

Nos. 131026 & 131032 (consolidated)

IN THE
SUPREME COURT OF ILLINOIS

CONCERNED CITIZENS &	)	On appeal from the Appellate Court
PROPERTY OWNERS, et al.,	)	of Illinois, Fifth Judicial District,
	)	No. 5-23-0271
Petitioners-Appellees,	)	
v.	)	
	)	
ILLINOIS COMMERCE	)	
COMMISSION, et al.,	)	There Heard on petition for direct
	)	administrative review from the
Respondents-Appellants.	)	Illinois Commerce Commission,
	)	Docket No. 22-0499

(full caption on next page)

**REPLY BRIEF OF RESPONDENT-APPELLANT
ILLINOIS COMMERCE COMMISSION**

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AGRICUTLURAL ASSOCIATION a/k/a	)	No. 5-23-0271
Illinois Farm Bureau; CONCERNED	)	
CITIZENS ALLIANCE; YORK	)	
TOWNSHIP IRRIGATORS; and	)	
NAFSICA ZOTOS,	)	
	)	
Petitioners-Appellees,	)	
v.	)	
	)	
ILLINOIS COMMERCE	)	
COMMISSION; GRAIN BELT	)	
EXPRESS LLC; CLEAN GRID	)	
ALLIANCE; HANSON AGGREGATES	)	
MIDWEST INC.; GREYROCK, LLC;	)	
CITIZENS UTILITY BOARD;	)	
LEONARD BRAD DAUGHTERTY, as	)	
Trustee of the Leonard Daughterty	)	
Trust Dated July 9, 2010; REX	)	
ENCORE FARMS LLC; and ILLINOIS	)	There Heard on petition for direct
MANUFACTURERS ASSOCIATION,	)	administrative review from the
	)	Illinois Commerce Commission,
Respondents-Appellants.	)	Docket No. 22-0499

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INTRODUCTION

Petitioners provide no basis for this Court to affirm the appellate court judgment or reverse the Illinois Commerce Commission's decision. Based on substantial evidence, the Commission found that GBX was capable of financing the Project without significant adverse financial consequences for its customers or ratepayers. Accordingly, under longstanding precedents, this Court should defer to the Commission's finding and its reasonable interpretation of subsection 8-406.1(f)(3). As the Commission explained, that subsection does not require GBX to have demonstrated that it already had financing or related legal commitments in place. In their response brief, petitioners attempt to avoid this deference, and the evidence in the record, by asking this Court to depart from its precedents. They further improperly urge this Court to read into subsection 8-406.1(f)(3) and prior Commission orders addressing different circumstances the requirement that applicants prove that they already have financing in place. Nothing in section 8-406.1's text or the Commission's prior orders, however, imposes such a requirement. Nor do petitioners' other arguments show that the Commission's finding was unsupported by substantial evidence or otherwise improper. And petitioners provide no basis for this Court to determine that subsection 8-406(b-5) is unconstitutional. Therefore, this Court should reverse the appellate court and affirm the Commission's decision.

ARGUMENT

I. Petitioners fail to show that the Commission’s finding that GBX satisfied subsection 8-406.1(f)(3) was unsupported by substantial evidence or improper.

A. The Commission issued sufficient findings that GBX satisfied subsection 8-406.1(f)(3).

Petitioners argue that the Commission’s order is void because it failed to make sufficient findings and cite supporting evidence that GBX satisfied subsection 8-406.1(f)(3). AE-GBX Br. 22-23.¹ But the Commission is not required to cite evidence or make findings on each evidentiary dispute. *E.g.*, *People ex rel. Madigan v. Ill. Com. Comm’n*, 2011 IL App (1st) 101776, ¶¶ 11, 39 (“the Commission is not required to cite evidence in its findings”). Rather, its findings must be sufficient to enable courts to undertake an informed and intelligent review. *E.g.*, *Brinker v. Ill. Com. Comm’n*, 19 Ill. 2d 354, 357 (1960); *Commonwealth Edison Co. v. Ill. Com. Comm’n*, 405 Ill. App. 3d 389, 398 (2d Dist. 2010). By quoting a single sentence from the Commission’s 99-page decision, AE-GBX Br. 22, petitioners ignore the Commission’s detailed review of the evidence and its analyses finding that the evidence satisfied subsection 8-406.1(f)(3), C5884-92_V20; *see* C5868-80_V20.

¹ This reply cites the Commission’s opening brief as “AT Br. _,” GBX’s opening brief as “GBX AT Br. _,” petitioners’ response brief to GBX as “AE-GBX Br. _,” that brief’s appendix as “A_,” and petitioners’ response brief to the Commission as “AE-ICC Br. _.” The reply cites the record as described in the Commission’s opening brief. *See* AT Br. 3 n.1.

