



G. Neilan of Law Offices of Paul G. Neilan, P.C., and YORK TOWNSHIP IRRIGATORS by and through their attorney, William F. Moran of Stratton, Moran, Reichert, Sronce & Appleton (Farm Bureau, CCPO, CPA, Zotos, and York Township Irrigators are collectively referred to herein as the “Landowner Alliance” or the “LA” or the "Appellants"), and pursuant to Ill. S. Ct. Rule 335(g), hereby move (the “Motion”) this Court to stay until the resolution of this Appeal any implementation of the Order entered by the Illinois Commerce Commission (the "Commission" or "ICC") dated March 8, 2023 (the "Order”) granting Grain Belt Express LLC (“GBE”) a Certificate of Public Convenience and Necessity (“CPCN”) in the Commission’s Docket No. 22-0499, captioned *Application for an Order Granting Grain Belt Express LLC, as a Qualifying Direct Current Applicant, a Certificate of Public Convenience and Necessity pursuant to Section 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project (the "Project") and to Conduct a Transmission Public Utility Business in Connection Therewith and Authorizing Grain Belt Express LLC pursuant to Sections 8-503 and 8-406.1(i) of the Public Utilities Act to Construct the High Voltage Direct Current Electric Transmission Line* (“GBE’s Application”). The Order is the subject of this Appeal.

In support of this Motion, the Landowner Alliance further states as follows:

**I. SUMMARY OF MOTION.**

GBE has commenced a campaign of easement acquisitions from landowners along the proposed route of GBE’s contemplated Grain Belt Express High Voltage Direct Current (“HVDC”) Transmission Project (the “Project”). GBE has sent to numerous Illinois landowners correspondence, stated to be issued pursuant to the Order and Section 8-503 of the Act (220 ILCS 5/8-503), requesting discussions and/or negotiations with these landowners for easements for the

Project. A copy of this correspondence is attached to this Motion as Appendix (“App.”) pgs. A102-A109. In this correspondence, GBE couples its request with a threat that an eminent domain legal action will be commenced against any landowner who does not cooperate and voluntarily transfer an easement to GBE. However, for the reasons stated in this Motion, GBE’s easement acquisition campaign is radically premature.

As stated in the Landowner Alliance’s Application for Rehearing filed with the Commission on April 7, 2023 (C. 6012-51 V. 20; App. pgs. A007-A046), both the GBE Application and the Order are premised on a provision of the Illinois Public Utilities Act (the "Act") (220 ILCS 5/1-101 et seq), namely Section 8-406(b-5) (220 ILCS 5/8-406(b-5)) (“Section 8-406(b-5)”), that violates the Special Legislation, Equal Protection, and Separation of Powers clauses of the Illinois Constitution of 1970 (the "Illinois Constitution").

Second, the Order also violates several provisions of the Act itself. Initially, despite overwhelming evidence that GBE neither has nor will have any material assets or working capital unless and until it obtains its hoped-for financing at some indeterminate future time, the Commission, in violation of Section 8-406.1(f)(3) of the Act, found that GBE is presently capable of financing the Project. The Order also grants GBE up to five years in which it may commence construction of its Project, despite the General Assembly's determination in Section 8-406(f) of the Act (220 ILCS 5/8-406) that such a project must be commenced within two years of the Commission's issuance of a CPCN for the project.

Finally, GBE’s easement acquisition campaign will impose costs and other burdens on Illinois landowners along the Project’s proposed route. Landowners who do not accede to GBE’s demands are being told by GBE that they will face eminent domain proceedings. None of these costs or activities will be necessary if the Landowner Alliance is even partly successful in this

Appeal, and if the Project is not built, there is little to no likelihood that any landowner will ever recover their costs from GBE.

By this Motion, pursuant to Ill. S. Ct. Rule 335(g), the Landowner Alliance requests that this Court issue an order staying implementation of the Commission's Order pending the resolution of this Appeal. As stated in the Affidavit of Paul G. Neilan, included in the Appendix at pgs. A110-A111, counsel for the Landowner Alliance have conferred with counsel for GBE concerning the substance of this Motion. GBE does not consent to the relief sought in this Motion.

## **II. APPLICATION OF ILLINOIS SUPREME COURT RULE 335(g).**

GBE's easement acquisition campaign puts the cart before the horse. GBE will cause landowners along the Project's proposed route to incur substantial expenses for surveys, appraisals, attorney's fees, and potential crop damage, all for a project that will never materialize if this Appeal is successful. Staying the Order and GBE's easement acquisition campaign will preserve the status quo pending the resolution of this Appeal and preserve for the landowners the fruits of this Appeal should they be even partly successful.

Ill. S. Ct. Rule 335(g) permits this Court to stay the enforcement of any judgment or order of an agency pending review of the agency's order by this Court. Ill. S. Ct. Rule 335(g) states, in relevant part, that: "Application for a stay of a decision or order of an agency pending direct review in the Appellate Court shall ordinarily be made in the first instance to the agency. A motion for stay may be made to the Appellate Court or to a judge thereof, but the motion shall show that . . . application to the agency for the relief sought was not practicable." Ill. S. Ct. Rule 335(g). As explained below, it would not be practicable for the Landowner Alliance to request a stay of the Order from the ICC.

### **A. Moving the Commission to Stay Its Order Is Not Practicable.**

The chief reason why it would be impractical to move the Commission to stay its own Order carries with it all the subtlety and nuance of an oncoming freight train: the provisions of the Act pursuant to which the Commission issued the Order raise major issues under the Illinois Constitution, and the Commission lacks jurisdiction to decide the constitutionality of its own enabling statute. *Board of Educ. of Peoria School Dist. No. 150 v. Peoria Federation of Support Staff*, 2013 IL 114853, ¶ 38 (administrative agencies have no authority to declare statutes unconstitutional or even to question their validity). These constitutional issues concern Section 8-406(b-5)'s violation of the Special Legislation, Equal Protection and Separation of Powers clauses of the Illinois Constitution, the merits of which are addressed in Section III below.

Moreover, the Commission itself has recently taken the position that the Act requires a movant to seek a stay from the appellate court when an order has been appealed. In ICC Docket No. 21-0698, the same Administrative Law Judge (“ALJ”) assigned to GBE's Application in this docket recommended to the Commission that, pursuant to Section 10-204(a) of the Act (220 ILCS 5/10-204(a)), the reviewing court should determine whether to stay a Commission order when that order is on appeal. The Commission adopted the ALJ's recommendation and denied the motion to stay in that case. Section 10-204(a) of the Act states, “The pendency of an appeal shall not of itself stay or suspend the operation of the rule, regulation, order or decision of the Commission, but during the pendency of the appeal the reviewing court may in its discretion stay or suspend, in whole or in part, the operation of the Commission's rule, regulation, order or decision.” 220 ILCS 5/10-204(a). The language of Section 10-204(a) of the Act and the Commission's own recent ruling make it very clear that any filing of this Motion before the Commissions would be impracticable.

**B. The ICC Has Already Denied the Landowner Alliance's Application for Rehearing.**

Apart from any constitutional questions that lie beyond the jurisdiction of the Commission, seeking a stay from the Commission is impracticable because it would amount to nothing more than a redundant act. Pursuant to Section 10-201 of the Act, 220 ILCS 5/10-201, the Landowner Alliance filed its Application for Rehearing with the Commission on April 7, 2023 (C. 6012-51 V. 20; App. pgs. A007-A046). As required by that section of the Act, the Landowner Alliance's Application for Rehearing set forth the grounds on which this Appeal is based. On April 20, 2023, the Commission entered an order denying the Landowner Alliance's Application for Rehearing in its entirety. (C. 5640, 6088 V. 20; App. pgs. A002, A052).

Concurrently with the Commission's Order denying the Landowner Alliance's Application for Rehearing, the ALJ in the docket filed his Memorandum to the Commission (the "ALJ Memo") recommending denial of the Landowner Alliance's Application for Rehearing in its entirety. (C. 6083-87 V. 20; App. pgs. A047-A051). In response to every error in the Order raised in the Landowner Alliance Application for Rehearing, the ALJ Memo merely repeats, albeit with some variations in wording, the conclusory statement that the Landowner Alliance has not raised any new argument or evidence that would warrant rehearing. (*See id.*). The ALJ Memo provides no substantive response to any of the errors in the Order cataloged in the Application for Rehearing. To move the Commission to stay its Order, in the teeth of its April 20 entire denial of the Landowner Alliance's Application for Rehearing and the related ALJ Memo, would be the very definition of an altogether purposeless errand.

Accordingly, for the reasons stated above, and with all due respect to the Commission, the Landowner Alliance respectfully submits that moving the Commission to stay the Order is not practicable within the meaning of Ill. S. Ct. Rule 335(g).

### **III. A STAY OF THE ORDER IS WARRANTED.**

Stays pending appeal are commonly granted “to preserve the *status quo* and to preserve the fruits of a meritorious appeal where they might otherwise be lost.” *In re A.P.*, 285 Ill. App. 3d 897, 993 (2nd Dist. 1997). The factors considered for a stay requested pursuant to Ill. S. Ct. Rule 335(g) are similar to the factors reviewed for a stay of judgment under Supreme Court Rule 305. The following factors may be considered in determining whether a stay should be granted: first, the likelihood that the party seeking the stay will prevail on the merits; second, the likelihood that the moving party will be harmed, and the fruits of the appeal will not be preserved without the stay; and third, the prospect that the respondent will be harmed by the stay. *Stacke v. Bates*, 138 Ill.2d 295, 304-09 (1990). “In making the determination whether or not to grant a stay pending appeal, the court, of necessity, is engaged in a balancing process as to the rights of the parties, in which all elements bearing on the equitable nature of the relief sought should be considered.” *Id.* at 309-10. However, a strong showing of possibility of success on the merits can outweigh a weak showing of other factors, and vice versa. *Id.* at 308-09.

#### **A. The Landowner Alliance is Likely to Succeed on the Merits of its Claims.**

The Landowner Alliance is likely to succeed on the merits. Indeed, under this requirement, the Landowner Alliance is not required to make out a case which will prevail and in all events warrant relief at a final hearing. Rather, the Landowner Alliance need only raise a fair question as to the existence of the right claimed. *Happy R Securities, LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509, ¶ 32 (2013).

##### **i. The Special Legislation Clause.**

Special legislation is expressly prohibited by our state constitution: “The General Assembly shall pass no special or local law when a general law is or can be made applicable.

Whether a general law is or can be made applicable shall be a matter for judicial determination.”

Ill. Const. 1970, art. IV, § 13. A special legislation clause challenge is judged under a two-part test: (1) whether the statutory classification at issue discriminates in favor of a select group, and (2) if it does, whether the classification is arbitrary. *Piccioli v. Board of Trustees of Teachers’ Retirement System*, 2019 IL 122905, ¶ 18. Here, Section 8-406(b-5) of the Act arbitrarily discriminates against both utilities and landowners.

The statute without section 8-406(b-5) applies to all persons and entities in the same situation; the statute with section 8-406(b-5) does not. See *Board of Educ. of Peoria v. Peoria Federation of Support Staff*, 2013 IL 114853, ¶48 (the term “special” refers to laws which impose a particular burden on a portion of the people of the state). Section 8-406(b-5) benefits only GBE as opposed to all other potential applicants because GBE is the only entity that can take advantage of its specific requirements. There is no rational basis for the General Assembly to require that any application for a “qualifying direct current project” be filed by December 31, 2023, except to specifically favor GBE against all other applicants. In fact, the sponsor of the legislation that added Section 8-406(b-5) to the Act specifically admitted during the debate on the amendment that the new law was for “the transmission line [G]rain [B]elt.” 102nd Gen. Assem., Ill. House of Rep., Debate during 54th Legislative Day, Sept. 9, 2021, Rep. Evans, p. 62 (available at: <https://www.ilga.gov/house/transcripts/htrans102/10200054.pdf> ; App. pg. A101).

Section 8-406(b-5) also arbitrarily discriminates against landowners, including the Landowner Alliance, who own land within Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland and Clark Counties, Illinois (the “Enumerated Counties”), to the benefit of landowners that own real estate outside of the Enumerated Counties. Section 8-406(b-5) arbitrarily and unfairly deprives the landowners in the Enumerated Counties of the same legal



threshold for the involuntary transfer of their private property by eminent domain as landowners in non-Enumerated Counties enjoy.

Accordingly, the Landowner Alliance raises a fair question that the statutory classification in Section 8-406.1(b-5) favoring GBE is arbitrary and in violation of the Special Legislation Clause.

**ii. The Equal Protection Clause.**

The heart of the equal protection guarantee is that persons similarly situated shall be treated similarly. *Jacobson v. Department of Public Aid*, 269 Ill. App. 3d 359, 364 (2<sup>nd</sup> Dist. 1995). The equal protection clause provides a basis for challenging legislative classifications that treat one group of persons as inferior or superior to others, and for contending that general rules are being applied in an arbitrary or discriminatory way. *Panchinsin v. Enterprise Companies*, 117 Ill. App. 3d 441, 445-446 (1<sup>st</sup> Dist. 1983). The equal protection clause prohibits the legislature from drawing distinctions in legislation based on criteria wholly unrelated to the legislation's purpose. *In re M.A.*, 2015 IL 118049, ¶24. An equal protection challenge is generally judged under the same standards as a special legislation challenge. *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 125 (1998).

Intervenors are landowners in the State of Illinois and are similarly situated to any other landowners in the State where a “public utility” is attempting to construct an electrical system through their properties. In 2015, GBE’s predecessor failed to obtain a CPCN for this transmission project because it failed to qualify as a “public utility.” *Concerned Citizens Property Owners v. Illinois Commerce Commission*, 2018 Ill. App. (5<sup>th</sup>) 150551, ¶ 19. After Chicago-based Invenergy purchased the GBE Project (E. 16-17; App. pgs. A053-A054), the Illinois General Assembly enacted Section 8-406(b-5), which attempts to create a new category of “utility lite” applicant that

need only show that its HVDC project crosses the Enumerated Counties and meets minimum voltage and capacity parameters in order to get its CPCN from the Commission. There is no rational basis for the legislature to single out the Enumerated Counties and declare that landowners in those counties have fewer legal rights as against transmission line developers than landowners in Illinois's 93 other counties.

### **iii. The Separation of Powers Clause.**

Article I, Section 15 of the Illinois Constitution states, in relevant part, "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." While "just compensation" is certainly an important component of this takings clause, the requirement that the taking be for a "public use" is equally, if not more, important.

It is well settled under Illinois law that "...the determination of whether a given use is a public use is a judicial function." *People ex rel Tuohy v. Chicago*, 394 Ill. 477, 481 (1946) (citing *Limits Industrial Railroad Co. v. American Spiral Pipe Works*, 321 Ill. 101, 106 (1926); *Zurn v. Chicago*, 389 Ill. 114, 127 (1945)). As the Illinois Supreme Court stated in *Tuohy*, "Any attempt to grant the right to take private property for private use is void." 394 Ill. at 481. This principle was reaffirmed more recently in *Southwestern Ill. Dev. Auth. v. Nat'l. City Environmental, LLC*, 199 Ill. 2d 225, 238 (2002).

