained all permits, licenses, permissions, or approvals governing the construction, operation, and funding of decommissioning of such nuclear power reactors required by: (1) this Act; (2) any rules adopted by the Illinois Emergency Management Agency and Office of Homeland Security under the authority of this Act; (3) any applicable federal statutes, including, but not limited to, the Atomic Energy Act of 1954, the Energy Reorganization Act of 1974, the Low-Level Radioactive Waste Policy Amendments Act of 1985, and the Energy Policy Act of 1992; (4) any regulations promulgated or enforced by the U.S. Nuclear Regulatory Commission, including, but not limited to, those codified at Title X, Parts 20, 30, 40, 50, 70, and 72 of the Code of Federal Regulations, as from time to time amended; and (5) any other federal or State statute, rule, or regulation governing the permitting, licensing, operation, or decommissioning of such nuclear power reactors. None of the rules developed by the Illinois Emergency Management Agency and Office of Homeland Security or any other State agency, board, or commission pursuant to this Act shall be construed to supersede the authority of the U.S. Nuclear Regulatory Commission. The changes made by this amendatory Act of the 103rd General Assembly shall not apply to the uprate, renewal, or subsequent renewal of any license for an existing nuclear power reactor that began operation prior to the effective date of this amendatory Act of the 103rd General Assembly.

None of the changes made in this amendatory Act of the 103rd General Assembly are intended to authorize the construction of nuclear power plants powered by nuclear power reactors that are not either: (1) small modular nuclear reactors; or (2) nuclear power reactors licensed by the U.S. Nuclear Regulatory Commission to operate in this State prior to the effective date of this amendatory Act of the 103rd General Assembly.

(d) In making its determination under subsection (b) of this Section, the Commission shall attach primary weight to the cost or cost savings to the customers of the utility. The Commission may consider any or all factors which will or may affect such cost or cost savings, including the public utility's engineering judgment regarding the materials used for construction.

(e) The Commission may issue a temporary certificate which shall remain in force not to exceed one year in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this Section temporary acts or operations for which the issuance of a certificate will not be required in the public interest. A public utility shall not be required to obtain but may apply for and obtain a certificate of public convenience and necessity pursuant to this Section with respect to any matter as to which it has received the authorization or order of the Commission under the Electric Supplier Act,¹ and any such authorization or order granted a public utility by the Commission under that Act shall as between public utilities be deemed to be, and shall have except as provided in that Act the same force and effect as, a certificate of public convenience and necessity issued pursuant to this Section.

No electric cooperative shall be made or shall become a party to or shall be entitled to be heard or to otherwise appear or participate in any proceeding initiated under this Section for authorization of power plant construction and as to matters as to which a remedy is available under the Electric Supplier Act.

(f) Such certificates may be altered or modified by the Commission, upon its own motion or upon application by the person or corporation affected. Unless exercised within a period of 2 years from the grant thereof, authority conferred by a certificate of convenience and necessity issued by the Commission shall be null and void.

No certificate of public convenience and necessity shall be construed as granting a monopoly or an exclusive privilege, immunity or franchise.

(g) A public utility that undertakes any of the actions described in items (1) through (3) of this subsection (g) or that has obtained approval pursuant to Section 8-406.1 of this Act shall not be required to comply with the requirements of this Section to the extent such requirements otherwise would apply. For purposes of this Section and Section 8-406.1 of this Act, "high voltage electric service line" means an electric line having a design voltage of 100,000 or more. For purposes of this subsection (g), a public utility may do any of the following:

- (1) replace or upgrade any existing high voltage electric service line and related facilities, notwithstanding its length;
- (2) relocate any existing high voltage electric service line and related facilities, notwithstanding its length, to accommodate construction or expansion of a roadway or other transportation infrastructure; or
- (3) construct a high voltage electric service line and related facilities that is constructed solely to serve a single customer's premises or to provide a generator interconnection to the public utility's transmission system and that will pass under or over the premises owned by the customer or

generator to be served or under or over premises for which the customer or generator has secured the necessary right of way.