Here, the Commission found that GBX was capable of financing the Project based on GBX's evidence of a credible plan to raise the necessary funds through the project financing approach, a method commonly used in the energy industry for large infrastructure projects. C5882-92_V20; *see* R126-30, 275-76, 282-84; E1363-74_V11. As the Commission found, GBX's plan was supported by "ample evidence" of consumer and market need for and interest in the Project, demonstrating that GBX will be able to enter into sufficient transmission capacity contracts to raise the necessary financing. C5879-80, 5892_V20; *see, e.g.*, E71-75_V1; E418-47, 492-93_V3; E1363-74, 1383-85_V11. Indeed, GBX's management and affiliates have substantial experience in using project financing to successfully raise billions of dollars toward developing similar energy projects. *See* E410-11_V3; E1363-74, 1383-85_V11. Thus, the Commission's findings were sufficient and based on substantial evidence.

B. Subsection 8-406.1(f)(3) did not require that GBX show financing or related legal commitments in place.

As the Commission explained, the appellate court erred by implicitly accepting petitioners' construction of subsection 8-406.1(f)(3) to require that applicants presently have financing or legal commitments for financing in place. AT Br. 26. Petitioners deny that the appellate court construed the statute in this way. AE-GBX Br. 15-16. Like that court, however, petitioners contend that the Commission erred because GBX failed to show that it either had the funds or that it had legal commitments to obtain the funds. *See id.* at 11, 13-16; *Concerned Citizens & Prop. Owners v. Ill. Com. Comm'n*, 2024 IL

App (5th) 230271-U, ¶¶ 30, 38. Indeed, petitioners explicitly challenged the Commission’s decision on this basis, arguing that subsection 8-406.1(f)(3) required applicants to demonstrate current funding rather than that they “will be capable of financing the construction.” C6029_V20. And contrary to petitioners’ characterization, AE-GBX Br. 11, the Commission construed subsection 8-406.1(f)(3), consistent with its own prior practice, to not require that applicants prove that they presently have financing or legal commitments in place, C5886-89, 5892_V20; *see* C5085-86_V19; *Grain Belt Express Clean Line LLC*, Order, No. 15-0277, 2015 IL 7348552, *142 (Ill. Com. Comm’n Nov. 12, 2015), *rev’d on other grounds, Concerned Citizens & Prop. Owners v. Ill. Com. Comm’n*, 2018 IL App (5th) 150551; *Rock Island Clean Line, LLC*, Order, No. 12-0560, 2014 WL 6871986, *155-56 (Ill. Com. Comm’n Nov. 25, 2014) (“*Rock Island Order*”), *rev’d on other grounds, Ill. Landowners All., NFP v. Ill. Com. Comm’n*, 2017 IL 121302.

Rather than identify any error in the Commission’s interpretation of subsection 8-406.1(f)(3), *see* AT Br. 28-36, petitioners argue that this Court should not defer to the Commission’s reasonable interpretation under recent United States Supreme Court opinions limiting federal courts’ deference to federal agency decisions construing federal statutes, AE-GBX Br. 11-12, 16-18. Under *stare decisis*, however, this Court will not depart from its precedent “absent special justification, good cause, or compelling reasons,” especially where statutory construction is involved. *Glorioso v. Sun-Times Media*

Holdings, LLC, 2024 IL 130137, ¶ 53. And petitioners articulate no legal argument why this Court should adopt *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), other than repeating that opinion’s holding overruling *Chevron U.S.A., Inc. v. Nat’l Res. Def. Council, Inc.*, 467 U.S. 837 (1984), AE-GBX Br. 11-12. On this basis alone, petitioners forfeited their request to overrule this Court’s precedent. *See Vancura v. Katris*, 238 Ill. 2d 352, 373 (2010) (appellee’s failure to develop argument forfeits issue).

Regardless, the deference this Court gives to interpretations of Illinois statutes by state agencies is not based on *Chevron*, but on its own long-held jurisprudence recognizing state agencies’ expertise and experience with statutes they are charged with administering and providing informed sources of legislative intent. *See, e.g., Abrahamson v. Ill. Dep’t of Pro. Regul.*, 153 Ill. 2d 76, 97-98 (1992); *Ill. Consol. Tel. Co. v. Ill. Com. Comm’n*, 95 Ill. 2d 142, 152-53 (1983); *Adams v. Jewel Cos., Inc.*, 63 Ill. 2d 336, 344-45 (1976); *P.H. Mallen Co. v. Dep’t of Fin.*, 372 Ill. 598, 601 (1939). Thus, the Supreme Court’s overruling of *Chevron* provides no basis to depart from this authority.

