

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)

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

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

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)

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3312

Attorneys for Respondent-Appellant
Illinois Commerce Commission

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PROPERTY OWNERS; ILLINOIS	)	of Illinois, Fifth Judicial District,
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

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

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NATURE OF THE ACTION

The General Assembly enacted the Climate and Equitable Jobs Act (“CEJA”), P.A. 102-0662 (eff. Sept. 15, 2021), to transition Illinois to 100% clean energy. As part of this effort, CEJA added subsection 8-406(b-5) to the Public Utilities Act (“Act”), 220 ILCS 5/8-406(b-5) (2022), to expand the type of entities eligible to seek a certificate of public convenience and necessity (“Certificate”) from the Illinois Commerce Commission to transact electricity business in the State by constructing a high-voltage transmission line through a list of enumerated counties to bring renewable energy into Illinois’s regional grids. After conducting an evidentiary hearing, the Commission determined that Respondent-Appellant Grain Belt Express LLC (“GBX”) satisfied the conditions of subsection 8-406(b-5) to construct such a transmission line that would bring electricity from wind and solar farms in Kansas to Illinois ratepayers (“Project”). On direct administrative review, the appellate court reversed the Commission’s decision, holding that substantial evidence did not support the Commission’s finding that GBX was capable of financing the construction of the Project without significant adverse financial consequences for itself or its customers as required by subsections 8-406(b-5) and 220 ILCS 5/8-406.1(f)(3) (2022). The Commission and GBX appealed to this Court.

ISSUES PRESENTED FOR REVIEW

1. Whether this Court should affirm the Commission's finding that GBX was capable of financing the construction of the Project without significant adverse financial consequences for itself or its customers because:

(a) the Commission properly construed subsections 8-406(b-5) and 8-406.1(f)(3) of the Act to not require a qualifying applicant show that it already has financing or related legal commitments in place; and

(b) the Commission's finding was supported by substantial evidence.

2. If the Commission's finding with respect to the capable-of-financing requirement is affirmed, whether:

(a) subsection 8-406(b-5) does not violate the Special Legislation, Equal Protection, or Separation of Powers Clauses of the Illinois Constitution; and

(b) the Petitioners-Appellees' alternate, statutory challenges on administrative review to the Commission's decision to grant the Certificate to GBX fail for reasons set forth in GBX's opening brief.

JURISDICTION

The Commission issued its final administrative order on March 8, 2023. C5838-972_V20.¹ On April 7, 2023, Petitioners-Appellees Illinois Agricultural Association d/b/a Illinois Farm Bureau, Concerned People Alliance, Concerned Citizens & Property Owners, and York Township Irrigators (collectively, “Landowners Alliance”) and Petitioner-Appellee Nafsica Zotos (collectively with Landowners Alliance, “petitioners”) timely filed an application for rehearing, C6012_V20; 220 ILCS 5/10-113 (2022), that the Commission denied on April 20, 2023, C6088_V20. On April 20 and 21, 2023, petitioners timely filed notices of appeal with the Commission and petitions for direct administrative review with the appellate court. C6092_V20; C6104_V20; C6112_V20; C6127_V20; C6135_V20; 220 ILCS 5/10-201(a) (2022). The appellate court had jurisdiction over this action under 220 ILCS 5/10-201 (2022) and Ill. Sup. Ct. R. 335.

On August 8, 2024, the appellate court issued an Ill. Sup. Ct. R. 23 order reversing the Commission’s decision. *Concerned Citizens & Prop. Owners v. Ill. Com. Comm’n*, 2024 IL App (5th) 230271-U, ¶¶ 1-2, 42 (“*Concerned Citizens II*”). On November 27, 2024, this Court allowed the Commission’s and GBX’s petitions for leave to appeal and consolidated the appeals. This Court has jurisdiction over these appeals under Ill. Sup. Ct. R. 315.

¹ This brief cites the 20-volume common law record as “C_V_,” the 18 volumes of exhibits as “E_V_,” the report of proceedings as “R_,” the volume of sealed documents as “RS_,” and GBX’s opening brief as “GBX AT Br. _.”

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The texts of 220 ILCS 5/8-406 and 220 ILCS 5/8-406.1 (2022) are in the Commission's separate appendix at A176-84.² The texts of the provisions of the Illinois Constitution, art. I, § 2 (equal protection), art. II., § 1 (separation of powers), and art. IV, § 13 (special legislation) are in the separate appendix at A185.

² Although sections 8-406 and 8-406.1 were amended since the Commission's final order, those amendments are irrelevant to the issues on appeal. *See* P.A. 103-1066, § 65 (eff. Feb. 20, 2025); P.A. 103-0569, § 15 (eff. June 1, 2024).

STATEMENT OF FACTS

The Act

The Act “was enacted to assure the provision of efficient and adequate utility service to the public at a reasonable cost.” *Zahn v. N. American Power & Gas, LLC*, 2016 IL 120526, ¶ 17. To this end, section 8-406 of the Act requires that a public utility obtain a Certificate from the Commission to construct any new plant, equipment, or other facilities to provide electricity and other commodities regulated under the Act within Illinois. *City of Elgin v. Ill. Com. Comm’n*, 2016 IL App (2d) 150047, ¶ 3; 220 ILCS 5/8-406(b) (2022). In 2010, the legislature added section 8-406.1 to the Act to provide an expedited procedure for utilities to apply to the Commission for a Certificate to construct new high-voltage transmission lines and related facilities. *Elgin*, 2016 IL App (2d) 150047, ¶ 3; 220 ILCS 5/8-406.1 (2022). Both sections 8-406 and 8-406.1 require such applicants to show, among other criteria, that (1) the proposed construction is necessary to provide adequate, reliable and effective service to their customers and, relevant to this appeal, (2) that “the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.” 220 ILCS 5/8-406(b)(1), (3), 406.1(f)(1), (3) (2022).

In 2021, the legislature enacted CEJA, which mandates, among other goals, Illinois’s transition toward 100% clean energy by 2050 and which institutes key ratepayer protections. P.A. 102-662, § 90-50 (eff. Sept. 21,

2021); 20 ILCS 3885/1-5(1), (1.5) (2022). In enacting CEJA, the legislature declared its intent to “encourage the development of interregional high voltage direct current (HVDC) transmission lines that benefit Illinois” because ratepayers “benefit from the long-term price stability and market access provided by interregional HVDC transmission facilities,” among other benefits. 20 ILCS 3855/1-5(10.5), (10.6) (2022). Consistent with that intent, CEJA amended the Act to add subsection 8-406(b-5), which expanded the type of entity that may apply to construct an interstate HVDC transmission line to bring renewable energy into the regional grids serving the State along a specified geographic corridor. 220 ILCS 5/8-406(b-5) (2022).

The legislature enacted subsection 8-406(b-5) partially in response to this Court’s 2017 opinion that held that only public utilities could apply for Certificates to construct new transmission lines under the plain terms of section 8-406, and that an applicant could not qualify as a public utility unless it presently owned, managed, or controlled defined utility property or equipment in Illinois. *See Ill. Landowners All., NFP v. Ill. Com. Comm’n*, 2017 IL 121302, ¶¶ 36-47. Subsection 8-406(b-5) provides that a new type of applicant, a “[q]ualifying direct current applicant” (“qualifying applicant”), can seek a Certificate to construct “[q]ualifying direct current project” (described below) to “provide direct current bulk transmission service . . . for the purpose of transporting electric energy in interstate commerce.” 220 ILCS 5/8-406(b-5) (2022). A “qualifying direct current project” (“qualifying

project”), in turn, is a HVDC transmission line of a minimum voltage and capacity that runs through nine enumerated Illinois counties. *Id.*

“Notwithstanding any other provision” of the Act, the qualifying applicant may seek the Certificate regardless of whether it owns, control, operates, or manages any plant, equipment or property within Illinois for the transmission of electricity. *Id.*

Subsection 8-406(b-5) allows the applicant to pursue a Certificate through either a traditional section 8-406 proceeding or the expedited process under section 8-406.1. *Id.* The Commission conducts a hearing and then “shall grant” the application if it finds that that the applicant and project meet the requirements under subsection 8-406(b-5) and, depending on the process selected, “otherwise satisfy the criteria” of section 406 or section 406.1, “as applicable to the application and to the extent such criteria are not superseded by the provisions of [subsection 8-406(b-5)].” *Id.* Because GBX proceeded under subsection 8-406.1, only the criteria under that provision and subsection 8-406(b-5) were relevant to its application. *Id.*; see C5850-54_V20.

If the applicant and project qualify under its provisions and meets minimum capacity and voltage levels, then subsection 8-406(b-5) provides that the “project shall be deemed to satisfy” the identical criteria under subsection 8-406(b)(1) or subsection 8-406.1(f)(1) (depending on the procedure selected by the applicant) “without the taking of additional evidence on these criteria.” 220 ILCS 5/8-406(b-5) (2022). Subsections 8-406(b)(1) and 8-406.1(f)(1)

impose identical criteria that would otherwise require the applicant to prove that the proposed construction is either necessary and the “least-cost means” to provide adequate, reliable and efficient service, or the “least-cost means” to “promote the development of an effectively competitive electricity market that operates efficiently [and] is equitable to all customers.” *Id.* §§ 8-406(b)(1), 8-406.1(f)(1).

Any application must have been submitted by December 31, 2023. *Id.* § 8-406(b-5).

The Prior Commission Proceeding

In 2015, a predecessor company to GBX applied with the Commission under section 8-406.1 for a Certificate for a HDCV transmission line project in Illinois that is substantially identical to the Project at issue in this appeal. *See* E416_V3; *Grain Belt Express Clean Line LLC*, Order, No. 15-0277, 2015 WL 7348552 (Ill. Com. Comm’n Nov. 12, 2015) (“*GBX 2015 Order*”). The Commission granted a Certificate for the prior project, finding that GBX satisfied all the necessary criteria. *E.g.*, *GBX 2015 Order*, 2015 WL 7348552, *121-25, 133, 142. After an administrative review action was filed in the appellate court, this Court issued *Ill. Landowners All.*, 2017 IL 121302. Based on that decision, the appellate court reversed the Commission’s order, holding that GBX was not a “public utility” under the Act because it did not own, control, or operate any plant, equipment, or property used for electricity transmission in the State, and so could not apply under section 8-406.1.

Concerned Citizens & Prop. Owners v. Ill. Com. Comm’n, 2018 IL App (5th) 150551, ¶¶ 15-26 (“*Concerned Citizens I*”).

As explained *supra*, the legislature subsequently enacted subsection 8-406(b-5) to authorize the Commission to issue a Certificate to a qualifying applicant for the construction of a qualifying HVDC transmission line meeting its specified criteria. P.A. 102-662, § 90-50 (eff. Sept. 21, 2021). In arguing for the passage of that provision as a part of CEJA, the House sponsor recognized that this provision was added for the “[G]rain [B]elt” transmission line project that is at issue in this appeal. *See* 102nd Gen. Assem., House of Rep. Tr., Sept. 13, 2021, at 20, 62-63 (Rep. Evans).

