

Nos. 131026 & 131032

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

CONCERNED CITIZENS & PROPERTY OWNERS, et al.,	)	
	)	
Petitioners-Appellees,	)	
	)	
v.	)	Appeal from the Illinois Appellate
	)	Court, Fifth Judicial District,
ILLINOIS COMMERCE COMMISSION	)	No. 5-23-0271
and GRAIN BELT EXPRESS LLC,	)	
	)	There Heard on Appeal from the
Respondents-Appellants.	)	Illinois Commerce Commission,
	)	ICC Docket No. 22-0499
	)	
	)	
	)	
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	)	
	)	
	)	
	)	

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

Sarah C. Tallman
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
312-651-7918
stallman@nrdc.org

Justin Vickers
Sierra Club
70 E Lake Street, Suite 1500
Chicago, IL 60601
224-420-0614
justin.vickers@sierraclub.org

Nick Wallace
Environmental Law and Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
312-795-3736
nwallace@elpc.org

Eric DeBellis
Citizens Utility Board
309 W Washington Street, Suite 800
Chicago, IL 60606
312-263-4282
edebellis@citizensutilityboard.org

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INTEREST OF THE *AMICI CURIAE*

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

NRDC is an international, not-for-profit environmental and public health membership organization that works to ensure the rights of all people to clean air, clean water, healthy communities, and a livable planet. NRDC has over 18,000 members in Illinois and an office in Chicago. NRDC has long worked in Illinois, the Midwest, and across the nation to highlight discriminatory barriers and other challenges to expanding renewable energy and transmission infrastructure and to develop consensus-based solutions to these challenges. NRDC has supported legislation and regulatory reforms to advance clean energy and promote sustainable and resilient power grids, especially the Illinois Climate and Equitable Jobs Act (CEJA), which seeks to address the urgent need for more large-scale transmission like the GBX project. Since 2017, NRDC has advocated for the GBX project, including by writing public commentary and building coalitions, to highlight the project's potential benefits for clean energy expansion and regional economic development.

ELPC is a not-for-profit sustainable energy and environmental organization based in Chicago with members, contributors, and offices throughout the Midwest. Among other things, ELPC advocates before federal and state regulatory authorities for building smart transmission systems as a key tool to reduce ratepayer bills and improve environmental outcomes. ELPC frequently appears before the Illinois Commerce Commission (Commission) to advocate for clean, affordable energy and smart grid investments, such as grid-enhancing technologies. ELPC has advocated in favor of the GBX project in prior proceedings before the Commission.

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

CUB was created by the Citizens Utility Board Act, 220 ILCS 10, for the purpose of advocating on behalf of utility ratepayers in Illinois. CUB has a significant interest in

ensuring that ratepayer dollars are invested cost-effectively to the benefit of ratepayers. The potential benefits of transmission investments, including cost savings, are of concern to CUB and its members.

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

INTRODUCTION

This case presents the Court with a question of great consequence: Should a transmission line that would deliver significant environmental, public health, and economic benefits to the people of Illinois be permitted to proceed? This question arises at a critical moment when Illinois is on a statutorily-mandated path to using 100% clean energy by 2050, and more high-capacity transmission like the GBX project is necessary to help meet this mandate. Illinois is too reliant on costly, dirty fossil fuels that pollute the air people breathe and drive climate change. Utilities across Illinois are also projecting significant increases in electricity demand, driven by the development of new data centers. Yet, long backlogs at the two transmission operators serving the State are delaying connection of much-needed new energy sources to the grid. Increased demand, coupled with limited supply, will continue to drive up electricity prices for ratepayers. Without more transmission, Illinois will struggle to transition to clean energy in time, endangering the well-being of its residents and emptying their pocketbooks.

Moving away from fossil fuels and using more clean energy sources, like wind and solar, is an obvious, effective, and urgently needed response. The Illinois legislature has recognized that clean energy sources are more affordable and reliable, and can add much-needed power while reducing air pollution that drives climate change and harms

Illinois communities' health. Building transmission infrastructure to connect new clean energy sources to the grid is an essential step toward increasing the use of clean energy.