Moreover, to overrule *Chevron*, *Loper Bright* inferred Congress’s intent not to defer to federal agencies’ interpretations of federal statutes from the opening directive of section 706 of the federal Administrative Procedure Act, that ““the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.”” 603 U.S. at 391 (quoting 5

U.S.C. § 706); *see id.* at 391-98. This Court’s deference to agencies’ statutory interpretations, however, is based on Illinois law, not a federal statute. *See Ill. Consol. Tel. Co.*, 95 Ill. 2d at 152–53. And neither the Public Utilities Act (“Act”) nor the Administrative Review Law contains the language that *Loper-Bright* found essential to its holding. *See* 220 ILCS 5/10-201 (2024); 735 ILCS 5/3-110 (2024). To the contrary, the Act specifies that all Commission decisions and orders “shall be held to be prima facie reasonable” on administrative review. 220 ILCS 5/10-201(d) (2024). And the General Assembly never amended the Act or the Administrative Review Law to limit the substantial weight that Illinois courts accord state agencies’ statutory interpretations. *See People v. Way*, 2017 IL 120023, ¶ 27 (legislature “acts with full knowledge of previous judicial decisions” and “its silence on an issue in the face of those decisions indicates its acquiescence to them”). Thus, this Court should continue to defer the Commission’s reasonable reading of the Act’s provisions.

Petitioners similarly provide no basis for this Court to adopt a narrow and amorphous exception to federal agency deference for matters of “economic and political significance.” *See* AE-GBX Br. 16-17 (quoting *King v. Burwell*, 576 U.S. 473, 486 (2015)). The Commission is aware of no Illinois authority applying this federal exception. Instead, Illinois courts defer to the Commission’s reasonable interpretations of the Act based on its expertise and experience in utility regulation, including with issuing Certificates and

approving new utility services. *E.g., Ill. Power Co. v. Ill. Com. Comm'n*, 111 Ill. 2d 505, 510-11 (1986) (deferring to Commission's interpretation of public convenience standard to disapprove merger); *Pembroke Env't Just. Coal. v. Ill. Com. Comm'n*, 2023 IL App (3d) 220108, ¶¶ 37-38 (deferring to Commission's reading of criteria to issue Certificates under section 8-406.2); *Pliura Intervenors v. Ill. Com. Comm'n*, 405 Ill. App. 3d 199, 208-09 (4th Dist. 2010) (deferring to Commission's reading of section 15-401 to issue Certificate to extend pipeline). Through sections 8-406.1 and 8-406(b-5), the legislature mandated that the Commission determine whether applicants satisfy the criteria to obtain a Certificate to construct transmission lines. *See* 220 ILCS 5/8-406(b-5), 406.1 (2024). This stands in contrast to petitioners' cited federal authority, where the Supreme Court refused to defer to the Internal Revenue Service's reading of the Affordable Care Act because it had "no expertise in crafting health insurance policy." *King*, 576 U.S. at 485-86; *see also FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159-60 (2000) (not deferring to FDA interpretation of statute to regulate tobacco where Congress had repeatedly rejected amendments providing such authority).

C. Petitioners provide no basis to avoid deference to the Commission's factual finding that GBX satisfied subsection 8-406.1(f)(3).

Petitioners also try to avoid judicial deference to the Commission's factual findings, *see* AT Br. 21-22, arguing that the Commission's finding that GBX satisfied subsection 8-406.1(f)(1) "departed drastically" from its past

practice, AE-GBX Br. 29-32. But the Commission’s findings are entitled to less deference “only where [it] departs from its usual rules of decision to reach a different, unexplained result in a single case.” *People ex rel. Madigan v. Ill. Com. Comm’n*, 2015 IL 116005, ¶ 25 (cleaned up). Here, petitioners identify no prior Commission decisions establishing a rule from which it drastically departed. Rather, they argue that the Commission has not established a “standard practice” of finding that the project finance basis satisfies the capable-of-financing criterion, pointing to prior Commission orders granting Certificates that involved different types of financing evidence. *See* AE-GBX Br. 29-32. None of those orders, however, established any rule requiring that applicants already have financing commitments in place to satisfy the capable-of-financing criterion. *Compare United Cities Gas Co. v. Ill. Com. Comm’n*, 163 Ill. 2d 1, 18-22 (1994) (prior Commission orders did not establish “a ‘rule’ requiring multijurisdictional consistency” in allocating allowable costs from which rate reconciliation decision departed) *with Bus. & Pro. People for the Pub. Int. v. Ill. Com. Comm’n*, 136 Ill. 2d 192, 219, 225-28 (1991) (“*BPI I*”) (Commission drastically departed from past practice by disregarding the Act’s established “test-year rule” to set utility rates).

Petitioners cite prior Commission orders where, outside of the project-financing context, applicants submitted evidence of their own or their parent company’s finances and/or access to lending. *See* AE-GBX Br. 30-32, 34-35. None of these orders prohibited applicants from satisfying the capable-of-