Section 8-406(b-5) of the Act states that if the qualifying direct current applicant demonstrates in its application that the proposed qualifying direct current project is designed to deliver electricity to a point or points on the electric transmission grid in either the PJM Interconnection, LLC or the Midcontinent Independent System Operator, Inc., "...the proposed qualifying direct current project shall be deemed to be, and the Commission shall find it to be, for public use." 220 ILCS 5/8-406(b-5). Given Section 8-406(b-5)'s specification of the Enumerated

Counties as the mandatory route for a qualifying HVDC project, this additional requirement that the transmission line's delivery point be located in the service territory of either one of two regional transmission organizations verges on the superfluous.

But this language does show the General Assembly's arrogation of the judicial power to determine whether a proposed use is a "public use." Section 8-406(b-5) takes out of the hands of the courts the determination of whether a particular use is a public one. Article II, Section 1 of the Illinois Constitution states that "[t]he legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another."

**B. The Landowner Alliance will be irreparably harmed.**

Although it reserves to itself the right to postpone for up to five years the start of construction of the Project (C. 5940 V. 20, Finding (11); App. pg. A003). GBE seeks to impose on landowners right now the burdens of negotiating easements and defending against GBE's expressly threatened eminent domain actions. This makes no sense given the pendency of this Appeal.

GBE's present easement acquisition campaign will require the landowners to engage in burdensome and costly discussions with GBE to negotiate easements that may not be used for five years, if ever. These actions are a waste of time and money that the landowners will never recover from GBE. Even a landowner willing to grant an easement to GBE must be prepared to make a counter to whatever GBE might offer as a purchase price for the easement. That means that the willing landowner will, at minimum, need to obtain an updated title search, appraisal and ALTA survey. The cooperating landowner must pay out of pocket for these items. Those landowners who oppose GBE's easement or who believe GBE's offered easement acquisition price is too low will

incur court costs, attorneys' fees and likely expert witness fees in defending against GBE's eminent domain action.

Even if the Landowner Alliance is only partly successful in this Appeal -- for example, by this Court's decision that the Section 8-406(b-5) is unconstitutional on only one of the three grounds set forth in the Landowner Alliance's Application for Rehearing, the Project will never be built. Indeed, even if the Landowner Alliance were to entirely lose this Appeal there is a substantial chance that GBE's Project may never obtain its hoped-for funding. In any of these scenarios, the odds that any affected landowner will ever recover from a penniless project finance limited liability vehicle the costs and expenses they will have incurred in consequence of GBE's premature attempts to obtain easement rights will range somewhere between slim and none.

Easement negotiations also entail the entry by GBE and its employees or agents onto the farmer's land to survey it for the location of their proposed transmission line, towers, staging areas and access roads. This poses the risk of damage to the landowner's crops or facilities. It is no answer that GBE has entered into an Agricultural Impact Mitigation Agreement (the "AIMA") with the Illinois Department of Agriculture. (E. 1210-1240 V. 11; App. pgs. A056-A086). To the contrary, the AIMA shows how real the risk of damage is to growing crops, farmland and equipment from GBE's proposed activities.

The simple reality is that landowners along the transmission line's proposed route will be put to substantial effort and expense now for a project that GBE may never even build. The trouble to which GBE now wants to put these landowners will be purely wasted effort if the Landowner Alliance is even partly successful in this Appeal. GBE's more likely purpose is to use the fact of easement negotiations to show potential investors that it is making at least some progress on the Project.

By its own testimony, GBE provided no evidence establishing that it has assets or working capital with which to pay landowners for any easement. (R. 300-08; App. pgs. A087-A095). The costs and efforts that GBE's premature easement campaign will inflict on landowners present an irreparable harm to those landowners because the landowners will never recover any of those costs and expenses from GBE.

**C. Staying the Commission's Order Pending the Resolution of this Appeal does No Harm to GBE.**

With no disrespect to the late Mr. Marvell, Time's winged chariot isn't hurrying anywhere near GBE's proposed route.<sup>1</sup> GBE has asked for a full five years before it has to even begin putting iron in Illinois ground. Staying GBE's easement acquisition campaign pending the resolution of this Appeal will impose no hardship on GBE.

In fact, the provision in the Order permitting GBE to begin construction within five years is a basis in and of itself to overturn the Order, which supports the merits of the Landowner Alliance's appeal. Section 8-406 of the Act sets a two-year limit on the time within which an applicant must exercise the authority granted under a CPCN. 220 ILCS 5/8-406(f). The express time limit set forth in Section 8-406(f) shows that the Commission does not have the authority to issue the five-year CPCN included in the Order. (C. 5940 V. 20, Finding (11); App. pg. A003). The Commission's willful evasion of the time limit requirements of Section 8-406 of the Act constitutes reversible error, which supports the granting of the stay of the Order until this Appeal is concluded.

**D. GBE is Incapable of Financing the Project.**

Another factor supporting the merits of the Landowner Alliance's appeal is the

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<sup>1</sup> See Marvell, A., *To His Coy Mistress*, ca. 1681. Available at: <https://www.poetryfoundation.org/poems/44688/to-his-coy-mistress>

Commission's granting of the Order despite GBE's failure to demonstrate that it is capable of financing the Project as required by Section 8-406.1(f)(3) of the Act, which financing capacity must still be shown to comply with Section 8-406(b-5). The total Project cost is \$7 billion. (E. 425, V. 3, lines 429-30; App. pg. A055). Though GBE asserts that it is presently capable of financing the Project, this is false. GBE's own witnesses testified that financing for the Project will not be in place until it has secured transmission contracts with customers whose credit ratings are acceptable to lenders willing to lend to GBE on the strength of those customers' creditworthiness. (R. 339-43; App. pgs. A096-A100). As GBE stated in its Initial Brief before the Commission, it will not be able to obtain financing for the Project until customer contracts are executed. (C. 4834 V. 19; App. pg. A001).

The Commission's Order glosses over the Act's requirement that a CPCN applicant must be able to finance its project by attaching a "financing condition." (C. 5940-41 5971-72 V. 20; App. pgs. A003-A004, A005-A006). The Act does not empower the Commission to make conditional grants of CPCNs as a way of circumventing the Act's requirements. The exponential multiplication of conditions in its orders stands testament to the Commission's dexterity whenever it determines that explicit requirements of the Act are to be avoided.

Allied to the financing condition imposed by the Commission, GBE has agreed that it will not commence installation of any transmission facilities in Illinois until it has obtained commitments for funds in a total amount sufficient to finance the entire Project. (C. 5971; App. pg. A005). Stated more simply, the Commission has agreed to give GBE five years to obtain funding commitments in the aggregate amount of \$7 billion before GBE can begin to put iron in Illinois ground. Despite this, GBE is demanding that landowners begin easement negotiations now. The Order should be stayed until the merits of this Appeal have been decided.

### **E. Balancing of Factors.**

The immediate harm to the landowners if a stay is not granted versus the lack thereof to GBE if a stay is granted is described in Section III., subsections B and C, above. The Commission granted GBE up to five years to start the Project. Yet GBE's present implementation the Order imposes immediate and unnecessary burdens on the landowners. The equities of this case weigh heavily in favor of staying implementation of the Order pending the resolution of this Appeal. It makes no sense to require the landowners to expend time and money dealing with GBE's land agents and threats of eminent domain litigation when the statute on which GBE bases its entire case may be found unconstitutional. The constitutional issues in this case should be resolved before GBE is allowed to push forward on the Project.

As demonstrated above and in greater detail in the Landowner Alliance's Application for Rehearing (C. 6012-51 V. 20; App. pgs. A007-A046), all the requirements relevant to granting a stay are satisfied. A stay is necessary to ensure that the intervenors benefit fully from a victory on appeal. A stay will not cause any material harm to GBE. Most significantly, the appellants have a strong likelihood of success in their appeal.

The facts of this case, when balanced together, lead inevitably to the conclusion that the Commission's Order should be stayed pending the resolution of this appeal without the need for a bond (in light of the lack of monetary damages caused by the stay due to the applicable financing condition and GBE's own five-year time frame for beginning construction under the Order).

WHEREFORE, the Landowner Alliance respectfully requests that this Court grant their Motion to Stay the ICC's Order pending Appeal without the filing of a bond.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2023, I electronically filed the foregoing with the Clerk of the Court using the eFileIL system, and I hereby certify that a copy of the foregoing instrument was served upon:

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via electronic transmission on this 21<sup>st</sup> day of July, 2023.

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

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/s/Charles Y. Davis

No. 5-23-0271

IN THE APPELLATE COURT OF ILLINOIS  
FOR THE FIFTH JUDICIAL DISTRICT

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CONCERNED CITIZENS & PROPERTY OWNERS, )  
ILLINOIS AGRICULTURAL ASSOCIATION a/k/a )  
THE ILLINOIS FARM BUREAU, CONCERNED )  
PEOPLE ALLIANCE, NAFSICA ZOTOS, and )  
YORK TOWNSHIP IRRIGATORS )  
)  
)  
Petitioners-Appellants, )  
)  
v. )  
)  
)  
ILLINOIS COMMERCE COMMISSION, GRAIN )  
BELT EXPRESS LLC, CLEAN GRID ALLIANCE, )  
HANSON AGGREGATES MIDWEST, INC., )  
GREYROCK, LLC, CITIZENS UTILITY BOARD, )  
LEONARD BRAD DAUGHERTY, as TRUSTEE OF )  
THE LEONARD DAUGHERTY TRUST DATED )  
JULY 9, 2010, REX ENCORE FARMS LLC, and )  
ILLINOIS MANUFACTURERS ASSOCIATION, )  
)  
)  
Respondents-Appellees. )

Notice of Appeal of Orders of the  
Illinois Commerce Commission  
in its Docket No. 22-0499

Date of Notice of Appeal:  
April 20, 2023

Date of Orders of the Illinois  
Commerce Commission sought to  
be reviewed: March 8, 2023 and  
April 20, 2023

**APPENDIX**  
**TO**  
**MOTION FOR STAY PENDING APPEAL OF THE ORDER OF THE**  
**ILLINOIS COMMERCE COMMISSION IN ILL. C.C. DOCKET NO. 22-0499**

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120. Grain Belt Express is a special purpose vehicle established to construct, own and operate the Project. GBX Ex. 4.0 at 11:245–246. Grain Belt Express will finance on a “project-finance basis.” Hr’g Tr. 128:18–129:9, 343:21–344:2. This is a typical structure in the energy infrastructure industry. Hr’g Tr. 129:3–4. Once the Project reaches an advanced state of development and licensing, Grain Belt Express can enter into project-specific financing arrangements with investors and lenders to secure the capital needed to complete development and construction of the Project and place it into operation. GBX Ex. 4.0 at 5:95–98. Project-finance lenders generally prefer developers to have all necessary permits, have procured any remaining financial commitments beyond the lenders’ funding to complete construction and have a high degree of certainty on budget and timeline. GBX Ex. 4.0 at 11:225–228.

The financing process really starts in earnest once customer contracts are executed (which requires a route), supply agreements are executed and site control is obtained. Hr’g T. 290:19–291:4, 298:21–299:6. At that stage, developers of wind and solar generation facilities and other potential customers of the transmission line are willing to enter into commercial agreements for an undivided interest (purchase or lease) or long-term contracts for transmission capacity on the Project, and Grain Belt Express will enter into such contracts with interested subscribers that satisfy necessary creditworthiness and other requirements. GBX App. ¶ 96. Grain Belt Express will then raise debt capital using the aforementioned contracts as security for the debt. GBX Ex. 4.0 at 6:123–130. Grain Belt Express anticipates financing approximately 65 to 80% of the project costs through debt, with the debt being funded through the Department of Energy or commercial banks, including those listed institutions above. Hr’g Tr. 284:15–19, 289:19–290:2.

Recent experience shows that significant amounts of liquidity exist in the capital markets for transmission projects that have reached an advanced stage of development. GBX Ex. 4.0 at

Landowners Alliance's general request for oral argument on February 23, 2023 and determined which issues it would like to hear oral argument on. Notice served electronically to parties.

- 03/03/2023 Oral Argument Heard by the Commission and Taken under Advisement.
- 03/08/2023 Memorandum to the Commission regarding the action of March 8, 2023. C 5833 – C 5837 V 20
- 03/08/2023 Final Order entered.
- 03/08/2023 Final Order served electronically to parties. C 5838 – C 5976 V 20
- 03/23/2023 February 23, 2023 Regular Open Meeting Minutes of the Illinois Commerce Commission approved C 5977 – C 5995 V 20
- 04/05/2023 March 8, 2023 Special Open Meeting Minutes of the Illinois Commerce Commission approved C 5996 – C 6011 V 20
- 04/07/2023 Application for Rehearing of the Illinois Agricultural Association a/k/a the Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, Nafsica Zotos, and York Township Irrigators, filed by Brown Hay & Stephens LLP. ORAL ARGUMENT REQUESTED (Electronic) C 6012 – C 6051 V 20
- 04/12/2023 Grain Belt Express LLC's Motion for Leave to File a Response and the Proposed Response to the Application for Rehearing filed by Polsinelli PC. (electronic) C 6052 – C 6065 V 20
- 04/17/2023 Response of the Illinois Agricultural Association a/k/a the Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, Nafsica Zotos, and York Township Irrigators (the "Landowner Alliance") to Grain Belt Express, LLC's Motion for Leave to Respond to the Application for Rehearing of the Landowner Alliance, filed by Law Offices of Paul G. Neilan, P.C. (Electronic) C 6066 – C 6078 V 20
- 04/18/2023 Notice is hereby given by the Administrative Law Judge that Grain Belt Express LLC's Motion for Leave to File a Response and the Proposed Response to the Application for Rehearing, is Denied. There is no provision in the Public Utilities Act or the Commission's Rules for an answer or response to an Application for Rehearing. Notice served electronically to parties. C 6079 – C 6082 V 20
- 04/20/2023 Memorandum to the Commission regarding the action of April 20, 2023. C 6083 – C 6087 V 20
- 04/20/2023 The Commission in conference DENIED the Application for Rehearing and Request for Oral Argument of the Illinois Agricultural Association a/k/a the Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, Nafsica Zotos, and York Township Irrigators, filed on April 7, 2023.
- 04/20/2023 Notice of Commission Action served electronically to parties advising of the action of the Commission on April 20, 2023. C 6088 – C 6091 V 20
- 04/20/2023 Notice of Appeal filed by McNamara & Evans on behalf of Concerned Citizens & Property Owners to the Appellate Court, C 6092 – C 6103 V 20