The Grain Belt Express (GBX) project offers a promising renewable energy transmission solution for Illinois and the surrounding region. GBX proposes to construct a large transmission line that will connect multiple renewable energy sources to the grid, boosting power capacity and affordability while facilitating the mandated phaseout of Illinois fossil fuel plants starting in 2030. And unlike other potential solutions on the horizon, GBX already has an agreement to connect to Illinois, meaning it won't get caught up in the long interconnection backlog slowing down other new resources. If this project does not go forward, Illinois residents will instead be stuck with aging transmission infrastructure, continued reliance on polluting fossil fuels, and higher energy bills that strain households across the State.

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

ARGUMENT

Illinois urgently needs access to more clean energy and to reduce its reliance on fossil fuels to protect public health, bolster its electrical grid, and ensure more affordable energy for its residents. Without the necessary transmission infrastructure, Illinois will fall short of its mandate to phase out certain fossil fuel plants by 2030 and ultimately use 100% clean energy by 2050. And without the expansion of clean energy enabled by the GBX line, Illinois citizens will face higher energy costs, public health harms, and a less reliable grid. In short, without the GBX line, the State will struggle significantly in its pursuit of a cleaner, more affordable, more sustainable future.

This Court should also exercise its supervisory authority to make it clear that, when reviewing Commission orders, appellate courts should not usurp the Commission’s factfinding role but instead must consider the expert agency’s findings of fact with appropriate deference. The appellate court’s disregard for the Public Utilities Act’s deferential standard will have far-ranging consequences for future investment in Illinois if its decision is not reversed.

I. The GBX line is essential to achieving state clean energy targets, a cleaner environment, and better public health

A. To meet its ambitious clean energy targets, Illinois needs the GBX line

The appellate court’s overt skepticism of “clean energy” directly conflicts with the State’s clear legislative mandate to urgently expand clean energy. In passing Public Act 102-0662, or the Climate and Equitable Jobs Act (CEJA), the Illinois legislature committed the State to phasing out fossil fuels starting in 2030 and achieving a 100% clean energy economy by 2050. 415 ILCS 5/9.15(g)-(k); *id.* at 9.15(f) (defining “electric generating unit” or “EGU”); *see also* 20 ILCS 3855/1-5(1.5) (declaring state policy of

transitioning to 100% clean energy by 2050). Specifically, CEJA requires that all private coal-fired and oil-fired electric plants eliminate carbon emissions by 2030, all municipal coal plants reduce emissions by 45% by 2035 and by 100% by 2045, and all combined heat and power plants eliminate carbon emissions by 2045. 415 ILCS 5/9.15(g)-(h), (k). It also requires that natural gas plants eliminate emissions by 2030-2045, with compliance dates determined by proximity to environmental justice communities, emissions rates, and whether the plant is privately owned. *Id.* at 9.15(i)-(j).

Achieving these clean energy goals is impossible without additional transmission, because renewable resources like wind and solar are often situated far from population centers. Currently, there is insufficient transmission infrastructure to transport energy from areas with renewable sources, like Kansas, to high-demand areas in Illinois. *See Grain Belt Express LLC*, Ill. Comm. Comm’n No. 22-0449, at 26 (Order-Final Mar. 8, 2023) (“ICC Order”). Consequently, the Illinois legislature recognized the need for more transmission in CEJA, which directed the Commission to “develop a plan to achieve transmission capacity necessary to deliver the electric output from renewable energy technologies . . . to customers in Illinois and other states in a manner that is most beneficial and cost-effective to customers.” 220 ILCS 5/8-512(b)(2). Pursuant to that directive, the Commission developed the Renewable Energy Access Plan, which outlines steps to meet CEJA’s requirements, including developing new transmission. Ill. Commerce Comm’n, *Illinois Renewable Energy Access Plan* 23-24 (May 30, 2024), <https://tinyurl.com/mup8j4k6>.

The GBX line would provide essential new transmission infrastructure needed to connect the State and regional electric grids to numerous renewable energy sources,

facilitating retirement of fossil fuel plants in compliance with CEJA's clean energy targets. *See* ICC Order at 22, 30; PA Consulting Grp., *Analysis Summary: Impact of Grain Belt Express on Midwest Energy Consumer Costs and Emissions* 4-5, <https://tinyurl.com/2xb868p3> (last visited Apr. 14, 2025). The line will span nearly 800 miles across Kansas, Missouri, Illinois, and Indiana, and is designed to transport up to 5,000 megawatts of renewable energy, ICC Order at 4-5, enough to power homes and up to 50 data centers. Grain Belt Express Home Page, <https://tinyurl.com/4pxjx44y> (last visited Apr. 14, 2025). The project will add at least 2,500 megawatts of new renewable energy capacity to the Illinois electricity markets. ICC Order at 29. If the appellate decision stands and this line is not built, Illinois loses a key solution to meeting CEJA's ambitious goals.