financing criterion through alternative evidence, let alone purport to establish a rule describing the evidence required. For example, some reflect that applicants planning to finance a project primarily through funding from their affiliated company have provided evidence of that affiliate's financial status or access to financing to lend the applicant. *See, e.g., In re Ameren Trans. Co. of Ill.*, Order, No. 12-0598, 2013 WL 4508733, *115 (Ill. Com. Comm'n Aug. 20, 2013) (“*ATXI Order*”), *aff'd*, *Adams Cnty. Prop. Owners & Tenant Farmers v. Ill. Com. Comm'n*, 2015 IL App (4th) 130907. And, as the Commission argued, AT Br. 32, outside of the project-financing context, the Commission also has construed the capable-of-financing criterion to allow proof of plans for future loans and equity infusions rather than require that applicants demonstrate they already have financing or related legal commitments in place, *see Pliura*, 405 Ill. App. 3d at 208 (section 15-401(b) applicant need not prove parent had legal obligation to fund pipeline construction to show applicant was “fit, willing, and able” to construct pipeline); *N. Moraine Wastewater Reclamation Dist. v. Ill. Com. Comm'n*, 392 Ill. App. 3d 542, 548, 568-69 (2d Dist. 2009) (rejecting argument that applicant could not rely on parent's future debt and equity to satisfy subsection 8-406(b)(3)); *ATXI Order*, 2013 IL 4508733, *115 (applicant's evidence that funds “will be available” from parent utility through “intercompany loans and equity infusions”).

In any event, this Court has long recognized that the Commission “has the ‘power to deal freely with each situation as it comes before it, regardless of

how it may have dealt with a similar or even the same situation in a previous proceeding.’’ *Commonwealth Edison v. Ill. Com. Comm’n*, 2016 IL 118129, ¶ 24 (quoting *United Cities Gas*, 163 Ill. 2d at 22). Here, the Commission found that GBX demonstrated its capability to finance the Project based on the specific circumstances and evidence in this case. The undisputed evidence showed that GBX will finance the Project on the project finance basis, which is typically used to construct such infrastructure projects, primarily through outside lenders and investors using customer contracts (and not its affiliates’ assets) as security. AT Br. 24-25; see E1368-73_V11; R129-30; R275-76, 282-84. Under this financing method, lenders and investors require developers to first obtain all regulatory approvals and customer contracts before they enter into financing commitments. E1367-68, 1372-73_V11; R283-84. While GBX’s parent, Invenergy, will continue to finance GBX’s early development of the Project, the testimony before the Commission showed that Invenergy and its affiliates have developed billions of dollars in energy assets and had already funded \$60 million of the Project. E1367_V11; R126-27, 137-38, 272-73; RS249 (sealed). And, the testimony also showed, under the project finance basis, lenders prefer that a project is constructed by a special-purpose entity, like GBX, without other operations or agreements. E1373-74_V11. Thus, the evidence provided ample basis to distinguish this matter from petitioners’ cited orders.

Nor is *Citizens Valley View Co. v. Ill. Com. Comm’n*, 28 Ill. 2d 294 (1963), contrary to the Commission’s finding, *see* AE-GBX Br. 35-37. *Citizens Valley* reversed the Commission’s order granting a Certificate to a new utility to provide water services because the Commission failed to find that an existing utility, which already served contiguous territory and was competing for the Certificate, was unable to provide those services. 28 Ill. 2d at 299-303. It nowhere held that applicants must prove that they have funding or financial commitments in place to obtain a Certificate. And although the Court reversed the Commission’s “special finding” that the applicant was financially able to furnish the water services, it did so because the applicant provided “no disclosure as to the method” of financing or its “proposed financial structure” other than its owner’s assertion that he would furnish the necessary funds. *Id.* at 303. In contrast, GBX submitted extensive evidence of its plans to fund the Project through the project finance basis, including evidence of its parent’s and management’s experience in developing billions of dollars of transmission lines and other energy infrastructure, and Invenergy’s \$60 million investment to date. *E.g.*, E410-11, 459-63_V3; E1367-74_V11; R126-27, 137-38, 151-52, 272-73.

When, in the *Rock Island Order*, the Commission previously addressed the construction of an interstate transmission line using the project finance basis, it similarly construed the capable-of-financing criterion to allow the applicant to finance construction without proof that it already had financing or

legal commitments in place. *See* 2014 WL 6871986, *136-37, 155-56.

Petitioners assert that Rock Island provided other evidence, such evidence of its prior transactions and a balance sheet. AE-GBX Br. 29. Contrary to petitioners' characterization, *id.*, however, the Commission relied on evidence similar to what GBX presented here of Rock Island's ability to use the project financing approach to fund a project, *see Rock Island Order*, 2014 WL 6871986, *136-41, 155-56. For example, Rock Island submitted evidence of other transmission-line projects that other developers or its management team had successfully funded. *Id.* at *138-39; AE-GBX Br. A415-17. Here, GBX presented similar evidence of transmission-line and other energy projects that its own parent, affiliates, and management team have successfully developed. E459-63_V3; E1367-69, 1383-85_V11. Though Rock Island submitted its own financial statement, it was, like GBX, a single-purpose entity without assets or operations, *Rock Island Order*, 2014 WL 6871986, *136, so its operating results were "not meaningful," AE-GBX Br. A424.

As the above-cited orders reflect, the Commission assesses the capable-of-financing criterion based on the specific evidence before it, and has not established a standard requiring that applicants prove that they already have financing in place or other particular evidence to obtain a Certificate.