(h) A public utility seeking to construct a high-voltage electric service line and related facilities (Project) must show that the utility has held a minimum of 2 pre-filing public meetings to receive public comment concerning the Project in each county where the Project is to be located, no earlier than 6 months prior to filing an application for a certificate of public convenience and necessity from the Commission. Notice of the public meeting shall be published in a newspaper of general circulation within the affected county once a week for 3 consecutive weeks, beginning no earlier than one month prior to the first public meeting. If the Project traverses 2 contiguous counties and where in one county the transmission line mileage and number of landowners over whose property the proposed route traverses is one-fifth or less of the transmission line mileage and number of such landowners of the other county, then the utility may combine the 2 pre-filing meetings in the county with the greater transmission line mileage and affected landowners. All other requirements regarding pre-filing meetings shall apply in both counties. Notice of the public meeting, including a description of the Project, must be provided in writing to the clerk of each county where the Project is to be located. A representative of the Commission shall be invited to each pre-filing public meeting.

(h-5) A public utility seeking to construct a high-voltage electric service line and related facilities must also show that the Project has complied with training and competence requirements under subsection (b) of Section 15 of the Electric Transmission Systems Construction Standards Act.

(i) For applications filed after August 18, 2015 (the effective date of Public Act 99-399), the Commission shall, by certified mail, notify each owner of record of land, as identified in the records of the relevant county tax assessor, included in the right-of-way over which the utility seeks in its application to construct a high-voltage electric line of the time and place scheduled for the initial hearing on the public utility's application. The utility shall reimburse the Commission for the cost of the postage and supplies incurred for mailing the notice.

220 Ill. Comp. Stat. Ann. 5/8-406

220 ILCS 5/8-406.1

§ 8-406.1. Certificate of public convenience and necessity; expedited procedure.

(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 (Project). To facilitate the expedited review process of an application filed pursuant to this Section, an application shall include all of the following:

(1) Information in support of the application that shall include the following:

(A) A detailed description of the Project, including location maps and plot plans to scale showing all major components.

(B) The following engineering data:

(i) a detailed Project description including:

(I) name and destination of the Project;

(II) design voltage rating (kV);

(III) operating voltage rating (kV); and

(IV) normal peak operating current rating;

(ii) a conductor, structures, and substations description including:

(I) conductor size and type;

(II) type of structures;

(III) height of typical structures;

(IV) an explanation why these structures were selected;

(V) dimensional drawings of the typical structures to be used in the Project; and

(VI) a list of the names of all new (and existing if applicable) substations or switching stations that will be associated with the proposed new high voltage electric service line;

(iii) the location of the site and right-of-way including:

(I) miles of right-of-way;

(II) miles of circuit;

(III) width of the right-of-way; and

(IV) a brief description of the area traversed by the proposed high voltage electric service line, including a description of the general land uses in the area and the type of terrain crossed by the proposed line;

(iv) assumptions, bases, formulae, and methods used in the development and preparation of the diagrams and accompanying data, and a technical description providing the following information:

(I) number of circuits, with identification as to whether the circuit is overhead or underground;

(II) the operating voltage and frequency; and

(III) conductor size and type and number of conductors per phase;

(v) if the proposed interconnection is an overhead line, the following additional information also must be provided:

(I) the wind and ice loading design parameters;