B. GBX's delivery of clean power will combat the devastating consequences of climate change

The transition from fossil fuels to clean energy is critical to mitigating the worst impacts of climate change. Greenhouse gas emissions drive climate change, and the power sector is responsible for a significant portion of domestic greenhouse gas emissions due to its use of fossil fuels like coal, natural gas, and oil. *See* U.S. Env't Prot. Agency, *Sources of Greenhouse Gas Emissions* (Mar. 31, 2025), <https://tinyurl.com/29s7sy3j> (U.S. power sector accounted for approximately 25% of domestic carbon dioxide (CO₂) emissions in 2022). Illinois power plants emitted over 41 million tons of CO₂ in 2023, fifth highest among twelve Midwest states. *See* U.S. Env't Prot. Agency, *Clean Air Markets Program Data*, <https://tinyurl.com/2cs8hv34> (last visited Apr. 14, 2025) (using data query for annual state emissions in 2023).

Extreme weather events, such as more frequent and intense storms, are a direct consequence of climate change and pose significant threats to human life and power reliability by damaging infrastructure and disrupting electricity supply.¹ See Aaron B. Wilson et al., *Fifth National Climate Assessment*, at 24–17, 23–24 (A.R. Crimmins et al. eds., 2023), <https://tinyurl.com/ymx4z3pz>. Illinois and the Midwest are no exception—storms like Winter Storm Elliott have already caused rolling blackouts in the region, see Meghan Hassett, *A Tale of Two Capacity Auctions—and Still Too Much Coal*, NRDC (July 10, 2023), <https://tinyurl.com/yc24me26>, and more powerful storms are projected, see Donald Wuebbles et al., The Nature Conservancy, *An Assessment of the Impacts of Climate Change in Illinois* 4, 48 (2021), <https://tinyurl.com/mrxbxj7v>. Increased drought and flooding also threaten agriculture in the Midwest and have already caused corn yields to significantly decline in some locations. See Wilson et al., *supra*, at 24–7. Agriculture is crucial for Illinois’s economy and will be especially vulnerable to climate change impacts, with the State likely facing billions of dollars in yield losses by the end of the century. See Wuebbles et al., *supra*, at 4–5, 9, 83–84, 99.

Continued reliance on fossil fuels exacerbates this vicious cycle by contributing to emissions that drive climate change and intensify extreme weather patterns. See

¹ For recent examples of the serious impacts of extreme weather on electric grids and human life, see Juliet Macur et al., *‘Here We Go Again’: Kentucky Residents Face More Destruction and Anxiety From Storms*, N.Y. Times (Feb. 16, 2025), <https://tinyurl.com/yc6md7h4>; Sean Wolfe, *Days later, scope of Helene damage becomes more clear*, Factor This: Power Grid (Oct. 2, 2024), <https://tinyurl.com/yc2jwrwa>; Yan Zhuang & Christine Hauser, *String of Storms Batters Chicago and Leaves Damage Across Midwest*, N.Y. Times (July 15, 2024), <https://tinyurl.com/2fj4zp8s>; Jaclyn Diaz, *Texas officials put the final death toll from last year’s winter storm at 246*, NPR (Jan. 3, 2022), <https://tinyurl.com/28bvypxj>; Max Blau et al., *Entergy Resisted Upgrading New Orleans’ Power Grid. Residents Paid The Price*, NPR (Sept. 22, 2021), <https://tinyurl.com/mrymh5mn>.

Wuebbles et al., *supra*, at 10. To make matters worse, fossil fuels often fail to provide reliable power during such weather. *See* Hassett, *supra* (noting that “40 percent of MISO grid’s coal fleet” was “offline during [Winter Storm] Elliott”). More clean energy, on the other hand, is essential to reducing these emissions and the climate-related harms they cause. *See id.* This is exactly why the legislature has made clear that the “health, welfare, and prosperity of Illinois residents require that Illinois take all steps possible to combat climate change.” 50 ILCS 65/15-5(1).