D. Petitioners provide no other basis to hold that the Commission's finding was unsupported by substantial evidence or exceeded its authority.

Petitioners' other arguments challenging the Commission's finding that GBX satisfied subsection 8-406.1(f)(3) have no merit. Contrary to petitioners' assertion, AE-GBX Br. 33-34, the Commission did not "gloss over" Invenergy's financial statements. As the Commission explained, neither Illinois authority nor the Act required the Commission to conclude that GBX did not satisfy subsection 8-406.1(f)(3) because it did not submit its parent's financial statements. AT Br. 38-40. In finding that GBX satisfied subsection 8-406.1(f)(3), the Commission relied on more than Invenergy's and its affiliates' assets, such as evidence of Invenergy's prior funding of the Project and intent to do so until GBX obtained financing, and the substantial market demand that would support GBX's plans to obtain that financing. *Id.* at 24-25, 36-37; *see, e.g.*, E418-47, 492-94_V3; E1367-73_V11; R126-27, 270, 272-73; RS249 (sealed).

Nor does petitioners' belated assertion that they had sought, but did not receive, discovery of financial statements demonstrate that the Commission erred. *See* AE-GBX Br. 33-34. Petitioners never argued before the Commission that they were entitled to these documents, so they cannot later challenge the Commission's decision on this basis. *See* 83 Ill. Admin. Code §§ 200.370(b), 380, 420 (authorizing motions to compel); *City of Elgin v. Ill. Com. Comm'n*, 2016 IL App (2d) 150047, ¶ 36 (petitioner could not show error

in finding based on applicant's failure to offer data that petitioner never requested); *Demesa v. Adams*, 2013 IL App (1st) 122608, ¶¶ 49-52 (petitioner forfeited challenge to failure to produce evidence by not moving to compel in administrative proceeding). Regardless, petitioners' boilerplate request for "all bases" for GBX's claim that it was capable of financing the Project sought the information on which GBX intended to rely, not its parent's financial statements or any other particular documents. *See* AE-GBX Br. A610, A624.

Petitioners also improperly challenge the Commission's finding based on new material outside of the administrative record, asserting that the United States Department of Energy recently cancelled a conditional loan commitment for the Project. AE-GBX Br. 14-15. Appeals of Commission decisions are heard only on the certified administrative record and "[n]o new or additional evidence may be introduced." 220 ILCS 5/10-201(d), (e)(IV)(a) (2024); *id.* at § 8-406.1(f) (Commission shall grant Certificates "based upon" application and "evidentiary record"). Such extra-record material is therefore irrelevant. *See, e.g., Lyon v. Dep't of Child. & Fam. Servs.*, 209 Ill. 2d 264, 271 (2006) ("Courts cannot consider evidence outside of the record of the administrative appeal."). Regardless, contrary to petitioners' characterization of GBX's testimony, AE-GBX Br. 14-15, its witness clarified that GBX plans to finance between 65% and 80% of the Project through debt funded by "the Department of Energy or commercial banks," *not* solely or necessarily through Department funding, R274-75; *see* E1367-73_V11.

Petitioners then argue that the Revised Financing Condition demonstrates that GBX failed to satisfy subsection 8-406.1(f)(3) by effectively deferring GBX's proof that it did so until after the Certificate was granted. AE-GBX Br. 18-24. But as the Commission explained, AT Br. 40-43, it found that GBX had already demonstrated that it was capable of financing the Project based on the submitted evidence, C5892_V20. After that finding, the Commission adopted the condition prohibiting GBX from commencing construction until it obtained the necessary financing commitments to ensure that, in the unlikely event that GBX failed to raise sufficient capital to fund the entire Project, Illinois landowners like petitioners would not suffer significant adverse financial consequences from incomplete facilities. *See* C5887, 5892_V20.

As for petitioners' assertion that merely granting the Certificate would impose a cloud on the titles to their lands, petitioners cited no evidence in support of this argument and thus forfeited it. *See* AE-GBX Br. 21; *Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 64, 95-96 (2002) (failure to cite record in support forfeited argument). Regardless, the Commission credited expert testimony showing that even constructed transmission lines generally do not negatively impact property values and, when they do, any impact is temporary. AT Br. 42; *see* C5292_V20; E2627-28, 2684-85_V16.

Nor, contrary to petitioners' characterization, AE-GBX Br. 20-21, did Staff's witness McNally testify that the Revised Financing Condition precludes

petitioners from later challenging GBX's compliance with the condition at a hearing or otherwise. Instead, McNally stated that the terms of the Revised Financing Condition do not themselves require a hearing. R398. Otherwise, he confirmed that, pursuant to the condition, GBX will be required to submit documentation demonstrating its compliance that it must serve on all parties. R396-97; *see* C5971-72_V20; E1376_11; 83 Ill. Admin. Code § 200.150(a). Nothing in the Commission's decision or the condition prevents petitioners from contesting GBX's compliance with that condition through motion practice or at a hearing pursuant to the Commission rules. *See* 83 Ill. Admin. Code §§ 200.190(a), 900.