- (II) a full description and drawing of a typical supporting structure, including strength specifications;
- (III) structure spacing with typical ruling and maximum spans;
- (IV) conductor (phase) spacing; and
- (V) the designed line-to-ground and conductor-side clearances;
- (vi) if an underground or underwater interconnection is proposed, the following additional information also must be provided:
 - (I) burial depth;
 - (II) type of cable and a description of any required supporting equipment, such as insulation medium pressurizing or forced cooling;
 - (III) cathodic protection scheme; and
 - (IV) type of dielectric fluid and safeguards used to limit potential spills in waterways;
- (vii) technical diagrams that provide clarification of any item under this item (1) should be included; and
- (viii) applicant shall provide and identify a primary right-of-way and one or more alternate rights-of-way for the Project as part of the filing. To the extent applicable, for each right-of-way, an applicant shall provide the information described in this subsection (a). Upon a showing of good cause in its filing, an applicant may be excused from providing and identifying alternate rights-of-way.
- (2) An application fee of \$100,000, which shall be paid into the Public Utility Fund at the time the Chief Clerk of the Commission deems it complete and accepts the filing.
- (3) Information showing that the utility has held a minimum of 3 pre-filing public meetings to receive public comment concerning the Project in each county where the Project is to be located, no earlier than 6 months prior to the filing of the application. Notice of the public meeting shall be published in a newspaper of general circulation within the affected county once a week for 3 consecutive weeks, beginning no earlier than one month prior to the first public meeting. If the Project traverses 2 contiguous counties and where in one county the transmission line mileage and number of landowners over whose property the proposed route traverses is 1/5 or less of the transmission line mileage and number of such landowners of the other county, then the utility may combine the 3 pre-filing meetings in the county with the greater transmission line mileage and affected landowners. All other requirements regarding pre-filing meetings shall apply in both counties. Notice of the public meeting, including a description of the Project, must be provided in writing to the clerk of each county where the Project is to be located. A representative of the Commission shall be invited to each pre-filing public meeting.

For applications filed after the effective date of this amendatory Act of the 99th General Assembly, the Commission shall, by certified mail, notify each owner of record of the land, as identified in the records of the relevant county tax assessor, included in the primary or alternate rights-of-way identified in the utility's application of the time and place scheduled for the initial

hearing upon the public utility's application. The utility shall reimburse the Commission for the cost of the postage and supplies incurred for mailing the notice.

(b) At the first status hearing the administrative law judge shall set a schedule for discovery that shall take into consideration the expedited nature of the proceeding.

(c) Nothing in this Section prohibits a utility from requesting, or the Commission from approving, protection of confidential or proprietary information under applicable law. The public utility may seek confidential protection of any of the information provided pursuant to this Section, subject to Commission approval.

(d) The public utility shall publish notice of its application in the official State newspaper within 10 days following the date of the application's filing.

(e) The public utility shall establish a dedicated website for the Project 3 weeks prior to the first public meeting and maintain the website until construction of the Project is complete. The website address shall be included in all public notices.

(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 customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

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

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

(4) That the Project has complied with training and competence and Diversity Plan requirements under subsections (b) and (d) of Section 15 of the Electric Transmission Systems Construction Standards Act.

(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 30th day after the filing of the application, the Commission finds that good cause exists to extend the 150-day period.

(h) In the event the Commission grants a public utility's application for a certificate pursuant to this Section, the public utility shall pay a one-time construction fee to each county in which the Project is constructed within 30 days after the completion of construction. The construction fee shall be \$20,000 per mile of high voltage electric service line constructed in that county, or a proportionate fraction of that fee. The fee shall be in lieu of any permitting fees that otherwise

would be imposed by a county. Counties receiving a payment under this subsection (h) may distribute all or portions of the fee to local taxing districts in that county.

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

220 Ill. Comp. Stat. Ann. 5/8-406.1

220 ILCS 5/8-503

§ 8-503. Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order; provided, however, that the Commission shall have no authority to order the construction, addition or extension of any electric generating plant unless the public utility requests a certificate for the construction of the plant pursuant to Section 8-406 and in conjunction with such request also requests the entry of an order under this Section. If any additions, extensions, repairs, improvements or changes, or any new structure or structures, which the Commission has authorized or ordered to be erected, require joint action by 2 or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been authorized or ordered and that the same shall be made at the joint cost whereupon the said public utilities shall have such reasonable time as the Commission may grant within which to agree upon the apportionment or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured. Nothing in this Act shall prevent the Commission, upon its own motion or upon petition, from ordering, after a hearing, the extension, construction, connection or interconnection of plant, equipment, pipe, line, facilities or other physical property of a public utility in whatever configuration the Commission finds necessary to ensure that natural gas is made available to consumers at no increased cost to the customers of the utility supplying the gas. Whenever the Commission finds, after a hearing, that the public convenience or necessity requires it, the Commission may order public utilities subject to its jurisdiction to work jointly (1) for the purpose of purchasing and distributing natural gas or gas substitutes, provided it shall not increase the cost of gas to the customers of the participating utilities, or (2) for any other reasonable purpose.