Expanding transmission can significantly reduce power sector emissions to meet carbon reduction goals by integrating more renewable resources, facilitating the replacement of fossil fuel plants. *See, e.g.,* Patrick R. Brown & Audun Botterud, *The Value of Inter-Regional Coordination and Transmission in Decarbonizing the US Electricity System*, 5 Joule 115, 115, 130 (2020), <https://tinyurl.com/5n7456e6>. To achieve emissions reduction goals, the transmission system needs to expand rapidly. A Princeton University model to achieve a carbon neutral economy by 2050 found that transmission must at least double and perhaps even quintuple in size from 2021 levels. Eric Larson et al., *Net-Zero America: Potential Pathways, Infrastructure, and Impacts* 17, 27-29 (2021), <https://tinyurl.com/3jrypx2u>.

If built, the GBX project would reduce the State’s and region’s reliance on fossil fuels by connecting more clean energy resources to the grid, contributing to the reduction of greenhouse gas emissions. ICC Order at 30; PA Consulting Grp., *supra*, at 4-5. Specifically, GBX projects that the line will facilitate a 7.4% reduction of CO₂ emissions and 28 million tons of overall emissions reductions in Illinois through 2066. ICC Order at 30-31. For context, GBX’s projected CO₂ emissions reductions from 2027-2041 are

approximately equal to removing about 5.5 million gasoline cars from Illinois roads for a year. *Id.* at 30. By facilitating the retirement of fossil fuel plants—including plants required to retire in Illinois under CEJA—the GBX project will thus help mitigate climate harms. Conversely, the absence of the GBX line would significantly slow efforts in Illinois to reduce greenhouse gas emissions that drive climate change.

C. Renewable energy delivered by GBX will reduce health risks associated with fossil fuel power

Renewable energy also offers major health benefits to Illinois residents. By reducing reliance on fossil fuels, increased use of clean energy decreases harmful air pollution, which in turn significantly improves public health in our communities. *See* Nicholas A. Mailloux et al., *Nationwide and Regional PM_{2.5}-Related Air Quality Health Benefits From the Removal of Energy-Related Emissions in the United States* 6 GeoHealth 1, 2 (2022), <https://tinyurl.com/595x4brr>. Research has demonstrated that decreasing power sector pollution improves air quality and reduces related illnesses, such as respiratory and cardiovascular disease. *See id.*

More renewable energy can especially improve public health outcomes for environmental justice communities near fossil fuel plants. Coal- and gas-fired power plants generate pollution that causes asthma, heart disease, and even premature death, disproportionately impacting nearby residents.² CEJA mandates that Illinois fossil fuel plants eliminate emissions or retire, and prioritizes high-emitting plants within three miles of environmental justice communities, which must phase out by 2030. 415 ILCS

² Press Release, U.S. Env't Prot. Agency, Biden-Harris Administration Finalizes Suite of Standards to Reduce Pollution from Fossil Fuel-Fired Power Plants (Apr. 25, 2024), <https://tinyurl.com/yc7sf68z>; U.S. Env't Prot. Agency, *National Ambient Air Quality Standards (NAAQS) for PM – Rule Summary* (Mar. 20, 2025), <https://tinyurl.com/4y6shtcc>.

5/9.15(g)-(j); Ill. Commerce Comm’n, *Illinois Renewable Energy Access Plan*, *supra*, at 25. A shift to renewable energy sources would help to reduce demand for fossil fuels and facilitate the retirement of these plants in accordance with state law, thus improving air quality for these communities.

By increasing transmission connected to renewable sources like wind and solar through projects like the GBX line, Illinois can significantly reduce local air pollution and improve air quality for Illinoisans, including in environmental justice communities. Failing to build the GBX line will delay the significant public health and environmental justice benefits of cleaner power in Illinois.