Otherwise, petitioners claim that the Commission exceeded its authority by imposing the Revised Financing Condition. AE-GBX Br. 24-28. The Commission, however, maintains continuing jurisdiction to rescind a Certificate if warranted by subsequent facts or circumstances. *See* C5893_V20 (noting authority in imposing Cost Allocation Condition); 220 ILCS 5/10-113(a) (2024); *Black Hawk Motor Transit Co. v. Ill. Com. Comm'n*, 398 Ill. 542, 557 (1947) (Commission maintains continuing jurisdiction to rescind Certificates consistent with the Act's procedural requirements). And sections 8-406.1(i) and 8-503 authorized the Commission to order the construction of a transmission line "in the manner and within the time specified in said order." 220 ILCS 5/8-406.1(i), 503 (2024). If, despite its prior showing of financial capability, GBX were to fail to obtain the commitments necessary to fund the

entire Project, that would constitute a significant change in the circumstances forming the basis of the Commission's decision for which it could revoke the Certificate. Thus, the Commission's broad authority over the issuance and revocation of Certificates includes the power to impose such conditions to protect applicants' customers and Illinois ratepayers.

None of petitioners' cited decisions address the Commission's authority over Certificates or suggest that the Commission exceeded that authority by imposing the Revised Financing Condition. *See* AE-GBX Br. 24-28. In *BPI I*, the Commission acted outside its authority by imposing a five-year rate plan on a utility that violated the Act's prohibition against retroactive-ratemaking, imposed a rate-increase moratorium violating traditional ratemaking principles, and determined the rate-increase based on an improper settlement rather than on its determination of the reasonable rate based on the evidence. 136 Ill. 2d at 209, 212, 239-40, 242. *LifeEnergy LLC v. Ill. Com. Comm'n*, 2021 IL App (2d) 200411, ¶¶ 145-48, held that, in imposing a monetary penalty against a retail electricity supplier for improper sales practices, the Commission erred by requiring that supplier to re-litigate the scope of its violations and to recalculate a required customer refund in a separate proceeding after the final order. In doing so, the court emphasized that the very same evidence required in the post-order proceeding "could have been presented and considered prior to the entry of the order." *Id.* at ¶¶ 145, 147. And *Ill. Bell Tel. Co. v. Ill. Com. Comm'n*, 352 Ill. App. 3d 630, 641-42 (3d Dist.

2004), did not address the Commission’s authority at all, but merely found that substantial evidence did not support the specific annual amount that the Commission ordered the utility to spend.

Here, the Commission’s decision neither involved nor violated ratemaking principles. Unlike petitioners’ cited authority, the Commission did not set a utility’s rates based on an improper settlement rather than the evidence, *BPI I*, 136 Ill. 2d at 233-34, or require a post-order proceeding to re-litigate a potentially inaccurate refund calculation based on previously existing evidence, *LifeEnergy*, 2021 IL App (2d) 200411, ¶¶ 147-48. Instead, the Commission found that GBX had provided “ample evidence” that it “will be able to enter into sufficient transmission contracts to support” its plan to finance the Project. C5892_V20. And unlike *LifeEnergy*, 2021 IL App (2d) 200411, ¶ 147, no one disputes that GBX could not have already submitted the documents required by the Revised Financing Condition: GBX’s witness testified that lenders and investors will not enter into financing agreements until after GBX obtains the necessary regulatory approvals. E1367-68, 1372-74_V11; R283-84.

Ultimately, petitioners’ claim that the Revised Financing Condition exceeded the Commission’s authority depends on its incorrect reading of subsection 8-406.1(f)(3) to require applicants to prove that they already secured financing. *See* AE-GBX Br. 20 (“If GBX were capable of financing the Project . . . it could have provided the evidence” required by the condition.). As

explained, such proof was not required here, where GBX demonstrated its capability to finance construction through the project finance basis. Because the Commission found that GBX had demonstrated that it was capable of financing the Project, the Revised Financing Condition does not defer or relitigate GBX's showing that it satisfied subsection 8-406.1(f)(3). Instead, the Commission adopted the condition to ensure that, if GBX were to fail to raise the full funding, petitioners and other landowners would not suffer significant financial consequences. C5892_V20.

II. Petitioners provide no other valid basis to reverse the Commission's decision.

If this Court reverses the appellate court judgment, contrary to petitioners' argument, it need not remand this matter to that court to address petitioners' remaining challenges. AE-ICC Br. 3-4. Because this Court reviews the Commission's decision rather than the appellate court judgment on administrative review, *Ill. Landowners All.*, 2017 IL 121302, ¶ 29, this Court can and should reject petitioners' other challenges to that decision under the Act and Illinois Constitution for the reasons set forth in respondents' opening briefs, *see* AT Br. 43-62; GBX AT Br. 44-59. Petitioners' response brief provides no basis to hold subsection 8-406(b-5) unconstitutional.