220 Ill. Comp. Stat. Ann. 5/8-503

220 ILCS 5/8-509

§ 8-509. When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1 or 8-503 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain. If a public utility seeks relief under this Section in the same proceeding in which it seeks a certificate of public convenience and necessity under Section 8-406.1 of this Act, the Commission shall enter its order under this Section either as part of the Section 8-406.1 order or at the same time it enters the Section 8-406.1 order. If a public utility seeks relief under this Section after the Commission enters its order in the Section 8-406.1 proceeding, the Commission shall issue its order under this Section within 45 days after the utility files its petition under this Section.

This Section applies to the exercise of eminent domain powers by telephone companies or telecommunications carriers only when the facilities to be constructed are intended to be used in whole or in part for providing one or more intrastate telecommunications services classified as “noncompetitive” under Section 13-502 in a tariff filed by the condemnor. The exercise of eminent domain powers by telephone companies or telecommunications carriers in all other cases shall be governed solely by “An Act relating to the powers, duties and property of telephone companies”, approved May 16, 1903, as now or hereafter amended.¹

This Section applies to the exercise of eminent domain powers by an owner or operator of a pipeline designed, constructed, and operated to transport carbon dioxide to which the Commission has granted a certificate under Section 20 of the Carbon Dioxide Transportation and Sequestration Act and may seek eminent domain authority from the Commission under this Section. If the applicant of such a certificate of authority for a new carbon dioxide pipeline seeks relief under this Section in the same proceeding in which it seeks a certificate of authority for a new carbon dioxide pipeline under Section 20 of the Carbon Dioxide Transportation and Sequestration Act, the Commission shall enter its order under this Section either as part of or at the same time as its order under the Carbon Dioxide Transportation and Sequestration Act. Notwithstanding anything to the contrary in this Section, the owner or operator of such a pipeline shall not be considered to be a public utility for any other provisions of this Act.

735 ILCS 30/5-5-5

§ 5-5-5. Exercise of the power of eminent domain; public use; blight.

(a) In addition to all other limitations and requirements, a condemning authority may not take or damage property by the exercise of the power of eminent domain unless it is for a public use, as set forth in this Section.

(a-5) Subsections (b), (c), (d), (e), and (f) of this Section do not apply to the acquisition of property under the O'Hare Modernization Act. A condemning authority may exercise the power of eminent domain for the acquisition or damaging of property under the O'Hare Modernization Act as provided for by law in effect prior to the effective date of this Act.

(a-10) Subsections (b), (c), (d), (e), and (f) of this Section do not apply to the acquisition or damaging of property in furtherance of the goals and objectives of an existing tax increment allocation redevelopment plan. A condemning authority may exercise the power of eminent domain for the acquisition of property in furtherance of an existing tax increment allocation redevelopment plan as provided for by law in effect prior to the effective date of this Act.

As used in this subsection, "existing tax increment allocation redevelopment plan" means a redevelopment plan that was adopted under the Tax Increment Allocation Redevelopment Act (Article 11, Division 74.4 of the Illinois Municipal Code) prior to April 15, 2006 and for which property assembly costs were, before that date, included as a budget line item in the plan or described in the narrative portion of the plan as part of the redevelopment project, but does not include (i) any additional area added to the redevelopment project area on or after April 15, 2006, (ii) any subsequent extension of the completion date of a redevelopment plan beyond the estimated completion date established in that plan prior to April 15, 2006, (iii) any acquisition of property in a conservation area for which the condemnation complaint is filed more than 12 years after the effective date of this Act, or (iv) any acquisition of property in an industrial park conservation area.

As used in this subsection, "conservation area" and "industrial park conservation area" have the same meanings as under Section 11-74.4-3 of the Illinois Municipal Code.