II. The GBX line will deliver energy cost savings to consumers and bolster the electrical grid

A. GBX’s proposed renewable energy transmission will provide badly needed affordable power at a time of increasing bills for Illinois consumers

Illinois consumers are currently facing sharp increases in their electricity bills. In the Commonwealth Edison (ComEd) service territory covering northern Illinois, average monthly bills will increase by about \$10.50 from 2024 to 2025. Brett Chase & Dan Gearino, *ComEd Electric Bills to Go Up More Than \$10 a Month. Here’s Why*, Chi. Sun Times (Nov. 22, 2024), <https://tinyurl.com/426a67by>. One major cause of these higher prices is a shortage of new energy sources connecting to the grid. At the same time, significant increases in electricity demand are projected, due in large part to the development of new data centers. *See Chase, supra*; Ill. Commerce Comm’n, *Resource Adequacy Policy Session, Part 2 - Afternoon Session 7:10-17, 13:6-15* (Feb. 20, 2025), <https://tinyurl.com/3hux63xh> (ComEd representative flagging substantial demand from new data centers and the need for more transmission to meet load growth).

Current limited availability of low-cost renewable energy also contributes to higher energy costs. Clean energy sources, especially wind and solar, have emerged as the most cost-effective forms of power generation, including in Illinois.³ As a result, these clean energy technologies are becoming increasingly attractive due to their declining costs and price stability as compared to fossil fuels. *See* J.C. Kibbey, *Why Illinois Has a Power Supply Crunch, and How to Fix It*, NRDC (May 3, 2022), <https://tinyurl.com/yc299jbc>. Despite these advantages, limited integration of clean energy results in higher electricity costs for consumers by requiring reliance on more expensive fossil fuel generation or local resources. *See id.*

A shortage of new, affordable power sources, combined with rising electricity demand, has caused the cost of ensuring enough power supply to “surge[] over nine-fold” in some parts of Illinois. Sonal Patel, *PJM Capacity Auction Prices Surge Over Nine-Fold, Signal Urgent Need for New Power Generation*, Power Mag. (July 31, 2024), <https://tinyurl.com/jchyvsat>. In PJM Interconnection, LLC (PJM), one of the transmission operators serving Illinois, high demand and delays in the interconnection of new generation have led to massive increases in power costs, translating to higher bills for consumers. Chase, *supra*.

While higher prices would ordinarily spur investment in new resources, the reality is that backlogs in processing applications for new power to connect to the grid have slowed development nearly to a halt—on average, it takes more than five years for new

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

generators to complete the interconnection process. Claire Lang-Ree & Tom Rutigliano, *PJM Makes the Case for a Reliable, Carbon-Free Future*, NRDC (July 26, 2024), <https://tinyurl.com/4hry422z>. Thousands of megawatts of new power generation are mired in long interconnection queues at PJM and the Midwest Independent System Operator (MISO), the other transmission operator in Illinois. Nara Schoenberg, *Wind and Solar in Limbo: Long Waitlists to Get on the Grid are a “Leading Barrier,”* Chi. Trib. (Apr. 21, 2024), <https://tinyurl.com/2n3zwzyu>; *Tackling High Costs and Long Delays for Clean Energy Interconnection*, U.S. Dep’t of Energy (May 11, 2023), <https://tinyurl.com/4by327k5>. Developers may also face further delays from state and local permitting processes or supply-chain problems.

In this context, the GBX line offers a rare opportunity to provide a significant injection of new generating resources into Illinois, easing strain on the grid and protecting consumers from cost increases. In fact, according to a 2022 analysis conducted by PA Consulting, Inc., GBX could yield *\$6.6 billion* in energy and capacity savings for Illinois consumers. GBX Ex. 8.2 at 13. That figure has likely grown since PA Consulting conducted its analysis, given the sharp increases in capacity costs over the past year. Patel, *supra*. GBX can provide those savings because it will connect the Illinois grid to new low-cost renewable resources—resources that Illinois consumers will otherwise not be able to access. GBX Ex. 8.2 at 11 (“The Expanded GBX Case is projected to lower wholesale energy pricing for Illinois customers . . . [because] low-cost, high-capacity factor renewable generation is projected to put downward pressure on power pricing within the MISO and PJM wholesale power markets . . .”).

The GBX line promises to be a key part of a broader solution to consumer price hikes and potential power shortages facing Illinois. The Fifth District’s ruling prevents the project from moving forward and impedes integration of future resources. The ultimate result will be higher costs for Illinois ratepayers at a time when bills are already increasing.