A. Subsection 8-406(b-5) neither constitutes improper special legislation nor violates equal protection.

Petitioners argue that subsection 8-406(b-5) violates the Special Legislation Clause and equal protection because the legislature enacted it for

GBX's benefit and it arbitrarily discriminates against public utilities, other transmission-line developers, and landowners in the nine enumerated counties. AE-ICC Br. 5-19. They do not show, however, that a qualifying applicant or qualifying project under subsection 8-406(b-5) is similarly situated to other transmission-line developers and energy projects or, even if they were, that the statute's classifications have no rational connection to the statute's purpose. AT Br. 44-58.

Petitioners contend that subsection 8-406(b-5) discriminates in favor of GBX because members of the legislature identified the Project during the debate to enact it. AE-ICC Br. 11-12. On its face, however, subsection 8-406(b-5) nowhere restricts eligible applicants to GBX or any particular entity. Instead, it defines both qualifying applicant and qualifying project by the features and design of the interstate transmission-line project. 220 ILCS 5/8-406(b-5) (2024). Regardless, "that a law may affect only a single entity does not [] render" it improper special legislation. *Big Sky Excavating, Inc. v. Ill. Bell Tel. Co.*, 217 Ill. 2d 221, 235 (2005). Where "an entity is uniquely situated," the legislature may enact "a law tailored to address the conditions presented by that unique situation." *Id.* at 237. Here, as explained, subsection 8-406(b-5) addressed the unique circumstances supporting the development of an interregional transmission line to bring lost-cost renewable energy from the Kansas market to Illinois. AT Br. 47-49.

The legislature enacted CEJA to encourage the development of interregional transmission lines to, among other goals, rapidly transition Illinois to clean energy, lower power prices, and promote price stability. AT Br. 48-49; 20 ILCS 3855/1-5(1), (1.5), (10.5), (10.6) (2024). In enacting subsection 8-406(b-5), the legislature reasonably determined that allowing non-public utilities to seek a Certificate for a qualifying interstate HVDC transmission line of sufficient voltage and capacity designed to interconnect renewable energy sources outside Illinois with the grids serving Illinois ratepayers would further these legitimate interests. As the Commission found twice based on extensive evidence, a transmission line designed to bring low-cost renewable energy from the Kansas market will benefit Illinois ratepayers, and is necessary to provide reliable and efficient service and promote a competitive electricity market. C5879-80_V20; *GBX 2015 Order*, 2015 WL 7348552, *121-24. And petitioners offer no evidence of a similarly situated transmission line or developer that would be ineligible to seek a Certificate under subsection 8-406(b-5). Thus, a transmission line qualifying under subsection 8-406(b-5) is uniquely situated. *See Elementary Sch. Dist. 159 v. Schiller*, 221 Ill. 2d 130, 152-54 (2006) (statute tailored to annex particular property to school district not improper special legislation where plaintiffs provided no evidence of excluded similarly situated entities).

Petitioners also contend that two of the statute's classifications are arbitrary. First, they argue that there is no rational basis to require a

qualifying project to cross the nine enumerated counties. AE-ICC Br. 14-15, 17-18. Although rational-basis review requires only “rational speculation unsupported by evidence,” *Big Sky Excavating*, 217 Ill. 2d at 240, here the legislature had more than that, because it could reasonably rely on the Commission’s prior decision addressing the nine-county route, the prior route study supporting it, or any related set of facts to conclude that the nine counties provide the optimum route for such an interstate transmission line to interconnect with the MISO and PJM grids, while minimizing its environmental and human impact, AT Br. 51-53.

Petitioners respond that the Commission did not find that alternative routes were unavailable for “every conceivable HVDV interstate project.” AE-ICC Br. 15. But petitioners turn their burden to rebut the strong presumption of a statute’s constitutionality on its head. Geographic classifications are constitutional if they have any rational relationship to a statutory purpose, AT Br. 51 (citing cases), based on “[a]ny set of facts that can be reasonably conceived,” *Big Sky Excavating*, 217 Ill. 2d at 238. Moreover, “[t]he legislature need not deal with all conceivable evidence at once,” *People v. Anderson*, 148 Ill. 2d 15, 31 (1992), and instead may address “what it perceives to be the most acute need,” *Chi. Nat’l League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 367 (1985). Here, the legislature could have reasonably decided that the best means to achieve CEJA’s goals was through an interstate transmission line bringing low-cost renewable energy from the Kansas market

to both grids serving Illinois ratepayers, and tailored the statute to previously vetted evidence concerning the optimum route to locate the Illinois portion of such a transmission line. *See GBX 2015 Order*, 2015 WL 7348552, *121-24, *162-64, *199-200.