- (8) pursuant to Section 8-406.1(f)(3) of the Act, subject to the determinations made in this Order, the Commission finds that Grain Belt Express is capable of financing the proposed construction of the Project without significant adverse financial consequences for Grain Belt Express or its customers;
- (9) subject to the determinations made and conditions and requirements imposed in this Order, pursuant to Section 8-406.1 of the Act, a CPCN should be issued to Grain Belt Express as ordered below;
- (10) pursuant to Section 8-503 and Section 8-406.1(i) of the Act, the Commission finds that the construction of the Project is necessary and it should be erected to promote the security and convenience of the public, to promote the development of an effectively competitive electricity market and to secure adequate services and facilities;
- (11) subject to the determinations made and conditions and requirements imposed in this Order, pursuant to Section 8-406.1(i) of the Act, Grain Belt Express should be authorized to construct the Project as described herein, and in the manner and time specified in this Order, with construction of the Project within the State of Illinois to commence within five years (60 months) following the date of this Order, unless modified by the Commission;
- (12) Grain Belt Express should be issued a CPCN to construct, operate, and maintain the Project, an up to  $\pm 600$  kV HVDC transmission line and associated facilities, including a DC-to-AC converter station in Clark County, Illinois, and a double circuit 345 kV AC line from the converter station to the Illinois-Indiana border, in the State of Illinois, along the Proposed Route described in Grain Belt Express' Application's Attachment 4 and as depicted in Appendix A, with a permanent right-of-way, for both the DC and AC sections of the Project, of between 150 and 200 feet around the centerline of the transmission line from the Mississippi River to the Illinois-Indiana border, with the exception of locations that require an atypical span to accommodate terrain features, land considerations and other local factors, in which case Grain Belt Express is authorized to obtain a permanent ROW easement up to 300 feet, and additional temporary easements of (i) 50 feet beyond the permanent right-of-way as required for purposes of access, turning and laydown yard easements during the construction of the Project and (ii) up to 600 feet beyond the permanent right-of-way at those locations with turning structures at 15- to 90- degree angles as described in Section V.D.1;
- (13) Grain Belt Express should be allowed the flexibility as described in Section V.D.1 to permanently site structures outside of the approved ROW when feasible and consistent with the Commission-approved route location or by agreement of all affected landowners so long as the applicable parcel's landowner received notice of this proceeding pursuant to Section 8-406.1(a) or intervened in this proceeding. Consistent with the flexibility, Grain Belt Express should be allowed to site the permanent easement on parcels that received notice of this proceeding pursuant to Section 406.1(a) or that



intervened in these proceedings, even if the location of such permanent easement extends beyond 75 feet in both directions of the centerline of the ROW identified in the Application and Grain Belt Express testimony and exhibits without having to seek additional approval from the Commission is granted; and

- (14) the Commission adopts the Cost Allocation Condition set forth in Section IV.E, the Interconnection Condition set forth in Section IV.E., the Financing Condition set forth in Section IV.D.1, and the Accounting Condition set forth in Section VII.A of this Order, and grants confidential and proprietary treatment, pursuant to Section 4-404 of the Act, to the information designated by Grain Belt Express as confidential and proprietary in the testimony and exhibits submitted in this proceeding, for a period of five (5) years from the date of submission in this proceeding, unless that period is extended for good cause shown pursuant to 83 Ill. Adm. Code 200.430. Further, the Commission orders Grain Belt Express to file the Administrative Services Agreement with the Commission in this proceeding as set forth in Section VII.B., at which time the Commission will review and approve the Administrative Services Agreement if appropriate.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a Certificate of Public Convenience and Necessity is hereby issued to Grain Belt Express LLC pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act, and that said Certificate shall read as follows:

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

IT IS HEREBY CERTIFIED that the public convenience and necessity require (1) the construction, operation and maintenance by Grain Belt Express LLC of a high voltage direct current transmission line and an alternating current transmission line, and related facilities, as described in this Order over the Proposed Route approved by the Commission and described in the legal description set forth in Grain Belt Express Attachment 4 filed on e-docket in Docket No. 22-0499 and in Appendix A to this Order, and (2) the transaction of an electric public utility business by Grain Belt Express in connection therewith, all as set forth in this Order.

IT IS FURTHER ORDERED that pursuant to Section 8-406.1 and Section 8-503 of the Public Utilities Act, Grain Belt Express LLC is authorized to construct the proposed high voltage electric service line and related facilities as described in, and in the manner and within the time specified, in this Order.

IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity and the other authorizations granted herein are, and shall be, subject to, and Grain Belt Express LLC shall comply with, the Cost Allocation Condition set forth in Section IV.E, the Interconnection Condition set forth in Section IV.E., the Financing Condition set forth in Section IV.D.1 and Appendix B to this Order, and the Accounting Condition set forth in Section VII.A in this Order.

## Revised Financing Condition

Grain Belt Express will not install transmission facilities for Phase II of the Project on easement property until such time as Grain Belt Express has obtained commitments for funds in a total amount sufficient to finance the anticipated total project cost. For the purposes of this condition:

“install transmission facilities” shall mean to affix permanently to the ground transmission towers or other transmission equipment, including but not limited to bases, poles, towers and structures, such wires and cables as Grain Belt shall from time to time suspend therefrom, foundations, footings, attachments, anchors, ground connections, communications devices and other equipment, accessors, access roads and appurtenances, as Grain Belt may deem necessary or desirable in connection therewith, but shall not include (A) preparatory work such as surveys, soil borings, engineering and design, obtaining permits and other approvals from governmental bodies, acquisition of options and easements for right-of-way, and ordering of equipment and materials, and (B) site preparation work and procurement and installation of equipment and facilities on property owned in fee by Grain Belt Express including the converter station sites;

“easement property” shall mean property on which Grain Belt Express has acquired an easement to install transmission facilities;

“has obtained commitments for funds” shall mean (A) for loans and other debt commitments that Grain Belt Express has entered into a loan agreement(s) with a lender(s) and has received the loan funds or has the right to draw down the loan funds on a schedule that is consistent with the need for funds to complete the Project, and (B) for equity, that Grain Belt Express or its parent company has a combination of sufficient cash on hand, funds received from the equity investors, or commitments from the equity investors to provide funds on a schedule that is consistent with the need for funds to complete the Project; and

“total project cost” shall mean the total estimated remaining cost for Phase I and Phase II of the Project, at the time that Grain Belt Express is prepared to begin to install Phase II transmission facilities, for the following: engineering, manufacturing and installation of converter stations; transmission line engineering; transmission towers; conductor; construction labor necessary to complete the Project; right of way acquisition costs; and other costs necessary to complete the Project. For reference, the estimated total project cost as of July 18, 2022 is \$4.95 billion not including estimated costs for network upgrades.

To allow the Commission to verify its compliance with this condition, Grain Belt Express shall submit the following documents to the Director of the Financial Analysis Division and the Director of the Public Safety & Reliability Division at such time as Grain Belt Express is prepared to begin to install Phase II transmission facilities:

- a) On a confidential basis, documents sufficient to demonstrate equity and loan or other debt financing agreements and commitments entered into or obtained by Grain Belt Express or its parent company for the purpose of funding the Project that, in the aggregate, provide commitments for funds for the total project cost;
- b) An attestation certified by an officer of Grain Belt Express that Grain Belt Express has not, prior to the date of the attestation, installed Phase II transmission facilities on easement property; or a notification that such installation is scheduled to begin on a specified date;
- c) A statement of the total project cost, broken out by the components listed in the definition of "total project cost," above, and reviewed by an officer of Grain Belt Express, along with a reconciliation of the total project cost in the statement to the total project cost as of July 18, 2022 of \$4.95 billion (not including estimated costs for network upgrades); and
- d) A reconciliation statement, certified by an officer of Grain Belt Express, showing that the agreements and commitments for funds provided in (a) are equal to or greater than the total project cost provided in (c).

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

GRAIN BELT EXPRESS LLC, )  
 )  
 Application for an Order Granting Grain Belt )  
 Express LLC, as a Qualifying Direct Current )  
 Applicant, a Certificate of Public Convenience )  
 and Necessity pursuant to Sections 8-406(b-5) )  
 and 8-406.1 of the Public Utilities Act to )  
 Construct, Operate and Maintain a High )  
 Voltage Direct Current Electric Service )  
 Transmission Line as a Qualifying Direct )  
 Current Project and to Conduct a Transmission )  
 Public Utility Business in Connection Therewith )  
 and Authorizing Grain Belt Express LLC pursuant )  
 to Sections 8-503 and 8-406.1(i) of the Public )  
 Utilities Act to Construct the High Voltage Direct )  
 Current Electric Transmission Line. )

Docket No. 22-0499

**ORAL ARGUMENT REQUESTED**

**APPLICATION FOR REHEARING OF THE ILLINOIS AGRICULTURAL  
ASSOCIATION a/k/a THE ILLINOIS FARM BUREAU, CONCERNED CITIZENS &  
PROPERTY OWNERS, CONCERNED PEOPLE ALLIANCE, NAFSICA ZOTOS, AND  
YORK TOWNSHIP IRRIGATORS**

**NOW COME** Intervenor, ILLINOIS AGRICULTURAL ASSOCIATION a/k/a the Illinois Farm Bureau (the “Farm Bureau”), by and through its attorneys, Charles Y. Davis of Brown, Hay & Stephens, LLP, and Laura Harmon of the Office of the General Counsel for the Farm Bureau, CONCERNED CITIZENS & PROPERTY OWNERS (“CCPO”), by and through their attorneys, Edward D. McNamara, Jr. and Joseph H. O’Brien of McNamara & Evans, and Kara J. Wade, Kristen M. Flood, and Clayton Walden of Taylor Law Offices PC, CONCERNED PEOPLE ALLIANCE (“CPA”), by and through their attorneys, Brian R. Kalb and Joseph R. Harvath of Byron Carlson Petri & Kalb, LLC, NAFSICA ZOTOS (“Zotos”), by and through her attorney, Paul G. Neilan of Law Offices of Paul G. Neilan, P.C., and JOE and BETTY MACKE, KEN and ELEANOR MACKE, JOHN and PATTY MACKE, STEVEN and BETH MACKE, DAVID L. MACKE, ALICE and JOE SCHROEDER, LLOYD SHAW, DAVID and KIM

MACKE, and BRIAN and TIFFANY MACKE, a group of landowners in and surrounding the geographical area which is the subject of this proceeding (“York Township Irrigators” or “YTI”), by and through their attorney, William F. Moran, III of Stratton, Moran, Reichert, Sronce & Appleton (Farm Bureau, CCPO, CPA, Zotos, and YTI are collectively referred to herein as the “Landowner Alliance”), and pursuant to Section 10-113 of the Illinois Public Utilities Act (220 ILCS 5/10-113) and Title 83, Section 200.880 of the Illinois Administrative Code (83 Ill. Adm. Code 200.880), jointly and severally submit this Application for Rehearing of the Illinois Commerce Commission’s (“Commission”) March 8, 2023 Final Order entered herein. In support of this Application, the Landowner Alliance hereby state as follows:

## **I. INTRODUCTION**

1. The Commission entered its Final Order herein on March 8, 2023 (“Final Order”) and served it upon the parties on March 8, 2023.

2. The Final Order constitutes an “order on the merits” within the meaning of 83 Ill. Adm. Code 200.880(a), and this Application is filed within thirty (30) days of service of the Final Order, as required by Section 200.880(a). Concurrently with the filing of this Application by e-Docket, a hard copy original hereof is being mailed to the Office of the Chief Clerk of the Commission, as required by 83 Ill. Adm. Code 200.880(a)(2).

3. The Final Order wrongfully grants Grain Belt Express LLC’s (“Grain Belt”) Verified Petition and, as a result, the Landowner Alliance requests rehearing on the issues detailed hereinafter.

4. Pursuant to the Commission Rules of Practice, an application for rehearing may incorporate the “arguments made in prior pleadings and briefs” by specifying the document and page where such arguments were previously made to the Commission. 83 Ill. Adm. Code 220.880(b). As such, this Application incorporates arguments made in prior pleadings and

briefs, and when doing so, specifies the location of said arguments pursuant to the Commission Rules of Practice.

## **II. GRAIN BELT’S AUTHORITY TO PROCEED SECTION 8-406(b-5)**

### **A. Special Legislation**

Article IV, Section 13 of the Illinois Constitution of 1970 (the “Illinois Constitution”), the special legislation clause, prohibits the General Assembly from conferring special benefit or privilege upon one person or group and excluding others that are similarly situated. *Doe v. Lyft, Inc.*, 2020 IL App (1<sup>st</sup>) 191328, ¶34, appeal allowed 163 N.E.3d 713. The special legislation clause prevents the General Assembly from making classifications that arbitrarily discriminate in favor of a select group. Governments should establish and enforce general principles applicable to all their citizens and not enrich particular classes of individuals at the expense of others. *Moline School District No. 40 v. Quinn*, 2016 IL 119704, ¶19.

The special legislation clause of the Illinois Constitution prohibits the legislature from enacting a “special or local law when a general law is or can be made applicable.” Illinois Constitution, Art. IV, sec. 13. A general law applies to all persons and entities in the same situation; a special law does not. *Board of Education of Peoria v. Peoria Federation of Support Staff*, 2013 IL 114853, ¶48. Laws are considered “general” when alike in their operation upon all persons in like situations. Laws are “special” if they impose a particular burden or confer a special right, privilege, or immunity upon only a portion of the people of our State. *Moline School District v. Quinn*, 2016 IL 119704, ¶21(1966).

In 2015, the Supreme Court of Illinois commented on the history of the special legislation clause, stating:

The special legislation clause prohibits the General Assembly from conferring a special benefit or privilege upon one person or group of persons and excluding others that are similarly situated. *Big Sky*

*Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill.2d 221, 235, 298 Ill.Dec. 739, 840 N.E.2d 1174 (2005). Its purpose, as we have consistently held, is to prevent arbitrary legislative classifications that discriminate in favor of a select group without a sound, reasonable basis. *Best v. Taylor Machine Works*, 179 Ill.2d 367, 391, 228 Ill.Dec. 636, 689 N.E.2d 1057 (1997).

The clause has deep roots in our constitutional jurisprudence. It originally appeared in the nineteenth century in response to the General Assembly's past abuse of the legislative process through the grant of special charters for various economic interests. It is predicated in part on the conviction that governments should establish and enforce general principles applicable to all their citizens and not enrich particular classes of individuals at the expense of others, that "one class or interest should not flourish by the aid of government, whilst another is oppressed with all the burdens." *Id.* at 391–92, 228 Ill.Dec. 636, 689 N.E.2d 1057 (quoting I Debates and Proceedings of the Constitutional Convention of the State of Illinois 578 (statements of Delegate Anderson)).

*Moline Sch. Dist. No. 40 Bd. of Educ. v. Quinn*, 2016 IL 119704, ¶¶ 18-19, 54 N.E.3d 825, 830.

A challenge under the special legislation clause is thus judged under a two-part test: (1) whether the statutory classification at issue discriminates in favor of a select group, and (2) if it does, whether the classification is arbitrary. Here, Section 8-406(b-5) arbitrarily discriminates against both utilities and landowners.

Prior to the enactment of the new Section 8-406(b-5), the comprehensive regulatory scheme began with the classification of an entity as a "public utility." 220 ILCS 5/3-105. That section defines a "public utility" as a company "that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in" the production, transmission, delivery or furnishing of electricity. 220 ILCS 5/3-105(a)(1) and (b)(9).

Prior to its name change from Grain Belt Express Clean Line, L.L.C., to Grain Belt Express, L.L.C., Grain Belt was unable to satisfy the Commission that its project met those

requirements in the Grain Belt Clean Line 2015 Application. Although it tried to satisfy the legislative scheme set out above, it failed the most elementary hurdle of being a “public utility.” See *Concerned Citizens v. ICC*, 2018 IL App (5<sup>th</sup>) 150551.

Thus, the requirements and the required evidence for issuance of a certificate are completely different for “qualified direct current applicants” and projects as opposed to applicants pursuing a certificate under Sections 8-406(b) and 8-406.1 In other words, the exception of Section 8-406(b-5) becomes the rule and effectively reads the public use requirement out of the Illinois Public Utilities Act, 220 ILCS 5/1-101 et seq. (the “Act”), rendering it inapplicable to qualified direct current applicants.