B. More transmission of clean energy by GBX will boost grid resilience against vulnerabilities

Illinois’s limited transmission infrastructure threatens to jeopardize the reliability and resilience of its electrical grid, especially taking into account the State’s clean energy goals. Limited transmission capacity restricts the flow of energy from renewable energy sources to high-demand areas, contributing to higher congestion and lower grid reliability, as noted by the U.S. Department of Energy. U.S. Dep’t of Energy, *National Transmission Needs Study* vi-vii, ix, 9, 52-53 (Oct. 2023), <https://tinyurl.com/ynaadyka>. Limited transmission thus makes the State’s grid more vulnerable to extreme weather events and operational stresses. Across the country, the power grid’s inability to transfer electricity across regions during periods of high demand or weather disruptions, such as winter storms, has led to prolonged power outages, often with devastating consequences. *See supra* pp. 8-9.

Interregional transmission⁴ lines bolster grid resilience and reliability, decreasing the risk of prolonged power outages and economic disruptions for businesses. *See* U.S. Dep’t of Energy, *National Transmission Needs Study*, *supra*, at vi-xi, 32, 53. In particular, high-voltage direct current (HVDC) lines like GBX are more efficient and controllable,

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

and therefore more reliable, than other types of transmission lines. Natalie McIntire, *MISO's Clean Energy Dreams Hinge on a State-of-the-Art Grid*, Sustainable FERC Project (Aug. 2, 2023), <https://tinyurl.com/48am9aux>; Dep't of Energy, *National Transmission Needs Study*, *supra*, at 63.

By routing clean energy from rural Kansas to densely populated areas in Illinois and beyond, GBX will enable access to up to 5,000 megawatts of new capacity. ICC Order at 4-5. The line's ability to move renewable energy across multiple regions makes it vital to reducing bottlenecks in existing grid infrastructure, improving energy security and reliability. *See* ICC Order at 36; McIntire, *supra*; Andre Pereira, *Connecting the Country with HVDC*, U.S. Dep't of Energy (Sept. 27, 2023), <https://tinyurl.com/y4eubtey>. This ability to share renewable energy between Illinois and neighboring states also supports grid reliability during fluctuations in renewable energy generation. McIntire, *supra*; Alexander MacDonald et al., *Future Cost-Competitive Electricity Systems and Their Impact on U.S. CO₂ Emissions* 1-2, 4 (Nature Climate Change 2016), <https://tinyurl.com/dar4j95r>. For example, if the wind is not blowing or the sun is not shining in Illinois, but wind and solar farms are producing energy in Kansas, the GBX line will transport this clean energy from Kansas producers to Illinois consumers, reducing reliance on fossil fuel generation in Illinois. *See* ICC Order at 29. By ensuring that clean energy can flow to where it is most needed, expanded HVDC transmission networks like the GBX line can bolster grid reliability.

III. The Fifth District's decision disregards the standard of review for the Commission's factual conclusions

This Court should also reverse the Fifth District's decision to ensure that appellate courts give the appropriate level of deference to the Commission's conclusions of fact.

The Public Utilities Act requires courts to pay great deference to the Commission's factual findings in evidentiary hearings. 220 ILCS 5/10-201(d)-(e). While the Fifth District recites the correct standard of review, its legal analysis does not adhere to that deferential standard. Instead, the appellate court reaches its own conclusions about the evidence, including the credibility of witnesses on which the Commission relied. By substituting its judgment on those matters for that of the Commission, the appellate court's decision, if upheld, would undermine the stability and consistency of public utilities regulation in Illinois.

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

Section 10-201(e)(iv) establishes the standard of review on appeal, stating that a court may only reverse a Commission order if the court concludes that "[t]he findings of the Commission are not supported by substantial evidence based on the entire record of evidence presented to or before the Commission." 220 ILCS 5/10-201(e). This Court has interpreted the "substantial evidence" standard to mean that "a reviewing court is limited to determining whether the findings of the Commission are against the manifest weight of the evidence." *State ex rel. Pusateri v. Peoples Gas Light & Coke Co.*, 2014 IL 116844, ¶ 13 (quoting *United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 12 (1994)). This Court has found (and the Fifth District recognized) that "[a] finding is

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

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

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

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

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

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

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

ICC Order at 49.