The Commission Proceeding

In July 2022, GBX filed its application for a Certificate pursuant to sections 8-406(b-5) and 8-406.1 to construct, operate, and maintain the Illinois portion of an HVDC transmission line that would run from Kansas to Indiana and interconnect with the PJM Interconnection, LLC (“PJM”) and the Midcontinent Independent System Operator, Inc. (“MISO”) grids. C23-28_V1.³ With its application, GBX submitted testimony from 11 witnesses and other exhibits. *See* C112_V1-C2203_V9. The Commission’s Staff also

³ PJM and MISO are regional transmission organizations (“RTO”) responsible for coordinating the movement of wholesale electricity in their respective regional grids, which between them include and serve the different geographic portions of the Illinois electricity market. *See Ill. Com. Comm’n v. Fed. Regul. Energy Comm’n*, 721 F.3d 764, 769-70 (7th Cir. 2013).

participated in the proceedings and provided testimony. E3091-264_V18.

Among others, petitioners intervened in the proceeding. C5845_V20.

GBX and the Project

GBX is an Indiana subsidiary of Invenergy Transmission LLC, a company created to construct and operate high-voltage transmission lines to connect renewable resources in the United States and deliver their output to population centers like Illinois. C23-25_V1. Invenergy Transmission is a subsidiary of Invenergy Renewables LLC who, with their affiliates, are global leaders in renewable energy and transmission development. E410-11_V3.

The Project contemplates the construction, operation, and maintenance of a 5,000-megawatt capacity HVDC transmission line that would connect renewable energy resources, such as wind and solar farms, in Kansas to the MISO and PJM electricity grids, including in Illinois. E411-12_V3. The Project would be financed and constructed in two separated phases: “Phase I” involves the construction of the portion of the transmission line from Kansas to interconnection points in Missouri, and “Phase II” is the remaining portion from Missouri across Illinois to a substation in Sullivan County, Indiana, where it can interconnect with the PJM grid. E156-57_V1; E412-13_V3; E1450-51_V11. Prior to filing its application, GBX had secured the necessary regulatory approvals from state commissions in Missouri, Kansas, and Indiana, the other three states where the Project would be located, for the Project’s non-Illinois portions. E428_V3; E1368-69_V11.

The Record Evidence

The Commission held an evidentiary hearing from November 29 through December 1, 2022, where the parties submitted previously produced written testimony and presented and cross-examined witnesses, including GBX and Staff witnesses. *See* R58-827; E1_V1-E3264_V18.

To demonstrate its capability to finance the Project, GBX presented testimony that it would fund construction using the “project finance basis.” E1368_V11; R129-30. Shashank Sane, vice president of transmission for Invenergy LLC and GBX, and Rolanda Shine, Invenergy LLC’s director of finance, testified to their personal experience in financing the construction of energy projects. E410-11_V3; E1363_V11; R88-89; R255-339. Sane had participated in such financings totaling approximately \$5 billion, R150, and Shine had participated in over \$1 billion in construction financing, E1363-64_V11. Moreover, Invenergy LLC and its affiliated companies had substantial capital and experience in constructing and operating energy projects. For example, at that time, Invenergy Renewables had built the largest wind and solar farms in the United States. R151-52. Invenergy Transmission and its affiliates had developed over 4,000 miles of transmission and collection lines, 88 substations, 96 generator step-up transformers, and 5,323 pad mount transformers over the past 20 years. E1367_V11. And they also had developed over 191 large-scale clean power projects, totaling 30 gigawatts and representing \$47 billion in completed transactions. E1367,

1383-85_V11; *see* E461-63_V3. Through these projects, Invenergy Transmission has financial relationships with a number of respected financial institutions, including Wells Fargo, GE Capital, JP Morgan, Morgan Stanley, Bank of America, and Rabobank. E1367_V11.

GBX is a special purpose entity that Invenergy Transmission created to construct, own, and operate the Project with no debt, as is preferred by financial lenders. E1373-74_V11. Unlike legacy electric utilities, GBX would not finance or recover its infrastructure costs from Illinois ratepayers, but instead would recover such costs through sales, leases, and agreements with its transmission service customers. E427-28_V3. As a condition of its application, GBX proposed and agreed to the Cost Allocation Condition under which it could not seek to recover its construction costs from Illinois ratepayers through the cost allocation process of the PJM or MISO grids without Commission permission. C47_V1; C4839-40_V20; E1378-79_V11.

GBX witnesses testified, and Staff agreed, that the “project finance basis” approach is typically used in the energy infrastructure industry. E1372-73_V11; R129-30; C5088_V19. Under this approach, after completing preliminary development and regulatory permitting, GBX will enter into long-term contracts and commercial agreements with customers for transmission capacity made available through the Project. E1368_V11; E3157-58_V18; R282-84. Such customers will include developers of wind and solar generation facilities that satisfy necessary creditworthiness and other requirements.

E1368_V11. Using these contracts as security, GBX will then enter into project-specific financing arrangements with lenders and investors to construct the Project and place it in operation. E1368-71_V11; E3157-58_V18; R129-30; R275-76, 282-84.

Project finance lenders and equity investors typically require as a condition for funding that developers have (1) all the necessary permits and approvals in place, (2) have procured all financial commitments beyond the lenders' funding, and (3) a high degree of certainty on the budget and timeline. E1372-73_V11; R283-84. Thus, GBX will enter into project-specific financing arrangements with lenders once the Project reaches an advanced development and licensing stage. E1367-68_V11.

Shine testified to capital markets' substantial history of supporting transmission projects, including projects funding on a project finance basis, and to significant liquidity in the capital markets for transmission line projects that have reached an advanced stage of development. E1368-69_V11. In addition, GBX submitted evidence regarding the benefits of and market demand for the transmission service capacity that would be offered by the Project. *E.g.*, E71-75_V1; E418-47, 492-94_V3; E2451-58_V10; E2480-90_V16; E2509-15_V16. For example, in response to solicitations, 14 wind developers developing 26 wind farms totaling over 13,500 megawatts in the region around the Project's planned Kansas converter station expressed interest. E446_V3. Similarly, 14 shippers submitted requests for 20,600 megawatts of

transmission service capacity on the Project to its planned MISO and PJM delivery points. E446-47_V3.

The cost to construct the Project and place it into operation would be approximately \$4.95 billion, including about \$1.4 billion for Phase II.

E1368_V11; R276. GBX anticipated financing 65% to 80% of the project costs through debt, provided by commercial banks, including the financial institutions with whom Invenergy Transmission has established relationships, and/or the United States Department of Energy. R269-70, 274-75. The remainder will be raised from equity investors, including investments by GBX's ultimate parent, Invenergy Renewables Holding LLC, and its affiliates. R126-27, 272-73. Invenergy Renewables Holdings had sufficient capital resources to provide the funding necessary for its affiliated companies to undertake initial development and permitting for the Project, including \$60 million already spent to develop the Project. E1367_V11; R126-27, 137-38, 272-73; RS249 (sealed).

After proposing a financing condition, GBX agreed to the Revised Financing Condition recommended by Staff that would require that GBX obtain financing commitments for the entire Project before commencing construction of facilities on Illinois easements. E1401-02_V11; E3159-61_V18. Staff and its witness, Michael McNally, explained that this condition would prevent any risk of adverse financial consequences for GBX's customers if it were to construct facilities on Illinois easements but then abandon them due to

insufficient funds to complete the Project: only GBX's investors would suffer an adverse financial impact. C4674-77_V19; C5086_V19; E3158-62_V18. Staff also disputed the Landowner Alliance's reading of the Act to require that GBX have the Project "at present, fully financed." C5084-89_V19. Based on the Revised Financing Condition and GBX's testimony and other evidence on its capability to finance the Project, the Staff and its witness recommended that GBX had satisfied subsection 8-406.1(f)(3). C5086-90_V19; E3162_V18.

In response to petitioners' claims that the Project would harm their property values, GBX submitted testimony by Michael MaRous, a licensed appraiser, that his market analyses and published studies showed that residential or agricultural properties were not negatively impacted by their proximity to transmission lines. E2627-28, 2636-71_V16. He testified that other published studies finding some negative impact showed that such impact was temporary. E2684-85_V16.

The Commission's Decision

After briefing and argument, *e.g.*, C4569-710, 4751-901_V19; C5845_V20, the Commission issued a final order finding that GBX satisfied the criteria under sections 8-406(b-5) and 8-406.1 to construct the Project and issued GBX the Certificate, C5838-976_V20. In its 99-page decision, the Commission provided detailed findings on each of the statutory criteria to issue a Certificate and the parties' various challenges and concerns. *See id.*

Relevant to this appeal, the Commission determined that GBX was a qualifying applicant and the Project was a qualifying project under subsection 8-406(b-5). C5853-54_V20. The Commission noted that its findings that GBX and the Project qualified under subsection 8-406(b-5) mandated that the application satisfied the criteria under subsection 8-406.1(f)(1) “without requiring any additional evidence.” C5879_V20. But the Commission found even without that presumption that the evidence independently showed that Project was necessary to provide adequate, reliable and efficient transmission service, would promote a developing and effectively competitive electricity market, and was the least cost means of satisfying those objectives. C5879-80_V20. Among other rulings, the Commission found that “there is a need to address the lack of adequate transmission service to move electricity from the resource area in Kansas to Illinois and the MISO and PJM markets,” and that the Project would provide substantial reliability and resilience benefits. *Id.* It also found that there was sufficient demand for that service, that renewable energy from Kansas was competitive with fossil fuels, and that the Project would provide efficient transmission service and was the least cost means of doing so. *Id.*

As to subsection 8-406.1(f)(3), specifically, the Commission found that GBX was “capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.” C5884-92_V20. The Commission credited GBX and Staff testimony that the project

finance basis, which GBX intended to use, “is commonly used in the energy and infrastructure industries.” C5892_V20. It further reviewed the evidence of GBX’s capitalization, its management team’s experience in using the project finance basis to develop other projects, and Invenergy Transmission’s relationships with financial lenders and institutions and financial backing. C5884-85_V20. Based on the “ample evidence of the need for the Project and interest of renewable energy developers,” the Commission found that GBX “will be able to enter into sufficient transmission contracts to support the project financing.” C5892_V20; *see* C5868-76, 5879-80_V20 (reviewing evidence of project need). Furthermore, considering subsection 8-406.1(f)(3) “in its entirety,” the Commission found that GBX’s agreement to the Revised Financing Condition would prevent any potential adverse financial consequences for parties other than GBX’s investors, by precluding GBX from commencing construction on Illinois easements until it obtained financing commitments for the entire Project. C5892_V20.