Petitioners' cited authority, *Moline Sch. Dist. No. 40 Bd. of Educ. v. Quinn*, 2016 IL 119704, is not to the contrary. *See* AE-ICC Br. 15. *Moline* concluded that a property tax exemption intended to benefit a single business providing aeronautical services to a specified airport was improper special legislation because, this Court concluded, there was no conceivable basis to distinguish that business or airport. *Id.* at ¶¶ 28-35. Here, in contrast, the Commission findings and record provided far more than rational speculation to find that a qualifying project will substantially benefit Illinois by bringing low-cost renewable energy through the optimum route to the MISO and PJM grids. *See Schiller*, 221 Ill. 2d at 154-56 (administrative findings reflected rational basis for statute tailored to provide annexation of single property).

Next, petitioners assert that the December 2023 deadline arbitrarily discriminated against applicants other than GBX. AE-ICC Br. 15. But petitioners identified no similarly situated developer or project purportedly excluded by that deadline. *See Schiller*, 221 Ill. 2d at 152-54 (statute's immediate deadline did not improperly discriminate where plaintiffs failed to identify similarly situated entity denied benefit). Regardless, the Constitution does not require "a government program to continue in perpetuity," and the

legislature may reasonably “include a cutoff date in a statute establishing a public program or benefit.” *Piccioli v. Bd. of Trs. of Tchrs. Ret. Sys.*, 2019 IL 122905, ¶ 23. Here, subsection 8-406(b-5) required applicants to file by more than two years after its effective date. 220 ILCS 5/8-406(b-5) (2024). Given the substantial time required to develop an interstate transmission line, *see* C5931_V20, the legislature could reasonably decide that applicants must initiate that process within two years. *See Piccioli*, 2019 IL 122905, ¶ 23 (“mere fact that [statute] could have gone further . . . does not offend rational basis”).

Otherwise, petitioners acknowledge that their equal protection claim is judged by the same standard as their special legislation claim, AE-ICC Br. 19, and so their equal protection claim fails for the same reasons as their special legislation claim, AT Br. 45, 53-58.

B. Subsection 8-406(b-5) does not violate separation of powers.

In arguing that subsection 8-406(b-5) violates separation of powers, petitioners fail to cite any authority discussing that constitutional provision or to address the Commission’s arguments. *See* AT Br. 58-62. Instead, they mischaracterize the Commission’s decision and 220 ILCS 5/8-509 (2024) as providing eminent domain authority to GBX and claim, without legal support, that such authority would encroach on judicial functions. AE-ICC Br. 19-22.

As a threshold matter, contrary to petitioners’ suggestion, *id.* at 20, GBX did not seek, and the Commission did not grant it, eminent domain

authority, C5917_V20. Nor does granting a Certificate under sections 8-406 or 8-406.1 automatically confer such authority on applicants. Instead, the 45-day deadline is for the Commission to rule on requests under section 8-509, 220 ILCS 5/8-509 (2024), and “sections 8-406, 8-503, and 8-509 require distinct showings of necessity” by applicants, *Kreutzter v. Ill. Com. Comm’n*, 404 Ill. App. 3d 791, 812 (2d Dist. 2010).

Even if the Commission’s decision had granted such authority (which it did not), its decision to issue the Certificate to GBX under subsection 8-406(b-5) would, at most, create a rebuttable presumption under the Eminent Domain Act that the Project is for “public use” in any future eminent domain proceeding. AT Br. 60-61. Such a rebuttable presumption would be no different from the presumption afforded every applicant issued a Certificate who successfully obtains eminent domain authority under section 8-509. *See* 735 ILCS 30/5-5-5(c) (2024). Moreover, contrary to petitioners’ claim, the legislature’s decision to provide a rebuttable presumption does not grant “sole power” to the legislature or Commission to define “public use.” *See* AE-ICC Br. 21. Instead, courts presiding over any future condemnation proceedings under section 8-509 authority would determine whether the condemnation is for “public use” based on the parties’ evidence. AT Br. 61. As the Commission explained, *id.* at 59-62, the legislature may prescribe such evidentiary presumptions without violating separation of powers, *see, e.g., First Nat’l Bank of Chi. v. King*, 165 Ill. 2d 533, 542 (1995).

* * *

In sum, this Court should affirm the Commission's finding that GBX satisfied subsection 8-406.1(f)(3) because it was supported by substantial evidence. Likewise, petitioners failed to establish that subsection 8-406(b-5) violates the Special Legislation, Equal Protection, and Separation of Powers Clauses of the Illinois Constitution. Finally, the Court should reject petitioners' alternate, non-constitutional challenges for the reasons provided in GBX's briefs.

CONCLUSION

For these reasons, the Illinois Commerce Commission requests that this Court reverse the appellate court judgment and affirm the Commission's final administrative decision.

Respectfully submitted,

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October 15, 2025

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Ill. Sup. Ct. R. 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 5,982 words.

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CERTIFICATE OF FILING AND SERVICE

I certify that on October 15, 2025, I electronically filed the foregoing Reply Brief of Respondent-Appellant Illinois Commerce Commission with the Clerk of the Illinois Supreme Court, by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named on the attached service list, are not registered service contacts on the Odyssey eFileIL system, and thus were served by transmitting a copy from my email address to all primary and secondary email addresses of record designated by those participants on October 15, 2025.

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

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