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

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

GBX Ex. 4.0 at 5 (Shine direct testimony).

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

Yet, the Fifth District’s opinion dismisses Commission Staff and GBX testimony regarding the project finance plan as “highly speculative.” Fifth District Opinion ¶ 30. The court does not identify any record evidence indicating that this industry-standard practice is highly speculative—it appears to be the court’s own extra-record conclusion.

Similarly, with respect to Invenenergy’s overall financial health, the court below dismisses the testimony on which the Commission relied by stating that “GBX asked the Commission to simply take its word.” *Id.* ¶ 32. Again, the court below does not identify record evidence that contradicts GBX’s testimony. Indeed, the court identifies no record evidence that is at odds with the Commission’s ruling or undermines the witnesses’ credibility. Instead, the court relies on its own independent skepticism of testimony that otherwise supports the Commission’s ruling.

This is simply not the deferential approach that the legislature established in section 10-201(d). Applying the “substantial evidence” standard to the facts here, the court below had no basis to overturn the Commission’s conclusion that GBX “is capable of financing the construction” of the project, ICC Order at 49. GBX offered testimony explaining the project finance approach and detailing why GBX and Invenenergy could obtain sufficient funding through that approach. Staff testimony supported GBX’s testimony, and no party provided evidence that undermined GBX’s testimony. Based on that record, there is no basis for maintaining that the Commission’s finding is “unreasonable, arbitrary, or not based on the evidence presented.” *Best*, 223 Ill. 2d at 350.

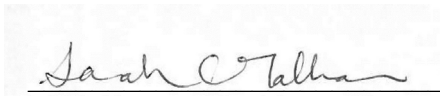
The appellate court’s ruling threatens the consistency of public utilities regulation in Illinois. The standard of review that the legislature established ensures that a single, expert body—the Commission—decides complex technical issues relating to public utilities in Illinois. By empowering one entity with that authority, the legislature created consistency across the State and afforded regulated utilities some predictability in future decisions. In contrast, a system in which appellate courts may supply their own analysis of complex factual records can lead to inconsistent approaches across judicial districts. It

also means that utilities cannot safely rely on the Commission's approach to technical questions in past cases; instead, they will need to try to anticipate how courts may view the evidence on appeal. Such uncertainty increases the risks associated with investing in Illinois. Accordingly, this Court should reverse and clarify the level of deference owed to the Commission's conclusions of fact.

CONCLUSION

For these reasons, Amici request that this Court reverse the appellate court's decision.

Respectfully submitted,



Sarah C. Tallman (#6310294)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
312-651-7918
stallman@nrdc.org

*Attorney for Natural Resources
Defense Council*

Nick Wallace (#6347713)
Environmental Law and Policy Center
35 East Wacker Drive, Suite 1600
Chicago, Illinois 60601
312-795-3736
nwallace@elpc.org

*Attorney for Environmental Law
and Policy Center*

Justin Vickers (#6305129)
Sierra Club
70 E Lake Street, Suite 1500
Chicago, IL 60601
224-420-0614
justin.vickers@sierraclub.org

Attorney for Sierra Club

Eric DeBellis (#6323795)
Citizens Utility Board
309 W Washington Street, Suite 800
Chicago, IL 60606
312-263-4282
edebellis@citizensutilityboard.org

Attorney for Citizens Utility Board

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.



Sarah C. Tallman (#6310294)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
312-651-7918
stallman@nrdc.org

CERTIFICATE OF FILING AND SERVICE

I certify that on April 16, 2025, I electronically filed the foregoing proposed Brief *Amici Curiae* of the Natural Resources Defense Council, Environmental Law and Policy Center, Sierra Club, and Citizens Utility Board in Support of Respondents-Appellants, with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that on April 16, 2025, an electronic copy of the foregoing brief was served to counsel of record via email.