The statute without Section 8-406(b-5) applies to all persons and entities in the same situation; the statute with Section 8-406(b-5), does not. See *Board of Education of Peoria v. Peoria Federation of Support Staff*, 2013 IL 114853, ¶48. Section 8-406(b-5) benefits only Grain Belt as opposed to all other utilities because Grain Belt is the only entity able to take advantage of its specific requirements. There is no rational basis for the General Assembly to create a special class of a single “qualifying direct current project” defined by certain voltage and capacity transmission parameters and limited to the counties along the route of the Grain Belt transmission line except to specifically favor Grain Belt against all other applicants. Nor is there any rational basis for the General Assembly to exempt this new special class of a single transmission project from the requirements of Section 8-406.1(f)(1) of the Act, as this special legislation does.

Section 8-406(b-5) also arbitrarily discriminates against landowners, including the Landowner Alliance, that own land within Pike, Scott, Greene Macoupin, Montgomery, Christian, Shelby, Cumberland and Clark Counties, Illinois (the “Enumerated Counties”), to the benefit of landowners that own real estate outside of the Enumerated Counties. Section 8-406(b-



5) arbitrarily and unfairly subjects the landowners within the Enumerated Counties to the possibility of Grain Belt's proposed high-voltage direct current transmission project (the "Project") traversing their properties without the same level of review by the Commission that is afforded landowners in non-Enumerated Counties.

**B. Section 406(b-5) denies Plaintiff and Intervenors Equal Protection of the Law in Violation of Article II, Section 1 of the Illinois Constitution of 1970.**

The heart of the equal protection guarantee is that persons similarly situated shall be treated similarly. *Jacobson v. Department of Public Aid*, 269 Ill. App. 3d 359, 364 (2<sup>nd</sup> Dist. 1995). The equal protection clause provides a basis for challenging legislative classifications that treat one group of persons as inferior or superior to others, and for contending that general rules are being applied in an arbitrary or discriminatory way. *Panchinsin v. Enterprise Companies*, 117 Ill. App. 3d 441, 445-446 (1<sup>st</sup> Dist. 1983). The equal protection clause prohibits the legislature from drawing distinctions in legislation based on criteria wholly unrelated to the legislation's purpose. *In re M.A.*, 2015 IL 118049, ¶24. An equal protection challenge is generally judged under the same standards as a special legislation challenge. *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117 (Ill. 1998).

Intervenors are landowners in the State of Illinois and are similarly situated to any other landowners in the State where any non-public utility or "public utility" seeks approval to construct an electrical system across their properties.

After the failure of Grain Belt's effort in 2015 to qualify as a "public utility," it secured passage of Section 8-406(b-5). But if a qualifying HVDC developer's project crosses the nine counties listed above, then the developer can get its certificate of public convenience and necessity ("CPCN") from the Commission without having to make any evidentiary showings beyond the voltage and capacity of the transmission line.

There is no rational basis for the legislature to single out these nine specific Illinois counties and declare that landowners in those counties have fewer legal rights than landowners in Illinois's 93 other counties. There is no reason to treat the landowners in Enumerated Counties differently from those in any other county in Illinois.

In further support of a violation of Equal Protection, the new legislation is wholly inconsistent with the purpose of the Act. The Act's express purpose is the regulation of "public utilities." *Inland Real Estate Corporation v. Village of Palatine*, 107 Ill. App. 3d 279, 281 (1<sup>st</sup> Dist. 1982). Its provisions grant authority to the Commission over the ownership and operation of "public utilities" as the term is defined in Section 3-105 of the Act. *Id.* The purpose of the Act includes the establishment and protection of "public utilities" from destructive competition, and contemplates actual supervision of every "public utility," so that continuous, adequate, uniform, and satisfactory service shall be rendered to the public at reasonable rates and without discrimination. *City of Chicago v. Alton R. Co.*, 355 Ill. 65, 74 (1934). Entities that are not "public utilities" are generally not subject to regulation under the Act or to supervision and control by the Commission. *Illinois Landowners Alliance, NFP v. ICC*, 2017 IL 121302, ¶32. This would mean that the new legislation does not provide the Commission with jurisdiction to regulate the activities of a qualified direct current applicant. *Concerned Citizens v. ICC*, 2018 IL App (5<sup>th</sup>) 150551, ¶24. The new legislation writes Section 3-105 out of the Act.

In addition, the designation as a qualified direct current project is available only to a project in the Enumerated Counties. No other project falls within the qualifying direct current project designation. Both the qualifying direct current applicant and the qualifying direct current project designations are elements of the same denial of Equal Protection. Section 406(b-5) gives a carte blanche distinction to Grain Belt and allows it to obtain a CPCN in a way no other entity applying for CPCN can. The purpose of Section 8-503 is to make improvements to

infrastructure that already exists and is owned by a “public utility.” See 220 ILCS 5/3-105; 8-503. It is now being used by a non-public utility for initial construction on Intervenors’ properties.

### C. Separation of Powers

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

It is well settled under Illinois law that “...the determination of whether a given use is a public use is a judicial function.” *People ex rel Tuohy v. Chicago*, 394 Ill. 477, 481 (1946), citing *Limits Industrial Railroad Co. v. American Spiral Pipe Works*, 321 Ill. 101, 106 (1926) and *Zurn v. Chicago*, 389 Ill. 114, 127 (1945). As the Illinois Supreme Court stated in *Tuohy*, “any attempt to grant the right to take private property for private use is void.” 394 Ill. at 481. This principle was reaffirmed more recently in *Southwestern Ill. Dev. Auth. v. Nat’l. City Environmental, LLC*, 199 Ill. 2d 225, 248 (2002).

In Section 8-406(b-5), the General Assembly is exercising the judicial power to determine whether a particular use is public or private. The overarching principle of the cases cited above is that the determination of whether, for purposes of exercising the power of eminent domain, a proposed use is a public use is a decision for the courts, not the legislature.

If the language quoted above in Section 8-406(b-5) is allowed to stand, the General Assembly will have acquired sole power to define what the term “public use” means in Article II, Section 1 of the Illinois Constitution. The General Assembly’s eminent domain power would be left unchecked because there would be no branch of government that could review its public use decisions. The General Assembly would have eminent domain power by fiat: it could merely declare something a public use in order to effect the involuntary transfer of private property from

one party to another. This has never been the law in the State of Illinois. The public use declaration in Section 8-406(b-5) unconstitutionally usurps the judicial power.

As further argument in support of their request for rehearing in this section, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Joint Initial Brief of Intervenors, Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos in Opposition to Grain Belt Express LLC's Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 13-28; and
2. Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos' Brief on Exceptions to the Illinois Commerce Commission's Proposed Order Dated February 2, 2023, pp. 14-21.
3. Initial Brief For Intervenor York Township Irrigators, pp. 6-10.

### III. SECTION 8-406.1 CRITERIA FOR A CERTIFICATE

#### A. Section 8-406.1(f) – Grain Belt's Promotion of the Public Convenience and Necessity

1. **Section 8-406.1(f)'s requirement that the Commission find that a project will "promote the public convenience and necessity" is separate from and in addition to the requirement that a project meet the requirements of subsections (1), (2) and (3) of Section 8-406(f).**

There is no ambiguity or lack of clarity in the language of Section 8-406.1(f) which states that:

[t]he Commission shall, after notice and hearing, grant a certificate of public convenience and necessity filed in accordance with the requirements of this Section **if**, based upon the application filed with the Commission and the evidentiary record, **it finds** the Project will promote

the public convenience and necessity **and that all of the following criteria are satisfied**. 220 ILCS 5/8-406.1 (emphasis added)

The term “and” is a conjunction, meaning that it joins together separate clauses, phrases or words. In Section 8-406.1(f) the term “and” conjoins: (a) the requirement that a project promote the public convenience and necessity, with (b) all of the three subsections of Section 8-406.1(f) that follow. All of the criteria in both Section 8-406.1(f) and subsections (1), (2) and (3) of Section 8-406.1(f) must be met. The Commission’s Final Order, which finds that “public convenience and necessity” is not a separate element that must be proved under Section 8-406.1(f) (Final Order, p. 25) contradicts the plain language of that provision. Consequently, argument on this portion of the Commission’s Final Order should be reheard.

As further argument in support of their request for rehearing in this section, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos’ Brief on Exceptions to the Illinois Commerce Commission’s Proposed Order Dated February 2, 2023, pp. 8-10.
2. **The Project does not promote the public convenience and necessity because it provides no benefits to Illinois ratepayers.**

The unrebutted evidence in this docket shows that any alleged savings that the Project will bring to Illinois ratepayers are completely illusory because they depend entirely on Grain Belt Witness Repsher’s insupportable assumption that the United States will implement a carbon pricing regime starting at \$24.55 per ton in 2026. (Landowner Alliance Initial Brief, pp. 31-32). Mr. Repsher’s carbon pricing assumption artificially raises the cost of natural gas generation, which generally sets the electricity supply price at the margin. (Landowner Alliance Exhibit 2.0, p. 6, ln 116 – p. 7, ln. 130). In other words, Grain Belt Witness Repsher uses his unjustified

carbon pricing assumption to create an artificially high benchmark against which to project savings. As explained in the briefs and at oral argument before the Commission on March 3, 2023, Grain Belt's assumed carbon pricing regime operates just like an underhanded retailer's fictitious savings claim: "Let's double the price and then advertise a 50%-off sale!" Landowner Alliance Initial Brief at p. 31.

But the most telling flaw in Grain Belt's claim that the Project will save Illinois ratepayers \$6.6 billion is that Grain Belt could have re-run its Aurora Model to project what those savings would be without Grain Belt Witness Repsher's carbon pricing assumption; but Grain Belt chose not to run that calculation. Landowner Initial Brief pp. 32-37. Landowner Witnesses Giordano and Turner testified that in that scenario the Project provides no benefit at all to Illinois ratepayers. The Commission's Final Order simply accepts Grain Belt's projected savings, entirely disregarding any question about the validity of Grain Belt's carbon pricing assumption and its centrality to Grain Belt's claimed savings for Illinois ratepayers.

As further argument in support of their request for rehearing in this section, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Joint Initial Brief of Intervenors, Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos in Opposition to Grain Belt Express LLC's Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 29-37; and
2. Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos' Brief on Exceptions to the Illinois Commerce Commission's Proposed Order Dated February 2, 2023, pp. 9-10.

- 3. The Project Must Still Meet the Requirements of Section 8-406.1(f)(1).**
- a. Grain Belt waived the evidentiary presumption in Section 8-406(b-5) that its Project met the criteria of Section 8-406.1(f)(1)**

For the reasons stated above, the position of the Landowner Alliance is that Section 8-406(b-5) is unconstitutional for violation of the special legislation, equal protection and separation of powers clauses. However, if Section 8-406(b-5) is found to be constitutional, Grain Belt is still required to show that the Project meets the requirements of Section 8-406.1(f)(1) because it waived Section 8-406(b-5)'s presumption that no such evidentiary showing was necessary.

The Commission's Final Order states that Section 8-406(b-5) requires the Commission to find that Grain Belt's Project satisfies the criteria of Section 8-406.1(f)(1) because it meets certain capacity and voltage transmission parameters set forth in Section 8-406(b-5). (Final Order, Section I.D.4, p.11; Final Order, Section III.F, p. 21; Final Order, Section IV.B.5, p. 36).

Section 8-406(b-5) provides that if a qualifying direct current applicant under that section demonstrates that its proposed transmission project has a capacity of 1000MW or larger and a voltage level of 345kV or larger, the Commission must deem the project one that satisfies the requirements of Section 8-406.1(f)(1) without the taking of additional evidence on these criteria. Section 8-406.1(f)(1), in turn, provides the following requirement for the Commission's approval of the Project:

- 1) That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

Section 8-406(b-5) was clearly intended to benefit Grain Belt by providing it with a statutory presumption that its Project met the criteria of Section 8-406.1(f)(1). Under Section 8-406(b-5), Grain Belt did not have to produce any evidence beyond the Project's capacity and voltage parameters to meet the criteria of Section 8-406.1(f)(1). Nevertheless, Grain Belt did provide such evidence:

Verified Application, par. 29, pp. 14-21;  
 Verified Application, pars. 52-80, pp. 29-51;  
 GBX Exh. 1.0, p. 9, ln. 174 – p. 17, ln. 441;  
 GBX Exh. 1.0, p. 22, ln. 567 – p. 30, ln. 834;  
 GBX Exh. 1.0, p. 32, ln. 883 – p. 36, ln. 984;  
 GBX Exh. 8.0, lns. 49-54, and throughout;  
 GBX Exh. 8.2;  
 GBX Exh. 9.0, p. 3, lns. 60-63;  
 GBX Exh. 9.0, p. 4, ln. 82 – p. 10, ln. 220;  
 GBX Exh. 9.2;  
 GBX Exh. 10.0, throughout; and  
 GBX Exh. 10.2.

A party may waive a statutory provision designed for its benefit. *Ajax Fin., L.P. v State (in re County Collector)*, 318 Ill App 3d 641, 645 (1<sup>st</sup> Dist. 2000), citing *United States v. Mezzanatto*, 513 US 196, 200-01 (1995) (a party may waive any provision, either of a contract or of a statute, intended for its benefit). Grain Belt, by presenting evidence that it met the requirements of Section 8-406.1(f)(1) even though no such evidence was required under Section 8-406(b-5), not only waived the evidentiary presumption in Section 8-406(b-5), it also opened the door to the contrary evidence presented by the Landowner Alliance – evidence that the Commission's Final Order improperly ignores. The Project does not meet the requirements of Section 8-406.1(f)(1).



**b. There is no evidence that the Project is necessary to provide adequate, reliable and efficient service in Illinois.**

Grain Belt did not allege, and the record in this docket is devoid of any evidence that the Illinois electricity market is inadequate, unreliable, inefficient or uncompetitive. It's not even clear that the Project will provide any electricity supply to Illinois ratepayers at all.

As further argument in support of their request for rehearing in this section, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Joint Initial Brief of Intervenors, Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos in Opposition to Grain Belt Express LLC's Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 37-39;
4. **The Project does nothing to promote the development of a competitive electricity market in Illinois.**

As was made clear at the November 28 – December 1, 2022 evidentiary hearing, it is in Grain Belt's self-interest that the locational marginal price of commodity electricity supply at any contemplated point of delivery in PJM be high, not low. (Tr., p. 193, ln. 6 – p. 212, ln.1). Despite its alleged altruistic objective of lowering electricity prices for Illinois consumers, Grain Belt's primary concern will be ensuring that its revenues are sufficient to make its debt service coverage ratio palatable to potential lenders. (GBX Exh. 4.0, p. 9, lns. 193-99). Unless electricity supply prices at the point of delivery are higher than prices at the point of receipt, there's no reason to transmit electricity on the Project.

As further argument in support of their request for rehearing in this section, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Joint Initial Brief of Intervenors, Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos in Opposition to Grain Belt Express LLC's Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 37-39; and
2. Joint Reply Brief of Intervenors, Illinois Agricultural Association A/k/a the Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos In Opposition to Grain Belt Express LLC's Verified Application for A Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, Dated December 29, 2022, pp. 3-9.
5. **Grain Belt's failure to account for network upgrade costs undermines its claim to be a "least cost" alternative.**

The Commission's Final Order completely ignores the fact that Grain Belt has not accounted for any network upgrade costs that will be required in order to interconnect with any regional transmission organization and make the Project operational. (Grain Belt Verified Application, par. 41; Landowner Alliance Initial Brief, pp. 39-40). Without network upgrades required for interconnection, the Project is nothing more than an assemblage of rusting towers and conductors. Grain Belt's failure to even estimate these costs renders its total cost figure for the Project, as well as its claim to be "least cost," completely spurious.