The Commission also noted GBX’s commitment to “recover the costs of constructing and operating the Project directly through its charges to the transmission service customers that purchase transmission capacity and service on the Project.” *Id.* This commitment was memorialized in the Cost Allocation Condition under which GBX would not recover the costs of constructing and operating the Project “as a traditional public utility through [the MISO or PJM] cost allocation processes.” *Id.* The Commission held that

it had the authority to enforce that condition as part of its “continuing jurisdiction over any [Certificate] . . . if a change in facts or circumstances warrants rescission.” C5893_V20.

Moreover, in addressing the concerns raised by petitioners that their property values would decrease, the Commission credited MaRous’s testimony concerning analyses and studies showing that “transmission lines generally do not cause any impact on property prices and values,” and if impacts occur, they “are generally temporary.” C5929_V20.

Regarding petitioners’ constitutional challenges to subsection 8-406(b-5), the Commission noted that it could not address them because they were beyond the scope of the administrative proceeding. C5864_V20.

On these and other bases, the Commission approved the Certificate for GBX. C5937-41_V20.

Appellate Court Proceedings

On direct administrative review, the appellate court reversed the Commission’s order, holding that it was “against the manifest weight of the evidence” because GBX “failed to prove the required criteria that it is capable of financing the project.” *Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶¶ 1, 28, 38. The court determined that GBX had not satisfied subsection 8-406.1(f)(3) because GBX “claimed that *it expects* to be able to obtain financing for the project” under the project financing approach rather than “that it had the capability of funding the project.” *Id.* at ¶ 29 (emphasis in original). It

viewed GBX's "plans on heavily relying upon debt financing" as a "method of speculative financing," and reasoned that "GBX had no customers for the project, no commitments from any financial institution, and had not been awarded any funding or debt commitments" from the Department of Energy.

Id. The court also rejected GBX's evidence of its parent Invenergy Renewables Holdings' capitalization and funding for the Project because it had not submitted a balance sheet or similar financial documents for itself or Invenergy Renewables Holdings. *Id.* at ¶¶ 31-33.

Finally, the court found that the Revised Financing Condition demonstrated that "GBX did not adequately prove its capability to finance project" because it "recognized the speculative nature and current inability of GBX to finance the project." *Id.* at ¶¶ 35-36. Relying on the petitioners' assertion that granting a Certificate would put "a cloud on the titles to their land," the court rejected the Commission's argument that the condition merely provided additional protection for landowners from any potential adverse financial consequences. *Id.* at ¶ 37.

The court concluded that because "GBX lacked the funding at the time of the hearing," it relied on "speculation" to satisfy "the (f)(3) criteria." *Id.* at ¶ 38. Based on this, it determined that "there was not substantial evidence put forth to support the finding that GBX is capable of financing the project." *Id.* Because it held that GBX had failed to prove a necessary element to obtain

a Certificate, the court did not address petitioners' other challenges to the order. *Id.* at ¶ 39.

This Court allowed the Commission's and GBX's petitions for leave to appeal.

ARGUMENT

I. The Commission’s findings and interpretation of ambiguous provisions of the Act are reviewed deferentially.

On direct administrative review, this Court reviews the decision of the Commission, not the appellate court. *Ill. Landowners All.*, 2017 IL 121302, ¶ 29. The Commission’s decision “is entitled to great deference because it is the judgment of a tribunal appointed by law and informed by experience.” *United Cities Gas Co. v. Ill. Com. Comm’n*, 163 Ill. 2d 1, 12 (1994) (cleaned up). Because the Commission’s factual findings “shall be held *prima facie* to be true” and its decisions are “*prima facie* reasonable,” 220 ILCS 5/10-201(d) (2022), “a party challenging such a decision bears the burden of proof to show it is unreasonable,” *People ex rel. Madigan v. Ill. Com. Comm’n*, 2015 IL 116005, ¶ 22; *see Pliura Intervenors v. Ill. Com. Comm’n*, 405 Ill. App. 3d 199, 207 (4th Dist. 2010) (on appeal from Commission order, “the burden of proof on all issues raised in an appeal is on the appellant”).

This appeal addresses petitioners’ challenge to the Commission’s factual finding that GBX satisfied subsection 8-406.1(f)(3) by showing that it was capable of financing the Project without significant adverse financial consequences for it or its customers. *See Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶¶ 38-42. Under the Act, the Commission’s factual findings are considered *prima facie* true and may be reversed only if they are not supported by substantial evidence. 220 ILCS 5/10-201(d), (e)(iv)(A) (2022). “Substantial evidence” means more than a scintilla, but not a preponderance

of, evidence. *Adams Cnty. Prop. Owners & Tenant Farmers v. Ill. Com. Comm’n*, 2015 IL App (4th) 130907, ¶ 30. It is evidence that a “reasoning mind would accept as sufficient to support the challenged finding.” *Id.*

Under this standard, showing that the record would support a different finding than the Commission’s is insufficient; petitioners must establish that the opposite conclusion was clearly evident. *Id.* In addition, when reviewing the Commission’s findings, courts may not reevaluate the credibility or weight of the evidence nor substitute their judgment for that of the Commission. *Elgin*, 2016 IL App (2d) 150047, ¶ 26; *see Bd. of Educ. of City of Chi. v. Ill. Educ. Labor Rel. Bd.*, 2015 IL 118043, ¶ 14 (in reviewing agency’s factual findings, Court “will not reweigh the evidence, or substitute its judgment for that of the agency”); *Bus. & Pro. People for the Pub. Int. v. Ill. Com. Comm’n*, 146 Ill. 2d 175, 210 (1991) (“*BPI*”) (Court “will not substitute its judgment for that of the Commission where, as here, it has made an evidentiary determination supported by the record”).

To the extent that the appellate court’s decision depends on the interpretation of subsection 8-406.1(f)(3) or the Act’s other provisions, it raises a question of law that reviewed *de novo*. *Ill. Landowners All.*, 2017 IL 121302, ¶ 29. The Commission’s interpretation of an ambiguous provision of the Act, however, “is accorded deference because administrative agencies enjoy wide latitude in effectuating their statutory functions.” *Madigan*, 2015 IL 116005, ¶ 22; *BPI*, 146 Ill. 2d at 206 (“The Commission’s construction of a statutory

standard is entitled to deference”); see *Citibank, N.A. v. Ill. Dep’t of Revenue*, 2017 IL 121634, ¶ 39 (courts “given substantial weight to an interpretation of an ambiguous statute by the agency charged” with that statute’s administration or enforcement).

II. The Commission’s finding that GBX was capable of financing the Project without significant adverse financial consequences was consistent with the Act and supported by substantial evidence.

This Court should reverse the appellate court’s judgment and affirm the Commission’s finding that GBX satisfied subsection 8-406.1(f)(3) by showing that it was capable of financing the Project without significant adverse financial consequences for it or its customers. The Commission based its finding on GBX’s and Staff’s unrebutted testimony demonstrating GBX’s plan to finance the Project through a commonly used method in the industry (the project finance basis), its management’s and affiliated companies’ extensive experience financing other energy projects, its affiliates’ substantial assets and relationships with major lenders, and the substantial consumer and market need for the Project’s transmission services. The appellate court, however, improperly reweighed that evidence and substituted its judgment for that of the Commission to find that GBX failed to show that it was capable of financing the Project. To ignore GBX’s evidence, and without examining the statute’s plain language, the court effectively read subsection 8-406.1(f)(3) to require that an applicant already have the necessary financing or related legal commitments in place to obtain a Certificate.

A. The Commission’s finding that GBX was capable of financing the Project without significant adverse financial consequences was supported by substantial evidence.

Contrary to the appellate court’s holding, substantial evidence supported the Commission’s finding that GBX had satisfied subsection 8-406.1(f)(3). After reviewing the evidence and parties’ arguments in detail, the Commission found that GBX had demonstrated that it was capable of financing the Project without significant adverse financial consequences for itself or its customers. C5884-92_V20. GBX planned to use the project financing approach, which the undisputed testimony showed is commonly used in the energy and infrastructure industries. *Id.*; R130; E1368, 1372-73_V11; C5088_V19. GBX provided testimony on the \$4.95 billion cost of the Project’s construction (including \$1.4 billion for the Phase II Illinois portion) and how it would finance that cost through this method with a mix of debt and equity. *See* E1367-73_V11; R269-70, 274-76. After preliminary project development and obtaining regulatory approvals, GBX would enter into long-term sale and lease agreements for transmission capacity on the Project. E1367-68_V11; E3157-58_V18; R282-83. Using these agreements as security, it would negotiate lending agreements with commercial banks or the Department of Energy for 65% to 80% of the necessary financing, E1369-71_V11; R129-30, 275-76, 282-84, and finance the remainder through equity investors, including Invenergy Renewables Holdings and its affiliate who would continue financing the Project’s early development, E1367-68_V11; R126-27, 137-38, 272-73.

The undisputed evidence showed that GBX and its affiliated companies had substantial experience in financing and developing similar energy projects, and the financial means to develop the Project. E410-11_V3; E1363-74_V11; R149. For example, Invenergy Transmission and its affiliates had developed over 4,000 miles of transmission lines and substantial related facilities, as well as 191 large-scale clean power projects representing over \$47 billion in completed transactions. E1367, 1383-85_V11; R151-52. With those assets, Invenergy Renewables Holdings had already spent about \$60 million on the Project in initial development costs for the Project, and would continue to fund the Project until GBX obtained financing from outside lenders and investors. E1367_V11; R126-27, 270, 272-73; RS249 (sealed).

The Commission further found that the Revised Financing Condition ensured that the Project's financing would not result in any potential, significant adverse financial consequences for any parties other than GBX's investors. C5892_V20; *see* E3158-62_V8; E1401-02_V11; C4674-77_V19; 5086_V19. By precluding GBX from installing any facilities on Illinois easement properties until it had sufficient financing commitments to fund the Project's entire construction, this condition prevented any significant adverse financial impact on GBX or its customers that could result if it later failed to raise sufficient funding and abandoned any such facilities. E3158-66_V18.

B. The Commission properly construed subsection 8-406.1(f)(3) to not require that applicants have financing in place.

Without applying principles of statutory construction, however, the appellate court implicitly accepted petitioners' proposed reading of subsection 8-406.1(f)(3), C4563_V19, to require that GBX already have financing in place for the Project or prove that it could raise those funds immediately. Based on that misreading, the appellate court found that no substantial evidence supported the Commission's finding that GBX had satisfied subsection 8-406.1(f)(3). Specifically, the court reasoned that GBX's reliance on the project finance basis to obtain financing agreements in the future did "not satisfy the current financing capability criteria of section 8-406.1(f)(3)," *Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶ 30. Instead, the court concluded that that GBX "failed to meet the (f)(3) criteria" because it "lacked the funding at the time of the hearing, had no customers, contracts, government or bank commitments." *Id.* at ¶ 38. Such a reading of subsection 8-406.1(f)(3), however, disregards the plain language of that provision and subsection 8-406(b-5) and the legislature's intent.

