

No. 131026

**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)) <i>Respondents,</i>)) v.)) 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) Daughtery Trust Dated July 9, 2010; REX) ENCORE FARMS LLC; and ILLINOIS) MANUFACTURERS ASSOCIATION)) <i>Petitioners.</i>)	On Appeal from the Appellate Court of Illinois, Fifth Judicial District, Appeal No. 5-23-0271 There Heard on Appeal from the Illinois Commerce Commission, ICC Docket No.22-0499
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**BRIEF OF *AMICUS CURIAE* ILLINOIS AFL-CIO
IN SUPPORT OF PETITIONER
GRAIN BELT EXPRESS LLC’S APPEAL**

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INTEREST OF AMICUS CURIAE

The Illinois State Federation of Labor and Congress of Industrial Organizations (hereinafter “State Federation” or “Illinois AFL-CIO”) is the statewide organization chartered by the American Federation of Labor-Congress of Industrial Organizations (“AFL-CIO”) to represent the interests of more than 1,600 local members and their 1.2 million members. The State Federation is comprised of local unions affiliated with international unions which are affiliated with the AFL-CIO. Many of the unions affiliated with the State Federation represent employees working in a variety of fields, including utilities, construction, energy, and manufacturing.

Illinois AFL-CIO has a significant interest in this Court’s review of the issues raised by Petitioner Grain Belt Express LLC’s (“GBX”) appeal due to the anticipated job creation and union labor commitments of the GBX project.

The Illinois AFL-CIO understands that it is not a right to appear and address this Court as *amici curiae*. However, the Illinois AFL-CIO has a significant interest in the reversal of the Fifth District’s decision and can provide this Court with insights on the effects of this case on parties other than the named parties.

ARGUMENT

GBX sought a certificate of public convenience and necessity, pursuant to the Public Utilities Act from the Illinois Commerce Commission (“ICC”) to construct, operate, and maintain the Illinois portion of a multi-state project to create a high voltage direct current transmission line and related facilities (referred to hereinafter as “the project”). The project will originate in Ford County, Kansas, traverse the remainder of Kansas into Missouri, cross Missouri into Illinois, travel approximately 207 miles

through Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark Counties, where it will ultimately, cross into Indiana. The transmission line's approximate length is expected to be 800 miles and interconnect multiple regional electric grids, including Southwest Power Pool ("SPP"), Midcontinent Independent System Operator ("MISO"), Associated Electrical Cooperative, Inc. ("AECI"), and PJM Interconnection, LLC ("PJM").

In GBX's application to the ICC for a certificate of public convenience and necessity ("CPCN"), GBX outlined the anticipated job creation, economic benefits, and revenues to the State of Illinois as a result of the project. *See GBX ICC Application*, pg. 14-21, 48, 53. The project benefits would include: (1) hundreds of jobs created for construction, operation, and maintenance of the project and related facilities; (2) orders and revenue required of manufacturers and service companies providing materials, components, and services for the construction, operation, and maintenance, of the project and related facilities; and (3) payments to landowners and tax revenues for the State of Illinois and for local governments connected to the for the construction, operation, and maintenance, of the project and related facilities. *Id.* at 14-21.

Construction and development costs in Illinois alone are estimated to be approximately \$1.25 billion (not including network upgrades). *Id.* at 48. According to the Economic Impact Analysis of the GBX project on the State of Illinois, the total employment impact from the project for Illinois counties is expected to be almost 5,000 new local jobs created or retained during construction and approximately 34 new local long-term jobs. *See Economic Impact Analysis of the GBX Project on the State of Illinois*, pg. 10-11. According to that same Analysis, the total earnings impact from the project for

Illinois counties is expected to be over \$565 million in new local earnings during construction and over \$4.5 million in new local long-term earnings. *Id.* at 11-12.

In its Application, GBX made specific commitments to maximize the use of union labor for the construction of the project in Illinois. *Id.* at 21, 48, 53. As of the date of the application, had already entered into agreements with relevant unions for the project. *Id.* at 53. More specifically, in the testimony of the project's Engineering Manager, Aaron White, GBX had already entered into letters of intent with the International Brotherhood of Electrical Workers ("IBEW") and the Laborers' International Union of North America ("LIUNA"), and expected to direct its contractors to enter into project labor agreements for union labor to construct the project in Illinois. *See Aaron White GBX Construction Testimony*, pg. 11. These commitments were reflected in the ICC's Final Order granting the CPCN. *See ICC GBX Final Order*, pg. 37-38.

On August 8, 2024, the Illinois Appellate Court Fifth District reversed the ICC's decision to grant a CPCN to the project, ruling that large utility infrastructure projects in Illinois must secure funding before securing a CPCN permit.