As further argument in support of their request for rehearing in this section, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Joint Initial Brief of Intervenors, Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos in Opposition to Grain Belt Express LLC's Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 39-40.
6. **Grain Belt's failure to compare the Project to any other alternative means of achieving its alleged objectives destroys its claim to be "least cost."**

As a matter of both plain English and common sense, the term "least" necessarily imports some comparison of two or more things that are comparable in some practical sense. A Volkswagen Beetle is the "least fast" choice when compared to a Formula 1 race car. But it makes no sense to compare the speed of either the Beetle or the race car to the speed of nothing.

Yet that's precisely what Grain Belt has done in this docket. Grain Belt Witness Repsher, on whose testimony Grain Belt relies for its showing that the Project is "least cost," admits that he compared only two scenarios: (1) doing Grain Belt's Project and (2) not doing Grain Belt's Project. (GBX Exh 8.0, p 5, lines 100-103). That is not a comparison of the costs of achieving certain stated objectives by different means. Grain Belt just compared its Project to the sole alternative of doing nothing.

As further argument in support of their request for rehearing in this section, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Joint Initial Brief of Intervenors, Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos in Opposition to Grain Belt Express LLC's Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 40-41.

Any conclusion by the Commission that the Project is the "least cost" means of achieving the Project's putative objectives is baseless because the Project was not compared to anything. (Landowner Alliance Initial Brief, pp. 29-30).

The Commission's Final Order errs in concluding that the Section 8-406(b-5) mandates a finding that the project satisfies the criteria of Section 8-406.1(f)(1), and argument regarding whether Grain Belt's proposed Project meets the criteria in Section 8-406.1(f)(1) should be reheard.

**B. Section 8-406.1(f)(2) – Capability to Efficiently Manage and Supervise the Construction Process**

The Landowner Alliance takes no position regarding Grain Belt's showing under Section 8-406.1(f)(2) of the Act.

**C. Section 8-406.1(f)(3) – Capability to Finance the Construction of the Project without Significant Adverse Financial Consequences**

The Final Order notes that Grain Belt plans to use a project financing approach and has established a single purpose legal entity that will own the facility to be financed and has no other assets, liabilities, or businesses. (Final Order, p. 49). Thus, in its Final Order, the Commission itself recognizes that Grain Belt has neither the assets nor the capability of funding the Project until it gets financing from either its parent company or third parties such as new investors or

lenders. No evidence was provided by Grain Belt establishing the financial health of its parent company or that any specific lender or investor is willing to lend or invest money in the Project.

The Final Order recognizes that Section 8-406.1(f)(3) requires a showing “that the applicant ‘is capable of financing the proposed construction without significant adverse financial consequences for the utility or the customers.’” (*Id.*) (quoting 220 ILCS 5/8-406.1(f)(3))(emphasis added). This language does not permit an applicant to show that it might or will be capable of financing the construction at some later date. Yet this is precisely the process permitted by the Final Order through the adoption of the Revised Financing Condition attached as Appendix B to the Final Order. The approved Revised Financing Condition postpones a final decision as to Grain Belt’s capacity to finance the Project to an *ex parte* proceeding sometime in the future when Grain Belt returns to the Commission to prove financing capability, if it can.

Without any citation to specific evidence or facts in the record, the Final Order states, “[b]ased on its review of the Application, the evidentiary record, and the parties’ arguments on this issue, the Commission concludes that Grain Belt Express has demonstrated it is capable of financing the proposed construction without significant adverse consequences for the utility or its customers.” (*Id.*). The Final Order has no citation to the record because, as noted above, Grain Belt provided no actual evidence that it is capable of financing the Project and instead relies on the Revised Financing Condition, which allows Grain Belt to delay meeting this criteria until a later date. The Commission is required to make findings of fact from the evidence in the case “to enable a court to intelligently review the decision of the [C]ommission and ascertain whether the facts offered a reasonable basis for the order entered.” *Chicago & W.T. Rys., Inc. v. Illinois Commerce Commission*, 397 Ill. 460, 467 (1947); *see also Knox Motor Service, Inc. v. Illinois Commerce Commission*, 77 Ill.App.3d 590, 595 (4th Dist. 1979). If the Commission fails to

make findings of fact concerning the issues presented by the evidence in the record, the order will be reversed and the case will be remanded back to the Commission. *Chicago & W.T. Rys., Inc.*, 397 Ill. at 468.

The Commission failed to cite to facts or evidence in the record that support the finding in the Final Order that Grain Belt is capable of financing the construction of the Project. Rather, it is evident that the Commission relies on the improper Revised Financing Condition for its determination that Grain Belt has satisfied the financing requirement set forth in Section 8-406.1(f)(3). (Final Order, p. 49). In light of the adopted Revised Financing Condition, any conclusion that Grain Belt established the ability to finance the Project *before* the issuance of the Final Order is against the manifest weight of the evidence. Grain Belt has not met its statutory burden regarding sufficient financing, the Final Order draws the wrong conclusions, and the issue should be reheard by the Commission.

As further argument in support of their request for rehearing in this section, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Joint Initial Brief of Intervenors, Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos in Opposition to Grain Belt Express LLC's Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 41-51;
2. Joint Reply Brief of Intervenors, Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos in Opposition to Grain Belt Express LLC's Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High

Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 11-18; and

3. Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos' Brief on Exceptions to the Illinois Commerce Commission's Proposed Order Dated February 2, 2023, pp. 10-15.

The Landowner Alliance continually expressed throughout this matter their concern about the lack of evidence in the record regarding Grain Belt's capability of financing the construction of the Project. To that end, after the Commission granted oral argument herein, the Landowner Alliance requested that specific questions be posed to Grain Belt about the lack of evidence on its financing capability as set forth in Section I of their Reply to Briefs on Exceptions. The Administrative Law Judge denied the request and struck this Section from the Landowner Alliance's Reply to Briefs on Exceptions. Nevertheless, the Landowner Alliance by reference expressly restates and reincorporates as if fully restated herein the arguments contained in Section I (found on pages 2-3) of the Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos' Reply to Brief on Exceptions as further reason this issue should be reheard.

**D. Other Proposed Conditions for the CPCN**

**1. Time Frame for Effectiveness of CPCN Granted by the Final Order**

In granting the relief requested by Grain Belt in its Verified Application, the Final Order authorizes Grain Belt to construct the Project, with the construction "to commence within five years (60 months) following the date of this Final Order, unless modified by the Commission." (Final Order, p. 97). A rehearing is required for the time frame in which Grain Belt is authorized to begin construction because said limit of five years exceeds the effectiveness of a CPCN as set forth in the Act. Section 8-406(f) of the Act specifically provides, "Unless exercised within a

period of 2 years from the grant thereof, authority conferred by a certificate of convenience and necessity issued by the Commission *shall be* null and void.” 220 ILCS 5/8-406(f) (emphasis added). The Commission may be able to modify or alter a CPCN at a later date, but the Act does not authorize the Commission to grant a CPCN that extends the authority conferred thereunder beyond the 2-year time frame mandated by Section 406(f). *Id.* In accordance with Section 8-406(f), Grain Belt is required to exercise the authority granted under the Final Order within two years from March 8, 2023, or the authority conferred under the Final Order is null and void. *Id.* Because the Final Order attempts to extend the authority of the CPCN beyond the scope permitted by Section 8-406(f) of the Act, this issue should be reheard by the Commission. *See id.*

As further argument in support of their request for rehearing in this section, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Joint Reply Brief of Intervenors, Illinois Agricultural Association d/b/a The Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos in Opposition to Grain Belt Express LLC’s Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 18.
2. **The Commission Lacks Subject Matter Jurisdiction Over Grain Belt’s Proposed Cost Allocation Condition.**

The Commission’s Final Order concludes that “...the Commission has the authority to enforce the Cost Allocation Condition.” (Final Order, p. 50). To support this conclusion, the Commission states that it reached the same conclusion in the 2015 Grain Belt docket, *id.*, and that it “...has the continuing jurisdiction over any CPCN that is granted and within the authority



of the Commission, [and] it may rescind a CPCN if a change in facts or circumstances warrants rescission.”

As made abundantly clear in Zotos’s Motion to Strike filed in this docket on September 16, 2022, the Federal Energy Regulatory Commission (“FERC”) has exclusive and plenary jurisdiction over the rates, terms and conditions for the transmission of electric energy in interstate commerce. 16 U.S.C. 824(a). The Commission’s mistaken conclusion in the 2015 Grain Belt docket that it had subject matter jurisdiction over an identical cost allocation condition does nothing to cure the Commission’s lack of subject matter jurisdiction over Grain Belt’s proposed cost allocation condition. The cost allocation condition is so obviously beyond the Commission’s jurisdiction that even entertaining it is a manifest abuse of the Commission’s authority and an unlawful intrusion on FERC’s exclusive jurisdiction.

The Commission’s lack of jurisdiction over the cost allocation condition means that it lacks the inherent power to make any order concerning that condition. *In re Estate of Steinfeld*, 158 Ill. 2d 1, 12 (1994). The Commission’s conclusion and its approval of the cost allocation condition in Section IV.E.3 is not simply voidable. It is void. This is because the Commission is without jurisdiction of the subject matter of the cost allocation condition. It is of no consequence that Zotos did not raise this issue in every filing made subsequent to her Motion to Strike because a void order may be attacked, either directly or collaterally, at any time. *People v. Wade*, 116 Ill. 2d 1, 5 (1987).

Accordingly, the arguments of the parties concerning Grain Belt’s proposed cost allocation condition should be reheard.

As further argument in support of their request for rehearing in this section, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Motion of Nafsica Zotos to strike inadmissible legal conclusions and Hearsay from Grain Belt Express, LLC's Testimony, pp. 1-4 and 6-7.

**IV. GRAIN BELT FAILED TO SEEK AUTHORITY TO TRANSACT BUSINESS AS A PUBLIC UTILITY UNDER 8-406(a)**

The Final Order errs in that Grain Belt failed to request a certificate under Section 8-406(a) or provide evidence in support of same, and therefore it cannot be awarded a CPCN to conduct a transmission public utility business. Grain Belt seeks authority to, among other things, "operate and maintain a high voltage electric service transmission line and related facilities." Verified Petition, ¶11. Grain Belt then requests that the Commission authorize it to "conduct a transmission public utility business." Verified Petition, ¶29. Grain Belt has only requested relief in its Verified Petition under Sections 8-406.1 and 8-503 of the Act. Grain Belt has not explicitly requested a certificate under Section 8-406(a), which provides that no public utility "shall transact any business in Illinois until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business." 220 ILCS 8/406(a). While Section 8-406(a) of the Act may provide such authority to transact business as a public utility in Illinois, Grain Belt's chosen Section 8-406.1 expedited statutory alternative does not provide for it, nor does their special legislation in Section 8-406(b-5). Grain Belt provides no support to the contrary in its Verified Petition or evidence. For these reasons, this issue should be reheard by the Commission.

As further argument, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Joint Initial Brief of Intervenors, Illinois Agricultural Association d/b/a the Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos In Opposition to Grain Belt Express LLC's Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current

Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 52-54.

2. Joint Reply Brief of Intervenors, Illinois Agricultural Association d/b/a the Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos in Opposition to Grain Belt Express LLC's Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 19-21.
3. Illinois Agricultural Association a/k/a the Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos' Brief on Exceptions to the Illinois Commerce Commission's Proposed Order dated February 2, 2023, pp. 2-8.
4. Ill. Com. Comm'n Oral Arg., No. 22-0499, Tr. dated March 3, 2023.

#### **V. 8-503 ORDER – MODIFIED BY 8-406(b-5), IGNORED BY COMMISSION**

The Final Order further errs in awarding Grain Belt Section 8-503 authority. It errs because (1) Grain Belt failed to provide evidence, and the Final Order fails to make findings, that the elements of Section 503 were met, and (2) such a finding is premature.

First, Grain Belt requests relief under Section 8-406(b-5), which provides:

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

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

‘Qualifying direct current project’ means a high voltage direct current electric service line that crosses at least one Illinois border, the Illinois portion of which is physically located within the region of the Midcontinent Independent System Operator, Inc., or its successor organization, and runs through the counties of Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark, is capable of transmitting electricity at voltages of 345 kilovolts or above, and may also include associated interconnected alternating current interconnection facilities in this State that are part of the proposed project

and reasonably necessary to connect the project with other portions of the grid.

Notwithstanding any other provision of this Act, a qualifying direct current applicant that does not own, control, operate, or manage, within this State, any plant, equipment, or property used or to be used for the transmission of electricity at the time of its application or of the Commission's order may file an application on or before December 31, 2023 with the Commission pursuant to this Section or Section 8-406.1 for, and the Commission may grant, a certificate of public convenience and necessity to construct, operate, and maintain a qualifying direct current project. The qualifying direct current applicant may also include in the application requests for authority under Section 8-503. ***The Commission shall grant the application for a certificate of public convenience and necessity and requests for authority under Section 8-503 if it finds that the qualifying direct current applicant and the proposed qualifying direct current project satisfy the requirements of this subsection and otherwise satisfy the criteria of this Section or Section 8-406.1 and the criteria of Section 8-503, as applicable to the application and to the extent such criteria are not superseded by the provisions of this subsection. The Commission's order on the application for the certificate of public convenience and necessity shall also include the Commission's findings and determinations on the request or requests for authority pursuant to Section 8-503.*** Prior to filing its application under either this Section or Section 8-406.1, the qualifying direct current applicant shall conduct 3 public meetings in accordance with subsection (h) of this Section. If the qualifying direct current applicant demonstrates in its application that the proposed qualifying direct current project is designed to deliver electricity to a point or points on the electric transmission grid in either or both the PJM Interconnection, LLC or the Midcontinent Independent System Operator, Inc., or their respective successor organizations, the proposed qualifying direct current project shall be deemed to be, and the Commission shall find it to be, for public use. If the qualifying direct current applicant further demonstrates in its application that the proposed transmission project has a capacity of 1,000 megawatts or larger and a voltage level of 345 kilovolts or greater, the proposed transmission project shall be deemed to satisfy, and the Commission shall find that it satisfies, the criteria stated in item (1) of subsection (b) of this Section or in paragraph (1) of subsection (f) of Section 8-406.1, as applicable to the application, without the taking of additional evidence on these criteria. Prior to the transfer of functional control of any transmission assets to a regional transmission organization, a qualifying direct current applicant shall request Commission approval to join a regional transmission organization in an application filed pursuant to this subsection (b-5) or separately pursuant to Section 7-102 of this Act. The Commission may grant permission to a qualifying direct current applicant to join a regional transmission organization if it finds that the membership, and associated

transfer of functional control of transmission assets, benefits Illinois customers in light of the attendant costs and is otherwise in the public interest. Nothing in this subsection (b-5) requires a qualifying direct current applicant to join a regional transmission organization. Nothing in this subsection (b-5) requires the owner or operator of a high voltage direct current transmission line that is not a qualifying direct current project to obtain a certificate of public convenience and necessity to the extent it is not otherwise required by this Section 8-406 or any other provision of this Act.

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

Despite the express language of Section 8-406(b-5) requiring that the Commission find that the application must meet the criteria of Section 8-503, Grain Belt failed to provide such evidence and the Final Order failed to make such a finding. The Final Order inappropriately concludes that the Section 8-503 Order is automatically awarded to Grain Belt (Final Order, p. 91), and therefore the Commission must rehear this issue.