"The most fundamental rule in statutory construction is to give effect to the legislative intent," and the most reliable indicator of that intent is the statute's plain language. *State ex rel. Raoul v. Elite Staffing, Inc.*, 2024 IL 128763, ¶ 16. In construing a statute's plain language, the court should consider the statute in its entirety, keeping in mind the legislature's overall

purpose in enacting it. *People v. Grant*, 2016 IL 119162, ¶ 20. A statute’s provisions should be considered not in a vacuum but in light of the statute as a whole, “with each provision construed in connection with every other section.” *Corbett v. Cnty. of Lake*, 2017 IL 121536, ¶ 27. And the court may not depart from the statute’s plain language by reading into it exceptions, limitations, or conditions that conflict with the legislature’s intent. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 75.

The overall goal of the Act is to assure the provision of efficient and adequate public utility services to Illinois ratepayers at a reasonable cost. *Zahn*, 2016 IL 120526, ¶ 17. To achieve this end, sections 8-406 and 8-406.1 grant the Commission broad discretion in determining whether to issue Certificates for the construction of new utility infrastructure. *See Ill. Power Co. v. Ill. Com. Comm’n*, 111 Ill. 2d 505, 511 (1986). As to high-voltage transmission lines, section 8-406.1 provides an expedited process under which the Commission “shall” grant a Certificate if the applicant satisfies the statutory criteria. 220 ILCS 5/8-406.1(f) (2022). With CEJA, the legislature amended section 8-406 to create a process for the type of interstate HVCD transmission line at issue in this matter, under which a qualifying project, like the Project here, is deemed “necessary to provide adequate, reliable, and efficient service” to Illinois customers and to “promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least-cost means of satisfying those objectives.” *Id.*

§§ 8-406(b-5), 8-406.1(f)(1); *see* 20 ILCS 3855/1-5(10.5) (2022) (finding ratepayers “benefit from the long-term price stability and market access provided by interregional HVDC transmission facilities”).

1. Subsection 8-406.1(f)(3)’s plain terms do not require that an applicant has financing in place.

Consistent with these goals and the provision’s plain language, the Commission properly interpreted subsection 8-406.1(f)(3) not to require that applicants already have financing in place. C5886-89, 5892_V20. Instead, subsection 8-406.1(f)(3) allows an applicant to demonstrate that it is capable of raising the necessary capital in the future without significant adverse financial consequences for it or its Illinois customers. *Id.*

To begin, as the Commission explained, subsection 8-406.1(f)(3)’s plain language requires the applicant to demonstrate that it “is capable of financing” a project, not that the applicant “has financed” the construction or that the applicant otherwise already has the legal commitments for such financing in place. *See id.* Where, as here, the terms are undefined in the statute, courts look to dictionary definitions to ascertain their commonly understood meaning. *People ex rel. Madigan v. Wildermuth*, 2017 IL 120763, ¶¶ 17-18. “Capable” means “[h]aving the needful capacity, power, or fitness for (some specified purpose or activity),”⁴ and “having attributes (such as

⁴ *Capable*, Oxford Eng. Dictionary.com, <https://www.oed.com/search/dictionary/?scope=Entries&q=capable> (last visited Mar. 28, 2025).

physical or mental power) required for performance or accomplishment.”⁵

Accordingly, this criterion allows an applicant to demonstrate its capacity to finance the construction through its attributes and abilities, including not only through the applicant’s currently held assets or projected revenues, but also through evidence of its prior experience in financing such projects, its planned financing method, the requirements to obtain financing in the relevant market, and consumer and market need for the project to support that financing. *See* C5892_V20.

Moreover, the Commission’s reading of “capable of financing” is consistent with the context of that term within subsection 8-406.1(f)(3). *See Wildermuth*, 2017 IL 120763, ¶ 17 (statutes must be read in their entirety). Rather than require an applicant to prove that it already has financing at the time of application, subsection 8-406.1(f)(3) requires the applicant to show that it is “capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.” 220 ILCS 5/8-406.1(f)(3) (2022). As the Commission has previously recognized, this criterion is a forward-looking analysis to determine the risk that the applicant’s financing plan would negatively impact Illinois ratepayers in the future. *See Rock Island Clean Line LLC*, Order at 150-51, No. 12-0560, 2014 WL 6871986, *156 (Ill. Com. Comm’n Nov. 25, 2014) (“*Rock Island Order*”) (“the

⁵ *Capable*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/capable?src=search-dict-box> (last visited Mar. 28, 2025).

Commission must ensure that said business model will not harm ratepayers”), *rev’d on other grounds, Ill. Landowners All.*, 2017 IL 121302, ¶ 53; *In re Ill. Power Co.*, Order at 21, No. 06-179, 2007 WL 1617828, *21 (Ill. Com. Comm’n May 16, 2007) (“*Ill. Power Order*”) (in applying identical subsection 8-406(b)(3), “the Commission is more concerned about impacts on ‘customers’ who are ratepayers than those who are not”). Thus, subsection 8-406.1(f)(3) does not require that an applicant prove that it already has financing-in-place or legal commitments for that financing.

Relying on petitioners’ reading of subsection 8-406.1(f)(3), *see* C4613_V19, 6013_V20, the appellate court ignored the statute’s plain terms, *see Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶¶ 28-40. Instead, it improperly interjected into subsection 8-406.1(f)(3) the condition that an applicant must have fully financed or otherwise obtained legal commitments to fund the construction at the time of the application. *See Sheffler*, 2011 IL 110166, ¶ 75 (courts may not depart from statute’s plain terms by reading conditions or limitations into it). If the legislature had intended such a requirement, however, it would have explicitly said so. *See Hart v. Ill. State Police*, 2023 IL 128275, ¶ 22 (refusing to read extension of disclosure requirement into statute because legislature “would have said so” if it had intended it). But neither subsection 8-406.1(f)(3), nor any other provision of section 8-406 or section 8-406.1, contains such language. *See Pliura Intervenors*, 405 Ill. App. 3d at 208 (refusing to read into section 15-401(b) of

Act “new statutory requirement” that applicant prove parent corporation had legal obligation to fund construction and operation of pipeline extension to show that applicant was “fit, willing, and able” to do so).

2. If subsection 8-406.1(f)(3) is ambiguous, this Court should defer to the Commission’s reasonable interpretation.

Even if subsection 8-406.1(f)(3) could be reasonably construed to require applicants to have financing or legal commitments in place, this Court should defer to the Commission’s reasonable interpretation of the Act, which is consistent with that statute’s text and purpose. This Court has long afforded substantial weight and deference to the Commission’s interpretation of ambiguous provisions of the Act because of its experience and expertise, and as an informed source of legislative intent. *Madigan*, 2015 IL 116005, ¶ 22; *Ill. Power Co.*, 111 Ill. 2d at 510-11.

To the extent that the phrase “is capable of financing . . . without significant adverse financial consequences” could reasonably be read otherwise, the Commission reasonably construed that broad language to not require an applicant to demonstrate that the financing or related legal commitments are already in place. C5892_V20; *see Cnty. of DuPage v. Ill. Labor Rels. Bd.*, 231 Ill. 2d 593, 604 (2008) (statutory provision capable of more than one reasonable interpretation is ambiguous); *Pembroke Env’t Just. Coal. v. Ill. Com. Comm’n*, 2023 IL App (3d) 220108, ¶ 38 (holding criterion under section 8-406.2(d)(4) identical to subsection 8-406.1(f)(3) ambiguous).

Subsection 8-406.1(f)(3) explicitly requires that an applicant show its capability to finance the construction through its attributes and abilities for purposes of a forward-looking analysis of the risks of its financing plan, rather than contain any language requiring proof of financing in place. 220 ILCS 5/8-406.1(f)(3) (2022).

The Commission’s interpretation is consistent with its past practice in which, with respect specifically to the construction of transmission lines, it has interpreted subsection 8-406.1(f)(3) to allow applicants to satisfy the criterion with evidence of plans to obtain funding in the future, as here, from lenders through the “project financing approach,” *Rock Island Order*, 2014 WL 6871986, *136-37, 155-57, or from a parent corporation, *see, e.g., In re Ameren Trans. Co. of Ill.*, Order at 131-32, No. 12-0598, 2013 WL 4508733, *115-16 (Ill. Com. Comm’n Aug. 20, 2013) (applicant satisfied subsection 8-406.1(f)(3) via plan to fund \$1 billion-plus transmission line “via intercompany loans and equity infusions” by parent). Likewise, courts have affirmed Commission determinations that applicants demonstrated their capability to finance infrastructure projects based on plans to obtain funds in the future from a parent corporation. *See Pliura Intervenors*, 405 Ill. App. 3d at 208 (rejecting argument that pipeline carrier could not rely on parent’s future intercompany loans to show it was “fit, willing, and able” to construct pipeline extension under section 15-401(b)); *N. Moraine Wastewater Reclamation Dist. v. Ill. Com. Comm’n*, 392 Ill. App. 3d 542, 548, 568-69 (2d Dist. 2009) (rejecting

argument applicant could not rely on parent's future debt and equity to satisfy section 8-406(b)(3)). Where, as here, the Commission's interpretation of a statute is consistent with its prior reading, it is entitled to greater deference. *See Ill. Consol. Tel. Co. v. Ill. Com. Comm'n*, 95 Ill. 2d 142, 153-54 (1983). Thus, this Court should defer to the Commission's reasonable interpretation of subsection 8-406.1(f)(3). *See Madigan*, 2015 IL 116005, ¶ 22.

Moreover, the Commission's reading of subsection 8-406.1(f)(3) is consistent with the purpose of the Act and sections 8-406 and 8-406.1 to ensure the provision of efficient utility services to Illinois ratepayers at a reasonable cost. *See Zahn*, 2016 IL 120526, ¶ 17. Sections 8-406 and 8-406.1 authorize the Commission to issue Certificates for new infrastructure that will "provide adequate, reliable, and efficient service to the public utility's customers" and an "effectively competitive electricity market." 220 ILCS 5/8-406(b)(3), 8-406.1(f)(3) (2022). Subsection 8-406(d) clarifies that under its procedures, in evaluating applications, "the Commission shall attach primary weight to the cost or cost savings to the customers of the utility." *Id.* § 8-406(d).