(b) If the exercise of eminent domain authority is to acquire property for public ownership and control, then the condemning authority must prove that (i) the acquisition of the property is necessary for a public purpose and (ii) the acquired property will be owned and controlled by the condemning authority or another governmental entity.

(c) Except when the acquisition is governed by subsection (b) or is primarily for one of the purposes specified in subsection (d), (e), or (f) and the condemning authority elects to proceed under one of those subsections, if the exercise of eminent domain authority is to acquire property for private ownership or control, or both, then the condemning authority must prove by clear and convincing evidence that the acquisition of the property for private ownership or control is (i) primarily for the benefit, use, or enjoyment of the public and (ii) necessary for a public purpose. An acquisition of property primarily for the purpose of the elimination of blight is rebuttably presumed to be for a public purpose and primarily for the benefit, use, or enjoyment of the public under this subsection.

Any challenge to the existence of blighting factors alleged in a complaint to condemn under this subsection shall be raised within 6 months of the filing date of the complaint to condemn, and if not raised within that time the right to challenge the existence of those blighting factors shall be deemed waived.

Evidence that the Illinois Commerce Commission has granted a certificate or otherwise made a finding of public convenience and necessity for an acquisition of property (or any right or interest in property) for private ownership or control (including, without limitation, an acquisition for which the use of eminent domain is authorized under the Public Utilities Act, the Telephone Company Act, or the Electric Supplier Act) to be used for utility purposes creates a rebuttable presumption that such acquisition of that property (or right or interest in property) is (i) primarily for the benefit, use, or enjoyment of the public and (ii) necessary for a public purpose.

In the case of an acquisition of property (or any right or interest in property) for private ownership or control to be used for utility, pipeline, or railroad purposes for which no certificate or finding of public convenience and necessity by the Illinois Commerce Commission is required, evidence that the acquisition is one for which the use of eminent domain is authorized under one of the following laws creates a rebuttable presumption that the acquisition of that property (or right or interest in property) is (i) primarily for the benefit, use, or enjoyment of the public and (ii) necessary for a public purpose:

- (1) the Public Utilities Act,
- (2) the Telephone Company Act,
- (3) the Electric Supplier Act,
- (4) the Railroad Terminal Authority Act,
- (5) the Grand Avenue Railroad Relocation Authority Act,
- (6) the West Cook Railroad Relocation and Development Authority Act,
- (7) Section 4-505 of the Illinois Highway Code,
- (8) Section 17 or 18 of the Railroad Incorporation Act,
- (9) Section 18c-7501 of the Illinois Vehicle Code.

(d) If the exercise of eminent domain authority is to acquire property for private ownership or control and if the primary basis for the acquisition is the elimination of blight and the condemning authority elects to proceed under this subsection, then the condemning authority must: (i) prove by a preponderance of the evidence that acquisition of the property for private ownership or control is necessary for a public purpose; (ii) prove by a preponderance of the evidence that the property to be acquired is located in an area that is currently designated as a blighted area or conservation area under an applicable statute; (iii) if the existence of blight or blighting factors is challenged in an appropriate motion filed within 6 months after the date of filing of the complaint to condemn, prove by a preponderance of the evidence that the required blighting factors existed in the area so designated (but not necessarily in the particular property to be acquired) at the time of the designation under item (ii) or at any time thereafter; and (iv) prove by a preponderance of the evidence at least one of the following:

(A) that it has entered into an express written agreement in which a private person or entity agrees to undertake a development project within the blighted area that specifically details the reasons for which the property or rights in that property are necessary for the development project;

(B) that the exercise of eminent domain power and the proposed use of the property by the condemning authority are consistent with a regional plan that has been adopted within the past 5 years in accordance with Section 5-14001 of the Counties Code or Section 11-12-6 of the Illinois Municipal Code or with a local land resource management plan adopted under Section 4 of the Local Land Resource Management Planning Act; or

(C) that (1) the acquired property will be used in the development of a project that is consistent with the land uses set forth in a comprehensive redevelopment plan prepared in accordance with the applicable statute authorizing the condemning authority to exercise the power of eminent domain and is consistent with the goals and purposes of that comprehensive redevelopment plan, and (2) an enforceable written agreement, deed restriction, or similar encumbrance has been or will be executed and recorded against the acquired property to assure that the project and the use of the property remain consistent with those land uses, goals, and purposes for a period of at least 40 years, which execution and recording shall be included as a requirement in any final order entered in the condemnation proceeding.