Second, the Commission's conclusion related to Section 8-503 in the Final Order is premature and should be reheard. Section 8-503 is important because it is a condition to obtaining eminent domain powers under Section 8-509. See 220 ILCS 5/8-509. Section 8-509 states, in part: "When necessary for the construction of any alterations, additions, extensions, or improvements ordered or authorized under Section 8-406.1, 8-503, or 12-218 of this Act, any public utility may enter upon, take, or damage private property in the manner provided for by the law of eminent domain."

The Commission's grant of Section 8-503 relief is premature given all of the proposed contingencies which must be met prior to construction commencing, like having adequate financial commitments, etc. Grain Belt's previous sister company, Rock Island, sought Section 8-503 relief in ICC Docket No. 12-0560, and the Commission had the same concerns and denied it Section 8-503 relief as premature. Particularly, it stated:

ComEd and Staff argue that Rock Island's request for Section 8-503 relief is premature, in that Rock Island is seeking authority that cannot be utilized given the contingencies, conditions and regulatory approvals still needed. While the Commission is by no means suggesting that RI would have to satisfy every contingency or uncertainty before Section 8-503 authorization may be granted, the Commission does agree with Staff and ComEd that under the circumstances, it would be premature to grant Section 8-503 relief to Rock Island in this proceeding.

ICC Docket No. 12-0560, Final Order, pp. 218-219.

In addition, the Final Order is "authorizing or directing" Grain Belt to commence construction of the Project "in the manner and within the time specified in said order." 220 ILCS 5/8-406.1(i). Although CPCNs must be exercised within two years (220 ILCS 5/8-406(f)), Grain Belt acknowledges it could take up to five years to commence construction with neither any showing of why the statutory time requirement should be relaxed, nor citation to any authority that would sanction the Commission's unilateral amendment of the Act. See Verified Petition, ¶ 150.

There is no evidence that Grain Belt is capable of complying with the Section 8-503 authorization it seeks for several reasons. First, it does not own, control, operate, or manage any plant, equipment, or property used for or in connection with the transmission, delivery, or furnishing of electricity in Illinois. Second, it does not have any customers, suppliers, or sufficient capital investments. Finally, it does not have the basic infrastructure, suppliers, customers, or sufficient funding to start doing transmission work. Grain Belt's request for a five-year period for its CPCN is an admission that it is impossible for Grain Belt to utilize any Commission certificates within two years as required. For these additional reasons, this issue should be reheard by the Commission.

As further argument, the Landowner Alliance by reference expressly restates and reincorporates the following arguments related to this issue as if fully restated herein:

1. Joint Initial Brief of Intervenors, Illinois Agricultural Association d/b/a the Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos In Opposition to Grain Belt Express LLC's Verified Application for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate, and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business and Authorizing Grain Belt Express LLC to Construct the Electric Transmission Line, pp. 60-62.
2. Illinois Agricultural Association a/k/a the Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, and Nafsica Zotos' Brief on Exceptions to the Illinois Commerce Commission's Proposed Order dated February 2, 2023, pp. 28-31.
3. Ill. Com. Comm'n Oral Arg., No. 22-0499, Tr. dated March 3, 2023.

## VI. CONCLUSION

**WHEREFORE**, the Landowner Alliance, and each of them, jointly and severally submit this Application and request oral argument on this Application, that the Commission enter an Order approving this Application by ordering a rehearing on the issues detailed herein, and for such other and further relief as may be just and proper.

**ILLINOIS AGRICULTURAL  
ASSOCIATION a/k/a the Illinois Farm  
Bureau, Intervenor**

By:     /s/Charles Y. Davis      
                    One of Its Attorneys

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**YORK TOWNSHIP IRRIGATORS,  
Intervenor**

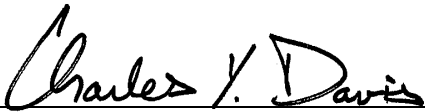
By: /s/William F. Moran, III  
One of Their Attorneys

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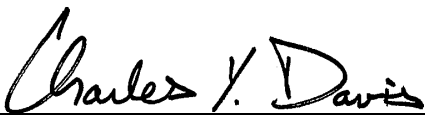
STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF SANGAMON )

Charles Y. Davis, being first duly sworn, deposes and says that he: (1) is authorized to execute this Application for Rehearing on behalf of his client, ILLINOIS AGRICULTURAL ASSOCIATION a/k/a the Illinois Farm Bureau; (2) has read this Application for Rehearing; (3) has knowledge of the facts stated therein; and, (4) herewith states that the matters set forth therein are true and correct in substance and in fact.

  
\_\_\_\_\_  
Charles Y. Davis

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

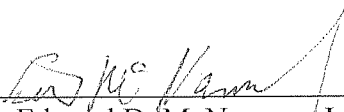
Dated: April 7, 2023

  
\_\_\_\_\_  
Charles Y. Davis

VERIFICATION BY CERTIFICATION

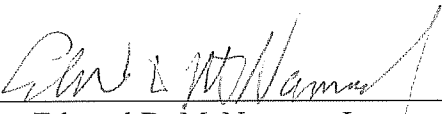
STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF SANGAMON )

Edward D. McNamara, Jr., being first duly sworn, deposes and says that he: (1) is authorized to execute this Application for Rehearing on behalf of his client, CONCERNED CITIZENS & PROPERTY OWNERS; (2) has read this Application for Rehearing; (3) has knowledge of the facts stated therein; and, (4) herewith states that the matters set forth therein are true and correct in substance and in fact.

  
\_\_\_\_\_  
Edward D. McNamara, Jr.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: April 7, 2023

  
\_\_\_\_\_  
Edward D. McNamara, Jr.

**VERIFICATION BY CERTIFICATION**

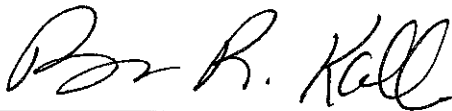
STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF MADISON     )

Brian R. Kalb, being first duly sworn, deposes and says that he: (1) is authorized to execute this Application for Rehearing on behalf of his client, CONCERNED PEOPLE ALLIANCE; (2) has read this Application for Rehearing; (3) has knowledge of the facts stated therein; and, (4) herewith states that the matters set forth therein are true and correct in substance and in fact.

  
\_\_\_\_\_  
Brian R. Kalb

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: April 7, 2023

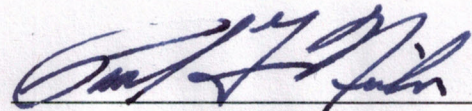
  
\_\_\_\_\_  
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VERIFICATION BY CERTIFICATION

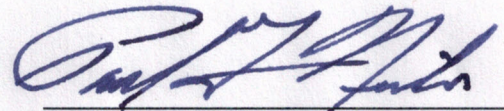
STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF LAKE         )

Paul G. Neilan, being first duly sworn, deposes and says that he: (1) is authorized to execute this Application for Rehearing on behalf of his client, NAFSICA ZOTOS; (2) has read this Application for Rehearing; (3) has knowledge of the facts stated therein; and, (4) herewith states that the matters set forth therein are true and correct in substance and in fact.



Paul G. Neilan

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Paul G. Neilan

Dated: April 7, 2023



VERIFICATION BY CERTIFICATION

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF SANGAMON )

William F. Moran, III, being first duly sworn, deposes and says that he: (1) is authorized to execute this Application for Rehearing on behalf of his client, YORK TOWNSHIP IRRIGATORS; (2) has read this Application for Rehearing; (3) has knowledge of the facts stated therein; and, (4) herewith states that the matters set forth therein are true and correct in substance and in fact.



\_\_\_\_\_  
William F. Moran, III

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



\_\_\_\_\_  
William F. Moran, III

Dated: April 7, 2023

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon:

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via electronic transmission on this 7<sup>th</sup> day of April, 2023.

\_\_\_\_\_  
 /s/Charles Y. Davis

**Docket No.:** 22-0499**Meeting:** 04/20/23**Deadline:** 04/27/23**MEMORANDUM**

---

**TO:** The Commission

**FROM:** Glennon Dolan, Administrative Law Judge

**DATE:** April 10, 2023

**SUBJECT:** Grain Belt Express LLC

Application for an Order Granting Grain Belt Express LLC, as a Qualifying Direct Current Applicant, a Certificate of Public Convenience and Necessity pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business in Connection Therewith and Authorizing Grain Belt Express LLC Pursuant to Sections 8-503 and 8-406.1(i) of the Public Utilities Act to Construct the High Voltage Direct Current Electric Transmission Line.

**RECOMMENDATION:** Deny the Application for Rehearing and Request for Oral Argument.

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**I. PROCEDURAL HISTORY**

On July 26, 2022, Grain Belt Express LLC (“Grain Belt Express” or “GBX” or “Applicant”) filed with the Illinois Commerce Commission (“Commission”) an Application seeking a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act (“Act”) to directly, or through one or more affiliates or third-party contractors, construct, operate, and maintain the Illinois portion of a high voltage direct current (“HVDC”) electric service transmission line and related facilities and to conduct a transmission public utility business in connection therewith. 220 ILCS 5/8-406(b-5); 220 ILCS 5/8-406.1. Grain Belt Express also sought an order pursuant to Sections 8-503 and 8-406.1(i) authorizing it to construct the transmission line and related facilities in this docket. 220 ILCS 5/8-503; 220 ILCS 5/8-406.1(i). Grain Belt Express filed the Application as a “qualifying direct current applicant” under Section 8-406(b-5) of the Act and the Project (“Project”) is a “qualifying direct current project” under Section 8-406(b-5). 220 ILCS 5/8-406(b-5).

Staff of the Commission (“Staff”) participated in the proceeding. Petitions to intervene were filed by and granted to: Illinois Agricultural Association d/b/a the Illinois Farm Bureau (“IAA”); Illinois Manufacturers’ Association (“IMA”); Concerned People Alliance (“CPA”); Landowners Alliance of Central Illinois, NFP (“LACI”); Nafsica Zotos

(“Zotos”); Rex Encore Farms LLC and Rex Encore Properties LLC (“Rex Encore”); certain individual landowners referred to in this proceeding as Concerned Citizens & Property Owners (“CCPO”); Hanson Aggregates Midwest, Inc. and Greyrock, LLC, (together, “Hanson”); Clean Grid Alliance (“CGA”); York Township Irrigators (“YTI”); Citizens Utility Board; and the Leonard Bradley Daugherty Trust. A group of the Intervenor formed Landowner Alliance (“Landowner Alliance”) which consists of the IAA, CCPO, CPA, Zotos. The Commission issued a final Order in this matter on March 8, 2023. On April 7, 2023, the Landowner Alliance filed an Application for Rehearing. YTI was included as part of the Landowner Alliance for the Application for Rehearing. On April 12, 2023, Grain Belt Express filed a Motion for Leave to File a Response and the Proposed Response to the Application for Rehearing. The Administrative Law Judge denied the motion noting that the Commission’s Rules and the Act do not provide for responses to applications for rehearing.

The Landowner Alliance requests that the Commission grant rehearing on the issues discussed below in Section II. The Landowner Alliance also requests that the Commission grant oral argument.

## **II. APPLICATION FOR REHEARING**

### **A. Whether Section 8-406(b-5) is discriminatory and unconstitutional.**

#### **1. Analysis**

The Landowner Alliance asserts that Section 8-406(b-5) is special legislation that arbitrarily discriminates in favor of a select group. The Landowner Alliance alleges that Section 8-406(b-5) discriminates against utilities and landowners. According to the Landowner Alliance, the public use declaration in Section 8-406(b-5) unconstitutionally usurps the judicial power. For these reasons, the Landowner Alliance requests rehearing on this issue.

#### **2. Recommendation**

The Landowner Alliance has not presented any new facts or evidence to warrant rehearing on this issue. Accordingly, the Landowner Alliance’s request for rehearing on this issue should be denied.

### **B. Whether Grain Belt Express satisfied the requirements of Section 8-406.1 of the Act.**

#### **1. Analysis**

The Landowner Alliance seeks rehearing on the finding in the Order that Grain Belt Express met the requirements of Section 8-406.1 of the Act. The Landowner Alliance asserts that the Project must still meet the requirements of Section 8-406.1(f)(1), and that Grain Belt Express waived the evidentiary presumption in Section 8-406(b-5) that its Project meets the criteria of Section 8-406.1(f)(1). Also, according to the Landowner Alliance, there is no evidence that the Project is necessary to provide adequate, reliable and efficient service in Illinois. It also claims that the Project does nothing to promote the development of a competitive electricity market in Illinois. Finally, the Landowner Alliance claims that Grain Belt Express failed to account for network upgrade costs or compare

the Project to any other alternative means of achieving its alleged objectives. The Landowner Alliance argues that this undermines any claim to be least cost.

## **2. Recommendation**

The Landowner Alliance has not offered any new evidence or arguments on this issue but instead reiterates its previous arguments. Accordingly, the Landowner Alliance's request for rehearing on this issue should be denied.

### **C. Whether Grain Belt Express has the capability to finance the construction of the Project without significant adverse financial consequences.**

#### **1. Analysis**

The Landowner Alliance requests that the Commission grant rehearing because Grain Belt Express failed to meet its statutory burden regarding sufficient financing and that the final Order draws the wrong conclusion.

## **2. Recommendation**

The final Order carefully considered this issue and the Landowner Alliance has not presented any new evidence or information that would warrant rehearing on this issue. Accordingly, the Landowner Alliance's request for rehearing on this issue should be denied.

### **D. Whether the time frame for effectiveness of the CPCN granted in the final Order is beyond the 2-year time frame mandated by Section 8-406(f).**

#### **1. Analysis**

The Landowner Alliance argues that rehearing is required because the final Order authorizing Grain Belt Express to begin construction within 5 years exceeds the effectiveness of a CPCN as set forth in Section 8-406(f) of the Act. The Landowner Alliance points out that Section 8-406(f) specifically provides that "[u]nless exercised within a period of 2 years from the grant thereof, authority conferred by a certificate of convenience and necessity issued by the Commission shall be null and void." 220 ILCS 5/8-406(f). The Landowner Alliance avers that the Commission may be able to modify or alter a CPCN at a later date, but the Act does not authorize the Commission to grant a CPCN that extends the authority conferred thereunder beyond the 2-year time frame mandated by Section 8-406(f).

## **2. Recommendation**

The Landowner Alliance omits the first sentence of Section 8-406(f), which states "[s]uch certificates may be altered or modified by the Commission, upon its own motion or upon application by the person or corporation affected." 220 ILCS 5/8-406(f). In its Application, Grain Belt Express requested additional time to begin the Project. This request is allowed under Section 8-406(f). Therefore, rehearing on this issue is not warranted and the Landowner Alliance's request for rehearing on this issue should be denied.

**E. Whether the Commission lacks subject matter jurisdiction over Grain Belt Express' proposed cost allocation condition.**

**1. Analysis**

The Landowner Alliance argues that the Commission should grant rehearing on the cost allocation condition. The Landowner Alliance states that the Commission does not have the authority to control the cost allocations and argues that the Federal Energy Regulatory Commission has jurisdiction over the rates, terms and conditions for the transmission of electricity energy in interstate commerce.

**2. Recommendation**

The Landowner Alliance has not offered any new evidence or arguments on this issue but instead reiterates its previous arguments. The final Order notes that Grain Belt Express asserts that it is willing to formally agree not to allocate the development, construction, and operation costs of the Project to Illinois ratepayers via an regional transmission operator transmission tariff without first seeking additional approval from the Commission to do so. While the Commission does not have jurisdiction over the transmission of electric energy in interstate commerce, Grain Belt Express has agreed to this condition and there was no objection by any party to this condition. Accordingly, the Landowner Alliance's request for rehearing on this issue should be denied.