Accordingly, through subsection 8-406.1(f)(3), the Commission examines the applicant's planned financing to ensure that it will not result in significant financial consequences for Illinois ratepayers through interrupted services (if it harmed the public-utility applicant) or increased rates. *See Rock Island Order*, 2014 WL 6871986, *156; *Ill. Power Order*, 2007 WL 1617828, *21. The

Commission's reading of subsection 8-406.1(f)(3) is consistent with that forward-looking analysis by focusing on the impact of the applicant's financing plans on ratepayers and other customers. Indeed, here, GBX agreed to not recover its construction costs from Illinois ratepayers, C5892-94_V20, minimizing that risk. But no language in section 8-406, section 8-406.1, or elsewhere in the Act requires applicants to demonstrate that they already have the funds or financing in place to obtain a Certificate for new construction. Rather, where, as here, the applicant submitted evidence of its financing method through which it will obtain the funds in the future without risk to Illinois ratepayers, that evidence may demonstrate its capability to finance the transmission line as necessary to satisfy subsection 8-406.1(f)(3).

In contrast, the appellate court's and petitioners' reading undermines the legislative purpose of subsection 8-406(b-5) by effectively precluding a qualifying applicant from using the financing method commonly used in the industry to construct energy infrastructure such as transmission lines. *See Elite Staffing*, 2024 IL 128763, ¶ 16 (court may consider consequences of construing statute that conflict with its purpose). In enacting subsection 8-406(b-5), the legislature explicitly stated its intent to encourage interregional high-voltage transmission lines, 20 ILCS 3855/1-5(10.5), (10.6) (2022), deeming such qualifying projects to provide adequate, reliable, and efficient services to Illinois ratepayers, 220 ILCS 5/8-406(b-5) (2022). Indeed, the legislature enacted this provision with this Project in mind, *see* 102nd Gen. Assem., House

of Rep. Tr., Sept. 13, 2021, at 20, 62-63 (Rep. Evans), and so would likely have been aware that such an interstate transmission line would be funded through a project finance basis.

The appellate court, however, read subsection 8-406.1(f)(3) to effectively prevent the financing method commonly used to construct energy infrastructure such as interstate high voltage transmission lines, the project finance basis. *See Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶¶ 30, 37-38. The undisputed testimony showed that, under this method, both potential customers (wind and solar developers) and, in turn, project finance lenders and equity investors typically require that developers first have the necessary regulatory approvals, such as the Certificate, before they will enter into capacity or financing agreements, respectively. E1368, 1371-73_V11; R275-76, 282-84. The appellate court's reading all but ensured that no qualifying applicant that is not a public utility will be able to obtain a Certificate under subsection 8-406(b-5) for a qualifying project. Clearly, the legislature did not intend such narrow reading of subsection 8-406.1(f)(3) when it incorporated it into subsection 8-406(b-5). *See Elite Staffing*, 2024 IL 128763, ¶¶ 16, 33 (court should not construe statute to conflict legislature's purpose).

Instead, the Commission reasonably construed subsection 8-406(f)(3) consistent with the legislature's intent to authorize it to consider evidence of financing methods typically used in the energy infrastructure industry to

determine whether the applicant is capable of financing a qualifying project without adverse financial consequences for Illinois ratepayers. *See* C5884-92_V20. Here, the Commission’s finding that GBX did so was supported by substantial evidence of its financing plan, its experience financing similar projects, its relationships with lenders, and the substantial need for the Project.

C. Based on its misreading of the statute, the appellate court improperly reweighed the evidence and substituted its judgment for that of the Commission.

Based on its erroneous reading of the statute, the appellate court improperly reweighed and discounted the substantial evidence of GBX’s capability to finance the Project’s construction without significant adverse financial consequences. Contrary to the appellate court’s conclusion, the Commission relied on “more than speculation” that GBX was capable of financing the Project. *See Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶ 38. As the Commission found, GBX’s financing plan was supported by “ample evidence” of consumer and market need for the Project, including market interest by energy developers, to show that GBX will be able to enter into sufficient transmission capacity contracts to obtain the necessary financing. C5892_V20. The court faulted the Commission for not requiring GBX to submit lenders’ or investors’ “financing commitments.” *Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶¶ 29-30. But as explained *supra*, subsection 8-406.1(f)(3) does not require an applicant to demonstrate it

already has such commitments in place to satisfy that criterion. Here, the undisputed testimony showed that project lenders and investors typically require that developers of energy projects have regulatory approvals in place as a condition to enter into such financing agreements. E1372-73_V11; R283-84. It further demonstrated that capital markets have supported transmission line projects, including on a project finance basis, that significant liquidity existed in those markets for such projects that reached an advanced development stage, and that GBX's and its affiliates have substantial experience in raising financing for energy projects. *See, e.g.*, E1367-69, 1383-85_V11.

While the appellate court emphasized that GBX had no customer agreements for transmission capacity with which to secure that debt and equity financing, *Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶¶ 29-30, it ignored GBX's extensive evidence of the market demand for both the renewable energy generally and the transmission capacity that the Project would provide, including responses to solicitations reflecting significant interest by renewable energy developers in obtaining capacity on the Project, *see* E71-75_V1; E418-47, 492-94_V3; E2451-58; E2480-90_V16; E2509-15_V16. Indeed, in finding that the Project is necessary to provide adequate, reliable and sufficient service, the Commission further found this evidence showed that there was both a need and sufficient demand for adequate transmission service for electricity from the resource area, and that the Project would provide competitive renewable energy. C5879-80_V20. And the testimony

showed that, until GBX obtained financing through this process, Invenergy Renewables Holdings and its affiliates would continue to fund development of the Project. E1367_V11; R126-27, 270, 272-73; RS249 (sealed). The Commission was not required to accept petitioners' unsupported assertions to the contrary. *See* C5877-80_V20; *BPI*, 146 Ill. 2d at 210 (court should not substitute its own judgment for the Commission's).

Thus, combined with GBX's testimony of it and its affiliated companies' experience, relationships with major financial institutions, this evidence provided substantial evidence that GBX was capable of funding the Project through the project finance basis without significant adverse financial consequences for it or its Illinois customers. This Court should not repeat the appellate court's error of improperly reweighing that evidence on administrative review. *See Bd. of Educ. of City of Chi.*, 2015 IL 118043, ¶ 14.

For example, the appellate court found that GBX failed to satisfy subsection 8-406.1(f)(3) because it did not submit financial statements for itself or its parent corporation to prove that Invenergy Renewable Holdings and its affiliates could fund the Project until GBX secured financing commitments. *Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶¶ 31-33. But the court identified no statute or Commission rule requiring such evidence. *See id.* And contrary to the court's characterization, GBX did not "protect or hide" such documents. *See id.* at ¶ 33. Petitioners had the opportunity through discovery to seek any financial documents, introduce

them into evidence, and otherwise use them to cross-examine GBX's witnesses or present testimony. *See* 83 Ill. Admin. Code §§ 200.335(a) & (c), 360, 380.

They made the tactical choice not to do so. *See Elgin*, 2016 IL App (2d) 150047, ¶ 36 (petitioner could not show Commission erred in finding applicant satisfied subsection 8-406.1(a) criterion based on applicant's failure to offer data that petitioner never requested).

Instead, citing *Beery v. Breed*, 311 Ill. App. 469, 475 (2d Dist. 1941), the appellate court implicitly accepted petitioners' argument that GBX's failure to submit such documents required the Commission to presume that neither GBX nor its parent corporation could finance the initial development of the Project. *Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶¶ 32-33; *see* C4618_19; C5890_V20. But *Berry* did not establish a mandatory presumption requiring a trier-of-fact to reject a party's factual position for failing to offer evidence under its control. It held that the defendant's failure to present a witness within his control allowed an inference that the missing testimony would be unfavorable to him, and so the plaintiff's argument to the jury regarding that failure was not reversible error. 311 Ill. App. at 475-76, 478.

At most, "if a party fails to offer evidence that is within its power to produce, the [factfinder] *may* infer that this evidence would be adverse to that party." *Simmons v. Garces*, 198 Ill. 2d 541, 573 (2002) (emphasis added); *see, e.g., Simmons v. Univ. of Chi. Hosps. & Clinics*, 162 Ill. 2d 1, 6-9 (1994) (same); Ill. Pattern Jury Instr., Civil No. 5.01 (West Mar. 2025). Assuming for

the sake of argument that such an inference was permissible in this matter, the Commission was not required to make it, let alone infer that GBX's affiliated companies could not provide the necessary funding. *See Szkoda v. Ill. Hum. Rts. Comm'n*, 302 Ill. App. 3d 532, 544 (1st Dist. 1998) (holding "whether an inference will be drawn against a party for failure to call a witness within its control is a determination committed to the sound discretion of the trier of fact" and the commission "chose not to draw such an inference"). Here, GBX's evidence of Invenergy Renewables Holdings and its affiliated companies' substantial assets, their significant funding of the Project to date, and their intent to continue to fund the Project until GBX obtained financing commitments supported the Commission's finding. *See, e.g.*, E1367_V11; R126-27, 270, 272-73; RS249 (sealed). By inferring the contrary based on GBX's failure to submit financial statements, the appellate court improperly reevaluated the credibility and weight of that evidence. *See Bd. of Educ. of City of Chi.*, 2015 IL 118043, ¶ 14.

Based on its misreading of subsection 8-406.1(f)(3), the appellate court also found that the Commission "recognized the speculative nature and the current inability of GBX to finance the [P]roject" when it adopted the Revised Financing Condition. *Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶ 35. As explained *supra*, however, subsection 8-406.1(f)(3) does not require that an applicant already have financing or related legal commitments in place. It requires that the applicant demonstrate that it "is capable of financing the

proposed construction without significant adverse financial consequences” for it or Illinois ratepayers or other customers, including through showing its ability to obtain such financing in the future. 220 ILCS 5/8-406.1(f)(3) (2022).

Accordingly, in adopting the Revised Financing Condition, the Commission did not “all but concede[]” that GBX did not “adequately prove its capability to finance the project.” *Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶ 36. To the contrary, prior to adopting this condition, the Commission explicitly found that GBX demonstrated that it was capable of financing the Project without significant adverse financial consequences based on GBX’s evidence. C5892_V20. The Commission only then adopted the condition to provide additional assurance that GBX’s Illinois customers would not suffer adverse financial consequences in the event that GBX ultimately failed to raise sufficient funding to complete the Project’s construction. *Id.* As the Commission recognized in adopting a similar condition for another transmission line, the project finance basis does not provide the same level of certainty as already having financing or financing commitments in place. *See Rock Island Order*, 2014 WL 6871986, *156. Consequently, the Commission agreed with Staff to adopt the condition prohibiting GBX from installing facilities on Illinois easements until it obtained sufficient legal commitments to fund construction of the entire Project. C5892, 5971-72_V20. But the Commission did not suggest that GBX would otherwise fail to prove that it was capable of financing the Project’s construction. Rather, balancing the parties’

interests, the Commission adopted the condition to prevent any potential adverse consequences for landowners like petitioners from the risk that GBX would be unable to raise sufficient funds to complete construction of facilities on Illinois easements. *See id.*

And although petitioners speculated that the issuance of the Certificate would put clouds on their titles, *see Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶ 37, the evidence contradicted this assertion. Rather, the Commission credited expert testimony showing that even constructed transmission lines generally have not negatively impacted property values and, where they did, any impact was temporary. C5929_V20; E2627-28, 2636, 2684-85_V16.