I. This Court Should Reverse the Fifth District's Decision Because It Is In Direct Conflict with the Third District's Precedent on the Matter

Section 8-406.1(f)(3) of the Public Utilities Act does not state that the Commission shall grant a CPCN if the public utility is capable of fully funding the proposed construction as of the time of the filing with the ICC, as proffered by the Illinois Appellate Court Fifth District. 220 ILCS 5/8-406.1(f)(3). The Section states that the public utility must be capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. *Id.*

In *Pembroke Environmental Justice Coalition v. Illinois Commerce Commission*, the Illinois Appellate Court Third District analyzed the ICC's granting of a CPCN to a natural gas company to provide natural gas distribution services after interested organizations intervened to oppose the petition. 2023 IL App (3d) 220108. The Third District held that the company had shown that it was capable of financing the project without significant adverse financial consequences for the utility or its customers and did so based on the company's revenue and the project proposal. *Id.* at 853-854. The Third District, in fact, rejected the intervenors position that the ICC was required to consider costs for customers to convert to natural gas services in a low income area when considering the financial impact of granting the CPCN. *Id.* Therefore, the Third District has explicitly upheld the ICC's ruling that when a projection of the total cost of a project is minimal in comparison to the company's net utility plant and operating revenue, that company is capable of financing the project without significant adverse financial consequences to the utility or its customers. *Id.*

In its application, GBX provided evidence regarding its abilities and experience in financing large projects, such as the one at issue, including direct testimony that its parent company as of 2022 had developed more than 191 large-scale clean power projects in the United States and globally, representing \$47 billion in completed transactions. *See GBX ICC Application*, pg. 57. GBX also provided testimony that the total project cost would be somewhere between \$5 and \$7 billion. *See ICC Docket No. 22-0499 In the Matter of Grain Belt Express, LLC Transcript*, pg. 409-410, 459. Rightfully so, the ICC utilized this evidence in finding that GBX was more than capable of financing the project at hand without significant adverse financial consequences to the utility or its customers. This

ruling is not only in line with the ICC's established application of this requirement, but also the Third District's explicit analysis of the requirement.

The Illinois Appellate Court Fifth District's redefining of the ICC's authority is greatly troubling to the Illinois AFL-CIO and its affiliate locals and members, namely in the Court's determinations that: (1) Section 8-406.1(f)(3) of the Public Utilities Act should be read as requiring an applicant to be able to finance a project at the time it files for a CPCN, as opposed to being able to prove it could finance the project once permitting approvals were received; and (2) direct testimony regarding development of \$47 billion in completed transactions by GBX's parent company was speculative and not sufficient evidence that GBX was capable of funding the project. The Fifth District's ruling regarding GBX's evidence is in direct conflict with the Third District's analysis in *Pembroke*. The *Pembroke* Court explicitly upheld the ICC's ruling that a projection of the total cost of a project when minimal in comparison to the company's net utility plant and operating revenue meets the standard that the company be capable of financing the project without significant adverse financial consequences to the utility or its customers. The Fifth District ignores this ruling, and proffers an almost unattainable standard, large utility infrastructure projects in Illinois must secure funding before securing a CPCN permit, despite the very likely changing landscape of project financing throughout the life of a project.

The Illinois AFL-CIO must object to this reading by the Fifth District due to its direct conflict with the Third District's precedent.

II. This Court Should Reverse the Fifth District's Decision Because It Raises Critical Issues Concerning Anticipated Job Creation and Union Labor Commitments

This ruling by the Fifth District threatens not only the outcomes of the project, but the local job growth, economic development, and labor commitments attached to the project. The ruling raises an issue of substantial importance to the Illinois AFL-CIO, as Illinois IBEW and LIUNA locals and their members are amongst the largest and most numerous affiliates of the State Federation. The loss of this project would cause the loss of anticipated work for thousands of Illinois AFL-CIO affiliated laborers.

Illinois AFL-CIO affiliate members rely on construction, operation, utility, infrastructure, energy, manufacturing, and maintenance projects, such as the GBX project, for work and their livelihood. The standard proffered by the Fifth District, if upheld, in application would lead to a virtually impossible and unrealistic standard for project financing. Many viable and practicable projects, that otherwise would have received a permit, would go by the wayside due to this absurdly high standard. This, in turn, would stall, and probably eliminate, countless union jobs. Simply put, the standard proffered by the Fifth District, if upheld, would lead to a significant reduction in union jobs in the State of Illinois. If \$47 billion in completed transactions is insufficient as evidence to prove that a company can finance large utility infrastructure projects of this nature, the Illinois AFL-CIO is hard pressed to understand how such projects would ever come to fruition and be approved by the ICC.

The Illinois AFL-CIO must object to this reading by the Fifth District due to its probable negative effect on Illinois AFL-CIO affiliated locals and members.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the briefs of the Petitioner and the various *amici* supporting the Petitioner, the Illinois AFL-CIO respectfully requests that this Court reverse the Fifth District's decision in this matter.

Dated: February 13, 2024

Respectfully submitted,

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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 or words contained in 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 eight (8) pages.

/s/ Margaret Angelucci
Margaret Angelucci

CERTIFICATE OF FILING AND SERVICE

I, Margaret Angelucci, attorney for Illinois AFL-CIO, certify that I electronically filed via Odyssey eFileIL the foregoing Brief of Amicus Curiae Illinois AFL-CIO in Support of Petition Grain Belt Express LLC's Appeal with the Clerk of the Supreme Court on the 13th day of February 2025.

The undersigned further certifies that on the 13th day of February 2025, an electronic copy of the foregoing Brief is being served to counsel of record at the email addresses below.

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Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Margaret Angelucci
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