**F. Whether Grain Belt needed to seek authority to transact business as a public utility under Section 8-406(a) of the Act.**

**1. Analysis**

The Landowner Alliance seeks rehearing on the finding in the final Order that Grain Belt Express seeks a CPCN in this docket pursuant to Section 8-406(b-5) of the Act; thus, Grain Belt Express does not need to request authorization under Section 8-406(a) of the Act. The Landowner Alliance argues that the Commission cannot award Grain Belt Express a CPCN to construct the Project because Grain Belt Express failed to request a certificate under Section 8-406(a) or provide evidence in support of the same. Therefore, GBX cannot be awarded a CPCN to conduct a transmission public utility business.

**2. Recommendation**

The Landowner Alliance has not presented any new facts or evidence to warrant rehearing on this issue. Accordingly, the Landowner Alliance's request for rehearing on this issue should be denied.

**G. Whether the final Order erred by granting Grain Belt Express authority under Section 8-503.**

**1. Analysis**

The Landowner Alliance argues that the Commission should grant rehearing on Grain Belt Express' authority under Section 8-503 of the Act. The Landowner Alliance argues that the Commission providing Grain Belt Express with authority under Section 8-503 is premature given all of the proposed contingencies which must be met prior to commencing construction of the Project.

## **2. Recommendation**

This issue was considered thoroughly in the final Order and the Landowner Alliance has not presented any new evidence or information that would warrant rehearing on this issue. Accordingly, the Landowner Alliance's request for rehearing on this issue should be denied.

### **III. ORAL ARGUMENT**

#### **A. Whether the Landowner Alliance's request for oral argument should be granted.**

##### **1. Analysis**

In its Application on Rehearing, the Landowner Alliance requests oral argument.

##### **2. Recommendation**

The Landowner Alliance's request for oral argument is governed by Section 200.850 of the Commission's Rules of Practice. 83 Ill. Adm. Code 200.850. The request is very general and it appears to be a request for oral argument on the Application for Rehearing itself. The request does not satisfy Section 200.850(a)(3) which provides that a party may request oral argument: (1) in a motion or (2) in its opening brief, reply brief, or brief on exceptions. 83 Ill. Adm. Code 200.850(a)(3). Finally, the Landowner Alliance requested oral argument in its Reply Brief, and the Commission granted its request. The Commission heard oral argument on March 3, 2023. For these reasons, the Landowner Alliance's request for oral argument should be denied.

### **IV. CONCLUSION**

I recommend that the Commission deny the Application for Rehearing and the request for oral argument. The deadline for Commission action is April 27, 2023.

GPD:jt





## ILLINOIS COMMERCE COMMISSION

April 20, 2023

Grain Belt Express LLC

Application for an Order Granting Grain Belt Express LLC, as a Qualifying Direct Current Applicant, a Certificate of Public Convenience and Necessity pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act to Construct, Operate and Maintain a High Voltage Direct Current Electric Service Transmission Line as a Qualifying Direct Current Project and to Conduct a Transmission Public Utility Business in Connection Therewith and Authorizing Grain Belt Express LLC Pursuant to Sections 8-503 and 8-406.1(i) of the Public Utilities Act to Construct the High Voltage Direct Current Electric Transmission Line.

22-0499

**SERVED ELECTRONICALLY**NOTICE OF COMMISSION ACTION

TO ALL PARTIES OF INTEREST:

Notice is hereby given that the Commission in conference on April 20, 2023, **DENIED** the Application for Rehearing and Request for Oral Argument of the Illinois Agricultural Association a/k/a the Illinois Farm Bureau, Concerned Citizens & Property Owners, Concerned People Alliance, Nafsica Zotos, and York Township Irrigators, filed on April 7, 2023.

Related memoranda will be available on our web site ([www.icc.illinois.gov/e-docket](http://www.icc.illinois.gov/e-docket)) in the docket number referenced above.

Sincerely,

Stephanie Cook  
Chief Clerk

SC:lk  
Administrative Law Judge Dolan  
(312)814-6652

Staff: Theresa Ebrey, Leyah J. Williams, Michael G. McNally, ICC

527 East Capitol Avenue, Springfield, Illinois 62701 (217) 782-7434 / [TDD ("v/TTY")] [800] 526-0844]

**VERIFIED APPLICATION**

To the Illinois Commerce Commission:

Grain Belt Express LLC (“Grain Belt Express” or “Applicant”) files this Application to the Commission for an order (1) granting Grain Belt Express a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to § 8-406.1 of the Public Utilities Act (“PUA”), 220 ILCS 5/8-406.1, to, directly or through one or more affiliates or third-party contractors, construct, operate and maintain a high voltage direct current electric service transmission line and related facilities to be known as the Grain Belt Express transmission line (the “Project”), as more fully described herein, and to conduct a transmission public utility business in connection therewith; (2) authorizing Grain Belt Express, pursuant to § 8-503 and § 8-406.1(i) of the PUA, 220 ILCS 5/8-503 and 220 ILCS 5/8-406.1(i), to construct the high voltage direct current electric service transmission line and related facilities; and (3) granting Grain Belt Express certain other relief in connection with its operations, as more fully set forth in this Application. In support of its Application, Grain Belt Express states as follows:

**I. IDENTIFICATION OF APPLICANT**

1. Grain Belt Express is a limited liability company (“LLC”) organized under the laws of the State of Indiana. Grain Belt Express was formed in 2010 as a Delaware LLC and converted to an Indiana LLC in February 2013. Grain Belt Express’s principal offices are located at One South Wacker Drive, Suite 1800, Chicago, IL 60606. Grain Belt Express’s Articles of Conversion, the State of Indiana’s Certificate of Conversion, and the State of Indiana’s Certificate of Amendment (amending the company from Grain Belt Express Clean Line LLC to Grain Belt Express LLC) are attached as **Attachment 1** to this Application.

2. Grain Belt Express is a wholly owned subsidiary of Invenergy Transmission LLC (“Invenergy Transmission”), a Delaware limited liability company, which is a wholly owned

subsidiary of Invenenergy Renewables LLC, also a Delaware limited liability company. Invenenergy Transmission is an affiliate company of Invenenergy LLC (“Invenenergy”), which is an Illinois limited liability company.

3. Grain Belt Express is duly qualified to do business in the State of Illinois. **Attachment 2** to this Application is a certified copy of Grain Belt Express’s Certificate of Authority to do business in the State of Illinois.

4. The following representatives of Grain Belt Express should be placed on the official service list maintained by the Chief Clerk of the Commission for this proceeding:

<p>Andrew Meyer Deputy General Counsel Nicole Luckey Senior Vice President Grain Belt Express LLC One South Wacker Drive Suite 1800 Chicago, IL 60606 (312) 224-1400 <a href="mailto:ameyer@invenenergy.com">ameyer@invenenergy.com</a> <a href="mailto:nluckey@invenenergy.com">nluckey@invenenergy.com</a></p>	<p>David Streicker Benjamin Jacobi Sean Pluta Polsinelli PC 150 North Riverside Plaza Suite 3000 Chicago, IL 60606 (312) 873-2941 (DS) (312) 463-6344 (BJ) <a href="mailto:dstreicker@Polsinelli.com">dstreicker@Polsinelli.com</a> <a href="mailto:bjacobi@Polsinelli.com">bjacobi@Polsinelli.com</a> <a href="mailto:spluta@Polsinelli.com">spluta@Polsinelli.com</a></p>
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Grain Belt Express will accept service by electronic means pursuant to 83 Ill. Admin. Code §200.1050.

5. Invenenergy Transmission’s mission is to construct and operate high voltage transmission lines and associated facilities for the purpose of connecting the best renewable resources in the United States and delivering their output to load and population centers, such as Illinois, that have an increasing demand for electricity produced from renewable resources. In furtherance of its mission, Invenenergy Transmission, through its wholly owned direct and indirect subsidiaries, has to date under contract, under construction or in operation over 4,000 miles of

409 line and of the renewable generators that will connect to it; payments to  
410 landowners and tax revenues for the State and for local governments.

411 • As set forth in the market impact analysis and testimony of Mike MaRous attached  
412 as Exhibit 11.0, the construction of the Project should not negatively impact  
413 property values in the project area. Accordingly, the Project will benefit the  
414 regional economy without harming local property values.

415 • The Project is one of the most significant infrastructure projects in the country that  
416 will drive significant economic development, improve reliability and help to meet  
417 the demand for electricity from renewable resources, in a least-cost manner, by  
418 using the most efficient transmission technology to provide Illinois and other  
419 electricity markets with access to some of the best and most cost-effective  
420 renewable resources in the U.S.

421 • The Project will connect high net capacity factor wind and solar resources to  
422 provide consistent energy throughout the day to meet daytime peaks as well as  
423 match load growth overnight caused by electric vehicle charging and carbon-  
424 conscious consumers.

425  
426 **Q. In addition to the direct benefits from the Project that you have identified, are there**  
427 **ancillary economic benefits expected from the construction and operation of the**  
428 **Project?**

429 **A.** Yes. The Project is a substantial transmission infrastructure project, with a projected  
430 investment of approximately \$7 billion. This cost includes the DC-to-AC converter station  
431 located at the eastern end of the transmission line, in Illinois, which is anticipated to be an  
432 approximately \$450 million to \$640 million capital investment. In addition, via the RTO  
433 interconnection process, Project sponsored network upgrades will be made to the MISO,  
434 AECI and PJM grids. Construction of the Project will directly employ over a thousand  
435 Illinois workers in the construction trades. As a result of the Project, Illinois businesses  
436 will see an increased demand for their products and services, particularly those businesses  
437 involved in producing materials and equipment to be used in the transmission project, as  
438 well as service and hospitality businesses. The Project is projected to create over 3,000

**AGRICULTURAL IMPACT MITIGATION AGREEMENT**  
**between**  
**GRAIN BELT EXPRESS LLC**  
**and the**  
**ILLINOIS DEPARTMENT OF AGRICULTURE**  
**pertaining to the**  
**CONSTRUCTION of a +/- 600 kV Electric Transmission Line**  
**in Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland and Clark**  
**Counties, Illinois**

Grain Belt Express LLC (hereafter referred to as “Grain Belt Express” or “Company”) and the Illinois Department of Agriculture (“IDOA”) agree to the following standards and policies in this Agricultural Impact Mitigation Agreement (“AIMA”) that the Company will implement, as described in Grain Belt Express’s application to the Illinois Commerce Commission (“ICC”) for a Certificate of Public Convenience and Necessity (“CPCN”), Docket No. 22-[\_\_\_\_\_].

The project involves the construction of one +/-600 kV high voltage direct current (“HVDC”) electric transmission line, which originates in Ford County, Kansas, traverses through Missouri, and crosses the Mississippi River into Illinois in Pike County, Illinois. The transmission line will travel approximately 205 miles from where it crosses the Mississippi River in Pike County through Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland and then finally to a DC-to-AC converter station that will likely be located in Clark County; the transmission line is then expected to extend approximately three to eight miles from the converter station to the Illinois-Indiana border and continue approximately two miles in Indiana to the AEP Sullivan Substation in Sullivan County, Indiana, where it will interconnect with the AEP 345 kV transmission system. The HVDC portion of the transmission line will terminate at the converter station located near the Illinois-Indiana border, and a double circuit 345 kV AC line will be constructed from the converter station to the point of interconnection at the AEP Sullivan Substation. The entire anticipated route of the transmission line from Kansas to Indiana is approximately 800 miles. The transmission line will deliver renewable energy to buyers in Missouri, Illinois and Indiana, and, through existing transmission facilities and/or additional transmission arrangements, to other states located on the MISO and PJM grids. The Illinois portion of the transmission line described in this paragraph, including all associated components in Illinois, shall be referred in this AIMA as the “**Electric Line.**”

These standards and policies will serve to minimize the negative agricultural impacts that may result due to the Electric Line construction.

If construction does not commence within two years from the issuance of the CPCN by the ICC, the AIMA will be revised, unless the ICC authorizes a longer term between issuance of the CPCN and the start of construction. In the event of a longer term issued by the ICC then the AIMA will coincide with the term issued by the ICC. All revisions to the AIMA will be completed, with the Company’s input, to reflect the IDOA’s most current Electric Transmission Line Construction Standards and Policies. This AIMA, and any updated AIMA, will be filed with the ICC by the Company.

The below prescribed construction standards and policies only apply to construction activities occurring partially or wholly on privately owned Agricultural Land. They do not apply to construction activities occurring on highway or railroad right-of-way, on other publicly owned land, or on land owned in fee by Grain Belt Express. The Company will, however, adhere to the construction standards relating to the repair of drainage tile (Item No. 5 in the AIMA) regardless of where drainage tile is encountered.

### Introduction

The Company will retain qualified professionals on each work phase of the project. The qualified professionals may be engineers, soil scientists, agronomists and/or construction and environmental inspectors as appropriate during each phase of the project. This shall include initial AIMA development, construction, initial restoration and post-construction monitoring, along with follow-up restoration. The qualified professionals shall act to assure that the provisions set forth in this document or in any separate agreement will be adhered to in good faith by the Company and by the Electrical Line installation contractor(s), and that all agreements protect the resources of both the Landowner and the Company.

The qualified professionals shall assist with the collection and analyzing of site-specific agricultural information gathered for the AIMA development by the Company. This information will be obtained through field review as well as direct contact with affected Landowners and farm operators, local County Soil and Water Conservation Districts (“SWCDs”), Agricultural Extension Agents and others. The Company shall provide a courtesy copy of the site-specific information to the appropriate local County SWCD(s) any time an AIMA modification is submitted. The SWCD staff may invoice the Company directly for technical assistance. The Company will provide each county where the project is taking place an address to submit such invoices, prior to work commencing in that county. Technical assistance would include extended mitigation related to construction issues that arise as a result of the project. Technical assistance may include compaction remedies, seeding recommendations, silt and sediment remedies, streambank and conservation remediation, and all other soil and water issues that may arise as a direct result of the project.

Prior to the beginning of construction in Illinois, the Company shall also retain agricultural inspectors who are: (i) selected by the Company based upon criteria agreed to by the IDOA; (ii) approved by the IDOA; and (iii) supervised by the Company and IDOA (hereinafter “Agricultural Inspectors”). Agricultural Inspectors will work with the appropriate onsite Company project inspectors and project contractors throughout the construction phase and through other phases as needed. Prior to such selection, the IDOA and Company shall agree on the bidding process criteria, including compensation, for the Agricultural Inspectors. The Agricultural Inspectors will also maintain contact with the affected Landowners and farm Tenants in conjunction with Company rights-of-way agents, as well as local SWCD personnel concerning farm resources and management matters pertinent to the agricultural operations and the site-specific implementation of the Agreement.

The Company will pay for the cost of the work performed by the Agricultural Inspectors that are, at a minimum, thoroughly familiar with the following:

- (1) this Agreement;
- (2) Company Plans and Procedures;
- (3) Electric Line construction sequences and process; and
- (4) aspects of production agriculture, Illinois soils, soil and water conservation, and farm operations.

The Agricultural Inspector will possess: Good oral and written communication skills, and the ability to work closely with the Landowner, Tenants, Company and project contractor(s). Agricultural Inspectors are required to be a Certified Professional in Erosion and Sediment Control.