Thus, contrary to the appellate court’s understanding, the Revised Financing Condition did not “extend to GBX more time to prove its capability to finance the [P]roject.” *Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶ 35. The Commission found that GBX had already proven that capability, C5892, 5940_V20, and so issued the Certificate, C5491_V20. The fact that GBX agreed to conditions such as the Revised Financing Condition did not contradict that finding.

Accordingly, the Commission’s adoption of the Revised Financing Condition did not demonstrate that GBX failed to satisfy subsection 8-406.1(f)(3), but instead prevented any potential risk that GBX’s use of the project finance basis could result in significant adverse financial consequences

for it or its customers. C5892_V20. Thus, the Commission's finding that GBX satisfied subsection 8-406.1(f)(3) was supported by substantial evidence.

III. Petitioners failed to provide any other valid basis to reverse the Commission's decision.

The appellate court reversed the Commission's decision without addressing petitioners' remaining challenges. *Concerned Citizens II*, 2024 IL App (5th) 230271-U, ¶¶ 23-24, 39. To provide clarity and finality to this administrative review action, this Court should address those challenges. *See* C6014-39_V20. In this regard, the Commission adopts GBX's arguments as to petitioners' alternate, non-constitutional challenges to the decision. *See* GBX AT Br. 41-56 (Sect. III). And for the reasons set forth below, the Court should reject petitioners' arguments that subsection 8-406(b-5) violates the Special Legislation, Equal Protection, and Separation of Powers Clauses of the Illinois Constitution.

Statutes are presumed to be constitutional, and the party challenging a statute under the Constitution bears the burden of rebutting that presumption by clearly establishing a constitutional violation. *Big Sky Excavating, Inc. v. Ill. Bell Tel. Co.*, 217 Ill. 2d 221, 234 (2005). Courts have the duty to uphold the constitutionality of a statute if it reasonably can do so, including by reasonably construing a statute to avoid a violation. *Id.*; *Burger v. Lutheran Gen. Hosp.*, 198 Ill. 2d 21, 32 (2001).

Petitioners' constitutional challenges depend, in part, on their argument that subsection 8-406(b-5) discriminates in favor of qualifying

applicants or usurps the judiciary's role by deeming certain criteria otherwise required under section 8-406.1 satisfied. *See* C6015-20_V20. As noted, if a project qualifies under subsection 8-406(b-5) and meets minimum capacity standards, it deems that qualifying project to satisfy the public necessity criterion under subsection 8-406.1(f)(1). 220 ILCS 5/8-406(b-5) (2022). In addition, subsection 8-406(b-5) directs the Commission to find that a qualifying project is "for public use" if the applicant demonstrates that the "project is designed to deliver electricity to a point or points on the electrical transmission grid" in PJM or MISO. *Id.* The legislature included that provision to address the second part of the Act's definition of "public utility" that requires that an entity's utility assets in Illinois are "for public use." 220 ILCS 5/3-105(a) (2022); *see Ill. Landowners All.*, 2017 IL 121302, ¶¶ 39, 51 (declining to address landowners' challenge to Certificate that developer failed to satisfy "for public use" portion of "public utility" definition). By deeming such qualifying projects "for public use," the legislature clarified that it intended to authorize the Commission to issue a Certificate for such a project to a qualifying applicant, even if that applicant is not otherwise a public utility under the Act.

A. Subsection 8-406(b-5) is not improper special legislation.

Petitioners argued that subsection 8-406(b-5) violates the Special Legislation Clause of the Illinois Constitution by arbitrarily discriminating in favor of GBX and against them as landowners of properties in the nine

counties enumerated in that provision. C6014-17_V20; *see* C4589-92_V19; Ill. Const. art. IV, § 13. They failed to establish, however, that subsection 8-406(b-5) grants a benefit to GBX that it denies to any similarly situated entity and, if it did, that it is arbitrary.

The Special Legislation Clause prohibits the legislature “from making classifications that arbitrarily discriminate in favor of a select group.” *Big Sky Excavating*, 217 Ill. 2d at 235; *see also id.* at 236 (statutes are not “improper special legislation merely because they affect only one class of entities and not another”). To violate the clause, a statute must provide “a special benefit or exclusive privilege that is denied to others who are similarly situated.” *Id.* The Court’s inquiry is twofold: first, it determines whether the challenged statutory classification “discriminate[s] in favor of a select group”; second, if so, it considers “whether the classification is arbitrary.” *Crusius v. Ill. Gaming Bd.*, 216 Ill. 2d 315, 325 (2005).

In addition, special legislation challenges are “generally judged under the same standards applicable to an equal protection challenge.” *Id.* Where, as here, the challenged statute does not affect a fundamental right or suspect classification, courts “review it under the deferential rational basis test,” which provides that “the statute is constitutional if the classification it establishes is rationally related to a legitimate state interest.” *Big Sky Excavating*, 217 Ill. 2d at 237-38. “If any set of facts can be reasonably

conceived to justify distinguishing the class,” the statute is not improper special legislation. *Id.* at 238.

1. Subsection 8-406(b-5) does not deny a benefit to any similarly situated entity.

First, petitioners failed to show that subsection 8-406(b-5) grants a benefit to GBX that was denied to any similarly situated entity. Petitioners claimed that subsection 8-406(b-5) discriminates against landowners who (like them) own property in the statute’s enumerated counties by requiring that qualifying transmission lines cross only those nine counties. C6016-17_V20. But petitioners and other landowners are not similarly situated to GBX or any qualifying applicant to which subsection 8-406(b-5) purportedly confers a special benefit. Thus, any purported harm to petitioners or other landowners “is not relevant to the question of the law’s discriminatory effect” for purposes of special legislation. *See Big Sky Excavating*, 217 Ill. 2d at 237 (rejecting telephone consumers’ special legislation challenge to statute benefiting Illinois Bell based on alleged harms to consumers).

Petitioners also argued that subsection 8-406(b-5) constitutes improper special legislation because it benefits only GBX and disfavors utilities. C6015-16_V20. But petitioners identified no similarly situated utility or transmission line developer that subsection 8-406(b-5) discriminates against in favor of GBX. *See id.* They complained that, unlike applicants seeking Certificates under sections 8-406 and 8-406.1, subsection 8-406(b-5) does not require GBX to prove that it constitutes a public utility, including that the Project is for

“public use,” or that the Project satisfies the public necessity criterion under subsection 8-406.1(f)(1). C6016_V20. Subsection 8-406(b-5), however, permits any entity to apply for a Certificate under its provisions if it can show that it is a qualifying applicant seeking to construct a qualifying transmission line project. 220 ILCS 5/8-406(b-5) (2022). To obtain a Certificate, however, the statute requires a qualifying applicant to demonstrate that it seeks to provide interstate transmission service by constructing a qualifying HVDC transmission line designed to deliver electricity to the MISO or PJM grids that serve Illinois. *Id.* Thus, such an applicant is not similarly situated to any utility or developer that cannot make this demonstration.

Nevertheless, petitioners assert that subsection 8-406(b-5) benefits only GBX because no other entity is able to qualify as a practical matter. *See* C6016_V20. But they offered no evidence of this assertion, let alone identified an entity that was prohibited from applying to construct a transmission line under subsection 8-406(b-5). *See id.*; C4584-92_V19. Regardless, “[t]he mere fact that a law may affect only a single entity does not [] render the law invalid under the special legislation clause.” *Big Sky Excavating*, 217 Ill. 2d at 235; *see Crusius*, 216 Ill. 2d at 325-28 (statute intended to benefit single gambling licensee not unconstitutional special legislation); *Chi. Nat’l League Ball Club, Inc. v Thompson*, 108 Ill. 2d 357 (1985) (rejecting special legislation challenge to statute intended to apply only to Wrigley Field). Where “an entity is uniquely situated, nothing in [the Special Legislation Clause] bars the

General Assembly from enacting a law tailored to address the conditions presented by that unique situation.” *Big Sky Excavating*, 217 Ill. 2d at 237 (statute benefiting only Illinois Bell was not improper special legislation because no other telecommunications carriers were similarly situated).

Here, in enacting CEJA to address Illinois’ goal of rapidly transitioning to clean energy, the legislature amended the Act to provide a streamlined process for applicants to seek a Certificate to construct an interstate HVDC transmission line intended to transport renewable energy and interconnect with the Illinois electricity grid. 220 ILCS 5/8-406(b-5) (2022). In light of (1) this Court’s holding under the previous version of the Act limiting Certificates to public utilities and (2) the interstate character of the transmission line, *Ill. Landowners All.*, 2017 IL 121302, ¶¶ 36-47, the legislature expanded the Commission’s authority to allow non-public utilities to apply for Certificates under this process. To address this situation, the legislature required applicants to show that their proposed interstate transmission line satisfies minimum voltage and capacity requirements, crosses an Illinois border into an area within the MISO grid, and passes through a route of enumerated counties to interconnect with the PJM grid. *Id.* Petitioners identified no alternative route for such an interstate transmission line to connect to the MISO and PJM grid, let alone a developer seeking to construct such an interstate transmission line along an alternative route to do so. Thus, the fact that GBX is “uniquely situated” to construct a qualifying transmission line does not establish that

subsection 8-406(b-5) discriminates against any similarly situated entity so as to constitute improper special legislation. *See Big Sky Excavating*, 217 Ill. 2d at 236-37.

2. Subsection 8-406(b-5)'s classifications are not arbitrary.

Even if subsection 8-406(b-5) discriminated in favor of GBX and against other similarly situated utilities or developers, its classifications are rationally related to the State's legitimate interests. Under the rational basis test, "[t]he legislature has broad latitude and discretion in drawing statutory classifications to benefit the general welfare," which "are not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Big Sky Excavating*, 217 Ill. 2d at 240.

Whether a statute is wise or the best means to achieve the State's goal "are matters left to the legislature, not the courts." *Id.* Moreover, under rational basis review, the legislature "need not choose between legislating against all evils of the same kind or not legislating at all, *Chi. Nat'l League Ball Club*, 108 Ill. 2d at 367, but "may proceed one step at a time," *People v Anderson*, 148 Ill. 2d 15, 31 (1992). "If any set of facts can be reasonably conceived that justify distinguishing the class," the statute is not improper special legislation. *Big Sky Excavating*, 217 Ill. 2d at 238.