The existence of an ordinance, resolution, or other official act designating an area as blighted is not prima facie evidence of the existence of blight. A finding by the court in a condemnation proceeding that a property or area has not been proven to be blighted does not apply to any other case or undermine the designation of a blighted area or conservation area or the determination of the existence of blight for any other purpose or under any other statute, including without limitation under the Tax Increment Allocation Redevelopment Act (Article 11, Division 74.4 of the Illinois Municipal Code).

Any challenge to the existence of blighting factors alleged in a complaint to condemn under this subsection shall be raised within 6 months of the filing date of the complaint to condemn, and if not raised within that time the right to challenge the existence of those blighting factors shall be deemed waived.

(e) If the exercise of eminent domain authority is to acquire property for private ownership or control and if the primary purpose of the acquisition is one of the purposes specified in item (iii) of this subsection and the condemning authority elects to proceed under this subsection, then the condemning authority must prove by a preponderance of the evidence that: (i) the acquisition of the property is necessary for a public purpose; (ii) an enforceable written agreement, deed restriction, or similar encumbrance has been or will be executed and recorded against the acquired property to assure that the project and the use of the property remain consistent with the applicable purpose specified in item (iii) of this subsection for a period of at least 40 years, which execution and recording shall be included as a requirement in any final order entered in the condemnation proceeding; and (iii) the acquired property will be one of the following:

- (1) included in the project site for a residential project, or a mixed-use project including residential units, where not less than 20% of the residential units in the project are made available, for at least 15 years, by deed restriction, long-term lease, regulatory agreement, extended use agreement, or a comparable recorded encumbrance, to low-income households and very low-income households, as defined in Section 3 of the Illinois Affordable Housing Act;
- (2) used primarily for public airport, road, parking, or mass transportation purposes and sold or leased to a private party in a sale-leaseback, lease-leaseback, or similar structured financing;
- (3) owned or used by a public utility or electric cooperative for utility purposes;
- (4) owned or used by a railroad for passenger or freight transportation purposes;
- (5) sold or leased to a private party that operates a water supply, waste water, recycling, waste disposal, waste-to-energy, or similar facility;
- (6) sold or leased to a not-for-profit corporation whose purposes include the preservation of open space, the operation of park space, and similar public purposes;
- (7) used as a library, museum, or related facility, or as infrastructure related to such a facility;

(8) used by a private party for the operation of a charter school open to the general public; or
 (9) a historic resource, as defined in Section 3 of the Illinois State Agency Historic Resources Preservation Act, a landmark designated as such under a local ordinance, or a contributing structure within a local landmark district listed on the National Register of Historic Places, that is being acquired for purposes of preservation or rehabilitation.

(f) If the exercise of eminent domain authority is to acquire property for public ownership and private control and if the primary purpose of the acquisition is one of the purposes specified in item (iii) of this subsection and the condemning authority elects to proceed under this subsection, then the condemning authority must prove by a preponderance of the evidence that: (i) the acquisition of the property is necessary for a public purpose; (ii) the acquired property will be owned by the condemning authority or another governmental entity; and (iii) the acquired property will be controlled by a private party that operates a business or facility related to the condemning authority's operation of a university, medical district, hospital, exposition or convention center, mass transportation facility, or airport, including, but not limited to, a medical clinic, research and development center, food or commercial concession facility, social service facility, maintenance or storage facility, cargo facility, rental car facility, bus facility, taxi facility, flight kitchen, fixed based operation, parking facility, refueling facility, water supply facility, and railroad tracks and stations.

(g) This Article is a limitation on the exercise of the power of eminent domain, but is not an independent grant of authority to exercise the power of eminent domain.

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