David Streicker
Benjamin Jacobi
Sean Pluta
Polsinelli PC
150 North Riverside Plaza
Suite 3000
Chicago, IL 60606
312-873-2941 (David Streicker)
dstreicker@Polsinelli.com
bjacobi@Polsinelli.com
spluta@Polsinelli.com

Brian J. Dodds, #6353824
Robert W. Funk, #6237110
Thomas R. Stanton, #6238159
Special Assistant Attorneys General
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Tel. (312) 793-2877
Brian.J.Dodds@Illinois.gov
Robert.Funk@illinois.gov
Thomas.Stanton@Illinois.gov

Brian R. Kalb, #6275228
Joseph R. Harvath, #6318097
Byron Carlson Petri & Kalb, LLC
411 St. Louis Street

Thomas L. Kilbride
Adam R. Vaught
Croke Fairchild Duarte & Beres
191 N. Wacker Dr. 31st Floor
Chicago, IL 60606
217-720-1961
tkilbride@crokefairchild.com
avaught@crokefairchild.com

Charles Y. Davis, #6286010
Steven C. Ward, #6184686
Brown, Hay & Stephens, LLP
205 South Fifth Street, Suite 1000
P.O. Box 2459
Springfield, IL. 62705
217-544-8491
cdavis@bhslaw.com
sward@bhslaw.com

Laura A. Harmon #6210985
Associate Counsel
Illinois Agricultural Association
Office of the General Counsel
1701 Towanda Avenue
Bloomington, IL 61702-2901
(309) 557-2470
lharmon@ilfb.org

William F. Moran, III, # 6191183

Edwardsville, IL 62025
 Phone: 618.655.0600
 Fax: 618.655.4004
 brk@bcpklaw.com
 jrharvath@bcpklaw.com

Edward D. McNamara, Jr. #1862979
 Joseph H. O'Brien #2081105
 McNamara & Evans
 P.O. Box 5039
 931 South Fourth Street
 Springfield, IL 62705
 mcnamara.evans@gmail.com

Kara J. Wade #6290986
 Taylor Law Offices, P.C.
 122 E. Washington Ave.
 Effingham, IL 62401
 Tel. (217) 342-3925
 wade@taylorlaw.net

Tim Ryan
 Jeff Naville
 1 N. Old State Capitol Plaza,
 Suite 525
 Springfield, IL 62701
 tryan@midwestlaborers.org

Christopher J. Townsend
 CJT Energy Law, LLC
 444 N. Michigan Ave., Suite 1200
 Chicago, IL 60611
 chris@cktenergylaw.com

Irina Y. Dmitrieva
 HeplerBroom LLC
 70 W. Madison Street, Suite 2600
 Chicago, IL 60602
 Irina.dmitrieva@heplerbroom.com

Robert Alexander Messina
 HeplerBroom LLC
 4340 Acer Grove Drive
 Springfield, IL 62711
 alec.messina@heplerbroom.com

Stratton, Moran, Reichert,
 Sronce & Appleton
 725 South 4th Street
 Springfield, IL 62705
 bmoran@stratton-law.com

Paul G. Neilan
 Law Offices of Paul G. Neilan, P.C.
 2515 Waukegan Road, MCPIIL 1289
 Bannockburn, IL 60015
 312 580 5483 M
 847 266 0464 T
 312 674 7350 F
 pgneilan@energy.law.pro

Christopher M. R. Turner
 Assistant Attorney General
 115 South LaSalle Street
 Chicago, Illinois 60603
 (312) 814-2106 (office)
 (773) 590-7121 (cell)
 CivilAppeals@ilag.gov (primary)
 Christopher.Turner@ilag.gov (secondary)

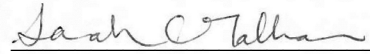
Jonathan D. Morton
 Joseph S. Trytten
 Golan Christie Taglia LLP
 70 W. Madison St., Suite 1500
 Chicago, IL 60602
 jdmorton@gct.law
 jstrytten@gct.law

Neil F. Flynn
 Daniel M. Flynn
 Neil F. Flynn & Associates
 600 S. Second St., Suite 102
 Springfield, IL 62704
 nfflynn@neilflynnlaw.com
 dfflynn@neilflynnlaw.com

James Roland Griffin
 Schain, Banks, Kenny & Schwartz, Ltd.
 jgriffin@schainbanks.com

Margaret Ann Angelucci
Catherine Humphrey
Asher, Gittler & D'Alba, Ltd.
maa@ulaw.com
ckh@ulaw.com

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.



Sarah C. Tallman (#6310294)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
312-651-7918
stallman@nrdc.org

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CYNTHIA A. GRANT
SUPREME COURT CLERK