In enacting CEJA, the legislature found that the "health, welfare, and prosperity of all Illinois residents" requires the provision of affordable, efficient "and environmentally sustainable electric service" at the lowest cost,

and that it is the State’s policy to “rapidly transition to 100% clean energy by 2050.” 20 ILCS 3855/1-5(1), (1.5) (2022). To achieve these interests, the legislature declared its intent to “encourage the development of interregional [HVDC] transmission lines” that it found benefit Illinois ratepayers through, among other things, “long-term price stability,” “reduction in wholesale power prices,” “access to lower-cost markets,” and “enabling the integration of additional renewable generating units within the State.” *Id.* § 1-5(10.5). These legislative interests and findings are consistent with the Act’s overall goal to ensure the provision of efficient utility service to the public at a reasonable cost. *Zahn*, 2016 IL 120526, ¶ 17.

Subsection 8-406(b-5)’s classifications are rationally related to these legitimate interests. The legislature could rationally conclude that creating a special procedure for applicants to seek a Certificate to construct an interstate HVDC transmission line would encourage development of such transmission lines. It could also reasonably determine that requiring minimum capacity and voltage for projects to qualify would ensure that any approved transmission line would improve efficiency, lower prices, and enable the use of renewable energy. And given the interstate character and scope of such a construction project, the legislature could rationally decide that expanding the Act to allow applicants who did not already own, operate, or manage utility facilities in Illinois to seek a Certificate for such a qualifying project would further these legitimate interests.

Before the Commission, petitioners conclusorily asserted that the legislature had no rational basis to require a qualifying project to cross the nine enumerated counties. C6018_V20. But the legislature could reasonably determine that those nine counties provided the optimum route for such an interstate transmission line to interconnect with the MISO and PJM grids. *See* 220 ILCS 5/8-406(b-5) (2022); *see also* E412-13_V3; E1450-51_V11 (Project's design to interconnect with MISO and PJM grids). Indeed, this Court has upheld geographic classifications that were rationally related to the challenged statute's purpose. *See Cutinello v. Whitley*, 161 Ill. 2d 409, 419 (1994) (statute allowing motor fuel tax in specified counties rationally related to perceived financial needs from population growth); *Nevitt v. Langfelder*, 157 Ill. 2d 116, 126-29 (1993) (disability statute excluding political units with over one million did not violate equal protection); *Chi. Nat'l League Ball Club*, 108 Ill. 2d at 370 (noise pollution statute limited by city's population not special legislation).

In fact, although such legislative judgments “may be based on rational speculation unsupported by evidence or empirical data,” *Big Sky Excavating*, 217 Ill. at 240, there is no need to speculate so here. Based on extensive evidence, the Commission has twice found that the construction of the Project is necessary to provide, reliable, and efficient service, promote a competitive electricity market, and would otherwise benefit Illinois ratepayers, both in this proceeding, C5879-80_V20, and in its decision approving the prior version of

the Project, *GBX 2015 Order*, 2015 WL 7348552, *121-24. Regardless of whether petitioners dispute the wisdom of the legislature’s judgment or its chosen means to achieve these interests, subsection 8-406(b-5)’s classifications are rationally related to achieving the State’s interests in rapidly transitioning to clean energy, providing lower power prices and price stability, and generally ensuring efficient electric service for Illinois ratepayers at a reasonable cost.

Likewise, this Court need not speculate as to reasonably conceivable facts supporting subsection 8-406(b-5)’s geographic criterion. Prior to subsection 8-406(b-5)’s enactment, the Commission had reviewed extensive evidence regarding the route for an essentially identical transmission line project that ran between selected converter stations so as to interconnect to the PJM grid at the substation in Sullivan County, Indiana. *See GBX 2015 Order*, 2015 WL 7348552, *162-64. The evidence further reflected that the proposed route was optimal based on numerous routing criteria, such as distance from residences, schools, and other structures, environmental considerations, and other routing factors. *Id.* The Commission, in turn, found the route study “detailed and comprehensive” and consistent with public policy goals of minimizing its effect on natural and human environments, and approved that route. *Id.* at *199-200. The legislature here could rationally rely on the Commission’s prior decision, the prior route study, or any related set of facts to determine that requiring a qualifying project to traverse the enumerated counties would ensure that the transmission line is best designed

to interconnect to the MISO and PJM grids, while minimizing its environmental and human impact.

Petitioners never identified an alternative route for such a transmission line in raising their equal protection challenge or otherwise. *See* C6017-19_V20. Even if they had, the legislature’s judgment is “not subject to courtroom fact finding.” *Big Sky*, 217 Ill. 2d at 240. And the legislature was well within its authority to “proceed one step at a time” by tailoring the statute to its reasonable assumptions concerning the optimum route to locate an interstate HVDC transmission line to bring renewable energy to the MISO and PJM grid serving Illinois ratepayers. *See Anderson*, 148 Ill. 2d at 31.

Thus, petitioners failed to establish that subsection 8-406(b-5) is improper special legislation.

B. Subsection 8-406(b-5) does not violate equal protection.

Petitioners’ claim that subsection 8-406(b-5) violates the Equal Protection Clause of the Illinois Constitution fails for similar reasons. C6017-19_V20; C4592-96_V19; Ill. Const., art. I, § 2. As noted, equal protection and special legislation challenges are generally judged under the same standards. *Gen. Motors Corp. v. State Motor Vehicle Rev. Bd.*, 224 Ill. 2d 1, 31 (2007). Under the Equal Protection Clause, similarly situated individuals “must be treated in a similar manner, unless the government can demonstrate an appropriate reason to treat those individuals differently.” *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 46. Thus, the threshold requirement “is whether

the claimant is similarly situated to the comparison group.” *Id.* at ¶ 47. “Two classes are similarly situated only when they are alike in all relevant respects.” *Id.*

In addition, even if the statute does discriminate, where, as here, the challenge does not involve a suspect classification or fundamental right, the statute must be upheld if it is rationally related to a legitimate state interest. *Gen. Motors Corp.*, 224 Ill. 2d at 31. This means that, as with special legislation challenges, the statute must be upheld if there are any reasonably conceivable set of facts that justify the classification. *Id.*

1. Subsection 8-406(b-5) does not discriminate against petitioners.

Like their special legislation challenge, petitioners argued that subsection 8-406(b-5) violates equal protection by discriminating against them as landowners of property within the nine counties enumerated in subsection 8-406(b-5) as compared to landowners in other Illinois counties, “where any non-public utility or ‘public utility’ seeks approval to construct an electrical system across their properties.” C6017_V20; 220 ILCS 5/8-406(b-5) (2022). In particular, they asserted that subsection 8-406(b-5) denied them “their right to an evidentiary hearing” enjoyed by landowners in other counties. C4595_V19. But subsection 8-406(b-5) entitles interested intervenors like petitioners to the same right to present evidence and arguments as landowners objecting in other certification proceedings. Subsection 8-406(b-5) requires an applicant to prove that it meets the qualifying requirements under its provisions as well as

multiple criteria, depending on the process selected, under section 8-406 or section 8-406.1. 220 ILCS 5/8-406(b-5) (2022). Accordingly, in this proceeding, the Commission conducted a hearing taking substantial evidence over several days, just as it would for objections to applications in other counties. *See, e.g.*, R29-866; C4569-657_V19; C5838-941_V20.

Petitioners did not dispute that they received ample opportunity to present evidence and arguments before the Commission. Rather, petitioners' equal protection claim is essentially the same as their special legislation claim: that they are discriminated against because subsection 8-406(b-5 treats qualifying applicants and projects differently from utility projects constructed in other counties by deeming that the qualifying projects "for public use" and as having satisfied the public necessity criterion under subsection 8-406.1(f)(1). C6017_V20. This, petitioners contended, prevented them from raising the same challenges that other landowners could raise to an application to construct a transmission line in different counties. *See id.*

As with petitioners' special legislation challenge, however, petitioners failed to show that there is any similarly situated entity seeking a Certificate to build a qualifying interstate transmission line project through other counties. *See supra* at pp. 46-48. Thus, petitioners "have advanced no separate or additional arguments that would warrant treating their equal protection and special legislation claims differently in this case." *Big Sky Excavating*, 217 Ill. 2d at 241. Because petitioners identified no similarly

situated transmission line project for which landowners in other counties could raise evidentiary challenges to “public use” or subsection 8-406.1(f)(1), they also failed to show that there are similarly situated landowners as necessary to support their equal protection claim. *See Caulkins*, 2023 IL 129453, ¶ 47 (classes only similarly situated if alike in all relevant respects).

2. Subsection 8-406(b-5) is rationally related to legitimate state interests.

Regardless, as shown with respect to petitioners’ special legislation challenge, subsection 8-406(b-5)’s classifications of qualifying applicants and projects, including the requirement that a qualifying project run through the nine enumerated counties, are rationally related to the State’s legitimate interests, *supra* at pp. 48-53. Thus, their equal protection claim fails to show that subsection 8-406(b-5) is arbitrary for the same reasons as their special legislation claims. *See Gen. Motors Corp.*, 224 Ill. 2d at 31-32 (special legislation and equal protection claims are judged by same standards).

In support of their equal protection claim, petitioners also argued that subsection 8-406(b-5)’s classification for qualifying applicants is inconsistent with the Act’s purpose because it includes entities that are not “public utilities.” C6018_V20. Petitioners claimed that the Act’s purpose is to regulate public utilities, including protecting public utilities from destructive competition, and so the Act could not authorize the Commission to regulate a non-public utility under subsection 8-406(b-5). *Id.*

But “the legislature has an ongoing right to amend the Act when it sees fit to do so” and petitioners “can claim no right in the mere continuance of the law,” *Big Sky Excavating*, 217 Ill. 2d at 242. Consequently, nothing in the Act precluded the legislature from amending it to authorize the Commission to issue a Certificate to an applicant that satisfied qualifying criteria, even if that applicant is not a public utility because it does not already own or operate electricity assets in Illinois. *See* 220 ILCS 5/8-406(b-5) (2022); *see also Ill. Landowners All.*, 2017 IL 121302, ¶ 50 (“the wisdom of this state's regulatory system is a matter for the legislature, not our court”).

Nor can petitioners cloak this statutory challenge to subsection 8-406(b-5) in equal-protection or special-legislation principles. The Act’s purpose is to ensure the provision of efficient utility services to the Illinois public at a reasonable cost. *Zahn*, 2016 IL 120526, ¶ 17. While the Act achieves this purpose through regulating public utilities, including by protecting such utilities from destructive competition, *Ill. Landowners All.*, 2017 IL 121302, ¶¶ 31-32, rational basis review recognizes that “not every provision in a law must share a single objective,” and a challenged statute “does not have to promote all of a law’s disparate and potentially conflicting objectives,” *Crusius*, 216 Ill. 2d at 329, 331-32. Instead, the legislature may rationally focus on one or more of a law’s goals in drawing classifications. *See id.* at 332 (legislature could focus on law’s economic goals instead of strict regulatory goal in enacting challenged statute). Accordingly, in applying rational basis review, this Court

often considers whether a statute's challenged classification is related to the purpose of the law that created that classification. *See Gen. Motors Corp.*, 224 Ill. 2d at 31-32 (considering purpose of statute creating new classification in Franchise Act); *Big Sky Excavating*, 217 Ill. 2d at 238-39 (considering purpose of challenged telecommunications law rather than the Act generally).

Here, the legislature enacted CEJA to rapidly transition the State to clean energy and encourage the development of interregional transmission lines to meet that goal and achieve other benefits, including lower power prices and price stability. 20 ILCS 3855/1-5(1), (1.5), (10.5), (10.6) (2022). Accordingly, in enacting subsection 8-406(b-5), the legislature could rationally conclude that expanding the Act to allow non-public utilities to seek a Certificate for such qualifying interstate HVDC transmission lines designed to interconnect with the MISO and PJM grids serving Illinois ratepayers would further these legitimate interests, as well as serving the Act's overall purpose of providing efficient utility services at a reasonable cost.

Thus, petitioners failed to show that subsection 8-406(b-5) treated them differently than any similarly situated landowners. And even if they had, the statute's classifications for qualifying applicants and projects are rationally related to legitimate state interests.

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

Finally, subsection 8-406(b-5) does not violate the Illinois Constitution's Separation of Powers Clause by directing the Commission to find that certain

qualifying projects are for public use. As noted, under subsection 8-406(b-5), if the Commission finds that a qualifying project is designed to connect to the PJM or MISO grids, then the Commission shall find the project is “for public use.” 220 ILCS 5/8-406(b-5) (2022). Petitioners argued that this provision violates separation-of-powers principles by abrogating the judiciary’s authority to declare when a condemnation of private property is for “public use” in any future eminent domain proceeding by GBX. C6019-20_V20. But like the issuance of any Certificate by the Commission, subsection 8-406(b-5), at most, may result in a rebuttable evidentiary presumption in a subsequent condemnation action and so does not violate separation-of-powers principles.

The Separation of Powers Clause prohibits one branch of government from exercising “powers properly belonging to the other.” Ill. Const. art. II, § 1. But this clause “was not designed to achieve a complete divorce among the three branches of government . . . and does not require government powers to be divided into rigid, mutually exclusive compartments.” *Burger*, 198 Ill. 2d at 33 (cleaned up). The legislature “may enact laws” involving judicial practice or procedure without violating separation-of-powers principles if the statute does not “directly and irreconcilably conflict” with a supreme court rule or unduly encroach on the “inherent powers of the judiciary.” *Id.* (cleaned up). In particular, “[t]he legislature has the power to prescribe new rules of evidence and alter existing ones, and to prescribe methods of proof” without violating separation of powers. *First Nat’l Bank of Chi. v. King*, 165 Ill. 2d

533, 542 (1995). While the legislature “cannot declare what shall be conclusive evidence” under separation of powers, it may establish rebuttable presumptions. *Id.*

Here, subsection 8-406(b-5) does not violate separation-of-powers principles because it does not usurp the judiciary’s role in deciding “public use” in eminent domain proceedings. Rather, at most, the provision may result in a rebuttable presumption of “public use” in a future judicial condemnation proceeding that would not violate separation of powers. The Act provides that any eminent domain authority granted under it is “subject to, and shall be exercised in accordance with, the Eminent Domain Act.” 220 ILCS 5/8-509.5 (2022). Under the Eminent Domain Act, a condemning authority may not take property through eminent domain “unless it is for a public use, as set forth in this Section [5-5-5].” 735 ILCS 30/5-5-5(a) (2022). In condemnation cases seeking to take property for private ownership or control, the condemning authority must prove by clear and convincing evidence that it is acquiring the property “(i) primarily for the benefit, use, or enjoyment of the public and (ii) necessary for a public purpose.” *Id.* § 5-5-5(c). Thus, in condemnation actions by private entities granted eminent domain authority by the Commission, landowners may challenge whether the condemnation under the Act is for “public use,” and the circuit courts presiding over such condemnation proceedings determine that issue based on the parties’ evidence. *See Egyptian Electric Coop. Ass’n v. Ill. Com. Comm’n*,

33 Ill. 2d 339, 342-43 (1965) (landowner's property rights not affected by Commission's grant of eminent domain authority because they are asserted in condemnation action); *Ill. Power Co. v. Lynn*, 50 Ill. App. 3d 77, 81-82 (4th Dist. 1977) (Commission's finding of "public use" under Act did not preempt circuit court from addressing issue subsequent condemnation proceeding).

Section 5-5-5 of the Eminent Domain Act (not subsection 8-406(b-5)) further provides that the Commission's grant of a Certificate "creates a rebuttable presumption" that a condemnation pursuant to any granted eminent domain authority is primarily for a public use. 735 ILCS 30/5-5-5(c) (2022). Accordingly, this presumption applies in condemnation actions whenever the Commission grants a Certificate and eminent domain authority under the Act, regardless of a finding of "public use" under subsection 8-406(b-5). *Id.* In such condemnation proceedings, landowners still retain the right to present evidence to rebut that presumption and otherwise challenge whether the condemnation is for "public use," and the circuit courts still determine that issue based on the parties' evidence. *See, e.g., Enbridge Pipeline (Ill.), LLC v. Murfin*, 2020 IL App (5th) 160007, ¶¶ 89, 91-93 (landowners entitled to present evidence of public use in condemnation action to rebut presumption created by Commission Certificate under Eminent Domain Act).

Thus, at most, through operation of the Eminent Domain Act, the Commission's issuance of a Certificate under subsection 8-406(b-5) may result in an evidentiary presumption that a qualifying project is "for public use." 220

ILCS 5/8-406(b-5) (2022). But the legislature “has power to prescribe new and alter existing rules of evidence or to prescribe methods of proof” without violating separation of powers. *People v. Rolfingsmeyer*, 101 Ill. 2d 137, 140-41 (1984). Thus, subsection 8-406(b-5) neither usurps the judiciary’s role in deciding “public use” nor otherwise violates separation-of-powers principles. *See First Nat’l Bank*, 165 Ill. 2d at 542 (Probate Act’s statutory presumption in favor of adopted children’s inheritance did not violate separation of powers); *Heitz v. Hogan*, 134 Ill. App. 3d 352, 357-58 (4th Dist. 1985) (Criminal Code provision deeming coroner’s reports admissible and *prima facie* evidence of facts and findings therein did not violate separation of powers).

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. If it does so, the Court should also find that petitioners failed to establish that subsection 8-406(b-5) violates the Special Legislation, Equal Protection, and Separation of Power Clauses of the Illinois Constitution, and otherwise reject petitioners’ alternate, non-constitutional challenges for the reasons provided in GBX’s opening brief.

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,

KWAME RAOUL

Attorney General
State of Illinois

JANE ELINOR NOTZ

Solicitor General

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000

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)

Attorneys for Respondent-Appellant
Illinois Commerce Commission

April 16, 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 13,972 words.

/s/ Christopher M. R. Turner
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)

CERTIFICATE OF FILING AND SERVICE

I certify that on April 16, 2025, I electronically filed the foregoing Opening 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 April 16, 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.

By: /s/ Christopher M.R. Turner
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)

SERVICE LIST**Nos. 131026 & 131032 (Consolidated)**

Thomas L. Kilbride
 Adam R. Vaught
 Attys. for Grain Belt Express LLC
 Croke Fairchild Duarte & Beres
 tkilbride@crokefairchild.com
 avault@crokefairchild.com

David Streicker
 Dmitry Shifrin,
 Benjamin Jacobi
 Attys. for Grain Belt Express LLC
 Polsinelli PC
 dstreicker@polsinelli.com
 dshifrin@polsinelli.com
 bjacobi@polsinelli.com

Paul G. Neilan
 Atty. for Nafsica Zotos
 Law Offices of Paul G. Neilan P.C.
 pgneilan@energy.law.pro

Charles Y. Davis Steven C. Ward
 Attys. for Illinois Agricultural
 Association a/k/a Illinois Farm Bureau
 Brown, Hay & Stephens, LLP
 cdavis@bhslaw.com
 sward@bhslaw.com

Edward D. McNamara, Jr.
 Joseph H. O'Brien
 Attys. for Concerned Citizens &
 Property Owners McNamara & Evans
 mcnamara.evans@gmail.com

Brian R. Kalb Joseph R. Harvath
 Attys. for Concerned People Alliance
 Byron Carlson Petri & Kalb, LLC
 brk@bcpklaw.com
 jrharvath@bcpklaw.com

Laura A. Harmon
 Associate Counsel
 Illinois Agricultural Association Office
 of the General Counsel
 lharmon@ilfb.org

Kara J. Wade
 Clayton Walden
 Taylor Law Offices, P.C.
 wade@taylorlaw.net
 walden@taylorlaw.net

William F. Moran, III
 Atty. for York Township Irrigators
 Stratton, Moran, Reichert Sronce &
 Appleton
 bmoran@stratton-law.com

Jonathan D. Morton
 Joseph S. Trytten
 Golan Christie Taglia LLP
 Attys. for Amicus Curiae
 Chicagoland Chamber of Commerce
 jdmorton@gct.law
 jstrytten@gct.law

Justin Vickers
 Atty. for Amicus Curiae
 Sierra Club
 justin.vickers@sierraclub.org

Tim Ryan
 Jeff Naville
 Attys. for Amicus Curiae
 Great Plains Laborers' District Council
 & Downstate Illinois Laborers' District
 Council
 tryan@midwestlaborers.org

Neil F. Flynn
 Daniel M. Flynn
 Neil F. Flynn & Associates
 Attys. for Amicus Curiae
 Illinois Manufacturers' Association
 nflynn@neilflynnlaw.com
 dflynn@neilflynnlaw.com

Thomas Zimpleman
 Atty. for Amicus Curiae
 Natural Resources Defense Council
 tzimpleman@nrdc.org

Irina Y. Dmitrieva
 Robert Alexander Messina
 HeplerBroom LLC
 Atty. for Amicus Curiae
 Illinois Chamber of Commerce
 Irina.dmitrieva@heplerbroom.com
 alec.messina@heplerbroom.com

Nick Wallace
 Atty. for Amicus Curiae
 Environmental Law & Policy Ctr.
 nwallace@elpc.org

Eric DeBellis
 Citizens Utility Board
 Atty. for Amicus Curiae
 Citizen Utility Board
 edebellis@citizensutilityboard.org

Margaret Angelucci
 Catherine Humphrey
 Asher, Gittler & D'Alba, Ltd.
 Atty. For Amicus Curiae
 Illinois AFL-CIO
 maa@ulaw.com
 ckh@ulaw.com