The Company agrees that a minimum of four Agricultural Inspectors shall be employed to monitor the ROW during the various phases of the project. These Agricultural Inspectors shall be familiar with requirements of each respective SWCD as the transmission line crosses county boundaries.

The Agricultural Inspector(s) shall train all Electric Line contractors on the terms of this Agreement and provide a copy of the Agreement to them.

When permitted by law and contract, the Company shall encourage its Electric Line contractor(s) to use, if available, local drain tile contractors to redesign, reconstruct, and/or repair any subsurface drain tile lines that are affected by Electric Line installation. The drain tile contractor(s) shall follow the attached construction specifications (Refer to 3.D.).

Unless the easement or other agreement between the Landowner and the Company provides to the contrary, the actions specified in the standards and construction specifications contained in this AIMA will be implemented in accordance with the conditions listed below.

#### **Conditions of the AIMA**

The mitigative actions specified in the construction standards set forth in this AIMA will be implemented in accordance with the conditions listed below:

- A. All mitigative actions are subject to modification through negotiation by Landowners and a representative of the Company, provided such changes are negotiated in advance of any construction, maintenance or repairs. The policies included in this AIMA are subject to modification through negotiation with specific Landowners.
- B. The Company may negotiate with Landowners to carry out the mitigative actions that Landowners wish to perform themselves. In such instances, the Company will offer landowners a fair settlement consistent with the area commercial rate for their labor and machinery costs.
- C. All mitigative actions employed by the Company pursuant to this AIMA, unless otherwise specified in this document, will be implemented within 45 days of completion of Electric Line facilities, weather and Landowner permitting. Temporary repairs will be made by the Company during the construction process as needed to minimize the risk of additional property damage that may result from an extended construction time period. If the

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2022 Agricultural Impact Mitigation Agreement

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completion of any mitigative action is delayed beyond the 45-day period the Company will provide the Landowner(s) with a written estimate of the time needed for completion of the mitigative action.

- D. Mitigative actions pursuant to this AIMA will extend to associated future construction, maintenance and repairs by the Company.
- E. The Company will provide the IDOA with a set of mailing labels of all Landowners and known Tenants in such area, most likely on a county-by-county basis, who will be affected by hosting a portion of the proposed Electric Line. As the list of affected Landowners and Tenants is updated, the Company will notify the IDOA of any additions or deletions. The IDOA will use the labels for notification of area-wide meetings with Landowners and the mailing of this AIMA to the Landowners and Tenants.

In addition, the Company shall provide postage for mailing a copy of this AIMA and associated documents to applicable Landowners. The IDOA shall determine the amount of postage and inform Company, which shall provide such postage reimbursement to the Department as soon as possible.

- F. The Company agrees to include this AIMA as part of any submissions to the ICC and hereby agrees to the inclusion of the terms contained in this AIMA in any environmental assessment and/or environmental impact statement that may be prepared on the project.
- G. The Company will implement the mitigative actions contained in this AIMA to the extent that they do not conflict with the requirements of any applicable federal, state or local rules, regulations, or other permits and approvals that must be obtained by the Company for the project.
- H. If any provision of this AIMA is held to be unenforceable, no other provision shall be affected by that holding, and the remainder of the AIMA shall be interpreted as if it did not contain the unenforceable provision.
- I. The Company will use good faith efforts to consult with both Landowners and Tenants of a given property as appropriate.
- J. The Company will incorporate by reference, the terms of this AIMA, in all agreements executed with Landowners on Agricultural Land in Illinois. However, in the event of a conflict between this AIMA and an Underlying Agreement, the Underlying Agreement will control.
- K. After construction the Company will provide the IDOA with “as built” drawings (strip maps) showing the location of all tile lines by survey station encountered in the construction of the Electric Line. The drawings and GPS tile lines repair coordinates will be provided on a county basis for distribution by the IDOA to the respective local SWCD for the purpose of assisting Landowners with future drainage needs.



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- L. In addition, after all construction is complete, all affected Landowners will receive a copy of the tile repairs location map with GPS coordinates identified as the electric cable crosses their property.
- M. The Company shall ensure that any Electric Line contractor or subcontractor employed by it adheres to the AIMA.
- N. In the event the Company elects not to construct the Electric Line, it may terminate this AIMA by providing written notice to IDOA.

### Definitions

Agricultural Impact Mitigation Agreement (AIMA)	The Agreement between the Company and the IDOA described herein pertaining to the construction of the Electric Line.
Agricultural Land	Land used for cropland, hayland, pasture, managed woodlands, truck gardens, farmsteads, commercial ag-related facilities, feedlots, livestock confinement systems, land on which farm buildings are located and land in government set-aside programs.
Best Efforts	The good faith efforts, time and costs that a prudent person would use, expend or incur in similar circumstances to ensure that such result is achieved as expeditiously as possible.
Company	Grain Belt Express LLC, as defined in the first paragraph of this AIMA.
Cropland	All land from which crops were harvested or hay was cut; all land in orchards, citrus groves, vineyards, and nursery greenhouse crops; land in rotational pasture, and grazing land that could have been used for crops without additional improvements; land used for cover crops, legumes, and soil improvement grasses, but not harvested and not pastured; land on which crops failed; land in cultivated summer fallow; and idle cropland. Cropland also includes land which was formerly used as cropland but is currently in a government set-aside program and pastureland comprised of Prime Farmland.
Drainage Tile	Artificial subsurface drainage system including, but not limited to, clay and concrete tile, vitrified sewer tile, corrugated plastic tubing and stone drains.
Electric Line	Shall have the same definition as set forth in the second paragraph to this AIMA, specifically the Illinois section of the project, including electric transmission lines and their associated components.
Landowner	Person(s) holding legal title to property on the Electric Line route from whom the Company is seeking, or has obtained, a temporary or permanent easement, or any person(s) legally

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	authorized by a Landowner to make decisions regarding the mitigation or restoration of agricultural impacts to such Landowner's property.
Landowner's Designate	Any person(s) legally authorized by a Landowner to make decisions regarding the mitigation or restoration of agricultural impacts to such Landowner's property.
Non-agricultural Land	Any land that is not "Agricultural Land" as defined above.
Parent material	Underlying geologic material, located below the subsoil (B horizon) consisting of unweathered material; i.e., loess, glacial till/outwash, blue clay and bedrock. Parent material is not rooting media.
Prime Farmland	Agricultural land comprised of soils that are defined by the USDA Natural Resources Conservation Service as being "prime" soils (generally considered the most productive soils with the least input of nutrients and management).
Right-of-Way or ROW	The permanent and temporary easements the Company acquires for the purpose of constructing and operating the Electrical Line. Each major segment of project right-of-way where the Electric Line construction will occur.
Spread	Length for a particular project may vary defined by the project segments in each individual county, if a county segment is longer than 45 miles, the county will be divided into 45 mile-increments.
Surface Drain(s)	Any surface drainage system such as shallow surface field drains, grassed waterways, open ditches, or any other conveyance of surface water.
Tenant	Any person lawfully residing on or leasing/renting of the land that is subject to an Underlying Agreement.
Topsoil	The uppermost layer of the soil that has the darkest color or the highest content of organic matter, more specifically defined as the "A" horizon. The surface layer of the soil has the darkest color or the highest content of organic matter (as defined in the USDA County Soil Survey and verified with samples).
Underlying Agreement	The written agreement with a Landowner(s) including, but not limited to, an easement, option, lease or license under the

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terms of which another person has constructed, constructs or intends to construct an electric transmission line on the property of the Landowner.

## **Electric Transmission Line Construction Standards and Policies**

### **1. Support Structures**

- A. Unless otherwise provided herein, only single-foundation type support structures that are typical of single pole style structures will be used. See Attachment 1, hereto, for diagrams of the two single-foundation type support structures that may be utilized, neither of which require permanent supporting guy wires.
- B. If it is structurally necessary, as determined by a licensed professional engineer and in accordance with good engineering practice, lattice structures may be used: (1) to cross the Mississippi River, the Illinois River and in the transitional areas before and after such crossings; (2) in designated wetlands and flood plains in compliance with all Federal and State statutory and regulatory requirements; and (3) when failure mitigation/containment concerns (as established in the Guidelines for Electrical Transmission Line Structural Loading, 4<sup>th</sup> ed. ASCE (2020) Sec. 1.2.2) necessitate such use.
- C. If it is structurally necessary, as determined by a licensed professional engineer and in accordance with good engineering practice and the Guidelines for Electrical Transmission Line Structural Loading, lattice structures may be used for heavy-angle sites when the Electric Line is required to undergo a change in direction of at least fifteen (15) degrees. If lattice structures are utilized pursuant to this subsection, the lattice structures shall only be used on non-Cropland, unless otherwise provided in an Underlying Agreement.
- D. Company will work directly with Landowners to determine optimal support structure type and locations (as agreed to in the Underlying Agreement) and will use its Best Efforts to mitigate impacts to agricultural operations by spacing support structures in such a manner to minimize their placement on Agricultural Land and by selecting routes that follow existing rights-of-way, field lines, and property lines.
- E. Where the Electric Line is adjacent and parallel to highway and/or railroad right-of-way but on privately owned property, the support structures will be placed as close as practical to the edge of the highway and/or railroad right-of-way such that no part of the structure overhangs or occupies the highway and/or railroad right of way. The only exception may be at jogs or weaves on the highway alignment.

### **2. Land to be Purchased via Fee Simple Acquisition**

Unless otherwise established in an Underlying Agreement, no land will be purchased in fee simple for the ROW corridor needed for the Electric Line.

### **3. Aboveground Facilities**

There will be no aboveground facilities located on cropland other than the support structures, foundations, conductors, optical ground wire, guy wires and anchors. Access

roads, if needed, will be located by agreement with the Landowners. (See Item 18. Ingress and Egress)

#### 4. Guy Wires and Anchors

- A. Concerted effort will be made to place guy wires and their anchors out of crop and hayland, placing them instead along existing utility lines and on land not used for row crops or hay.
- B. All guy wires will be shielded with highly visible guards.

#### 5. Drainage Tile

- A. If tiling is practiced in the area where a transmission line is to be constructed, the Company will send a letter to all Landowners to request information as to whether support structure locations will interfere with any drainage tile.
- B. If the Company is advised of possible drainage tile interference with a support structure location, then the Company will conduct an engineering evaluation to determine if the support structure can be relocated to avoid interference with the tile. The Company will make its Best Efforts to relocate the support structure if the engineering integrity of the electric transmission line can be maintained.
- C. If the tile is intercepted and will be relocated per an agreement between the Company and the affected Landowner, the tile shall be located not less than 50 feet upstream and 50 feet downstream of the interception. The tile shall be rerouted over that 100+ feet according to the recommendations of the *Illinois Drainage Guide*, Circular 1226, Cooperative Extension Service, College of Agricultural, Consumer and Environmental Sciences, University of Illinois at Urbana-Champaign, 1984 (available at <http://www.wq.illinois.edu/DG/DrainageGuide.html>.) In no case shall the length of the rerouted tile exceed 125% of the length of original tile line that will be replaced.

If the tile line is intercepted and repair is necessary, but no repair specifications are available from the county SWCD, the Company shall reference the USDA Natural Resources Conservation Service Conservation Practice Standard document, "SUBSURFACE DRAIN" - CODE 606 (see Attachment 2), to aid in the repair of the damaged tile. Tile repairs should be made to ensure functionality. If sections of hard plastic pipe are utilized, then the drainage tiles must be properly adjoined, taped, or otherwise interconnected to prevent silt fill from damaging the functionality of the system.

- D. Affected Landowners may elect to negotiate a fair settlement with Company for the Landowner or Tenant to undertake the responsibility for repair, relocation or reconfiguration of the damaged drainage feature.

## 6. Construction During Wet Weather

Except as provided below, construction activities are not allowed on Agricultural Land where normal farming operations, such as plowing, disking, planting or harvesting, cannot take place due to wet soils. Wet weather conditions are to be determined on a field-by-field basis and not for the project as a whole.

- A. Construction activities may occur on prepared surfaces, surfaces where topsoil and subsoil have been removed, heavily compacted in preparation, or otherwise stabilized (e.g. through cement mixing or matting). Matting should not be used to access the ROW when conditions are determined to be too wet for construction activities pursuant to subsection C below. Any matting utilized shall be removed from the ROW at the conclusion of construction activity.
- B. Construction activities on unprepared surfaces will be done only when work will not result in rutting creating a mixing of subsoil and topsoil. Determination as to the potential of subsoil and topsoil mixing will be in consultation with the Landowner, or, if approved by the Landowner, his/her designated Tenant.
- C. The Agricultural Inspector has the authority to stop work on any and all spreads under wet weather conditions, pursuant to protocols to be agreed to in advance of Electric Line construction by the Company, the Agricultural Inspector and the IDOA Bureau of Land and Water Resources. Contact information for the Agricultural Inspectors shall be made available to all Landowners. If the appropriate Agricultural Inspector is not immediately available, the Bureau Chief of the IDOA Bureau of Land and Water Resources, or his/her designee, may stop work on any and all spreads under wet weather conditions, pursuant to the aforementioned protocols.

## 7. Damages to Private Property

- A. The Company will use Best Efforts to repair, replace, or pay to repair or replace damaged private property within 45 days, weather and Landowner permitting, after the Electric Line has been constructed.
- B. If the Landowner is paid for any work that is needed to correct damage to his/her property, the Company will pay the ongoing commercial rate for such work.
- C. The Company will remain liable to correct damages to private property beyond the construction of the Electric Line, to associated future construction, maintenance, and repairs related to this Electric Line.
- D. The Company will reimburse Landowner, on a timely basis, for all agricultural production inputs (fertilizers of all types and kinds) needed to restore crop productivity to the ROW, the temporary workspace, or any other portion of Landowner's property where crop yields are diminished by reason of the construction, repair, maintenance, and inspection activities of Company. This shall

be a continuing obligation of Company for as long as and to the extent that Landowner can reasonably demonstrate diminished yields resulting from the above activities of Company. The Company shall make available to Landowner the name and contact information of a person acting on behalf of Company with whom the Landowner can communicate information with regard to diminished crop yields and need for reimbursement of cost of agricultural inputs. That person will have a background related to soil productivity and crop production.

#### **8. Restoration of Soil Compaction, Rutting, Fertilization and Liming**

- A. The Company, unless the Landowner opts to do the restoration work, will rip to a depth of 18 inches all cropland, which has been traversed by construction equipment to alleviate compaction impacts, unless the Landowner specifies other arrangements that are acceptable to the Company. Decompaction shall be conducted according to the guidelines provided in Appendices A and B.
- B. The Company will rip or pay to have ripped all compacted and rutted soil, weather and Landowner permitting, after the electric transmission line has been constructed across any affected property.
- C. The Company will restore all compacted or rutted land as near as practicable to its original condition.
- D. If there is a dispute between the Landowner and the Company as to what areas need to be ripped, the depth at which compacted areas should be ripped, or the necessity or rates of lime and fertilizer application, the County SWCD's opinion will be considered by the Company and the Landowner.

#### **9. Fertilization of Disturbed Soils**

- A. If desired by the Landowner, the Company will agree to apply fertilizer and lime or pay to have fertilizer and lime applied to land disturbed by construction at a rate specified by the local University of Illinois Extension office to help restore the fertility of disturbed soils and enhance the establishment of a vegetative cover to control soil erosion.
- B. Unless other arrangements are made with the Landowner, the Company will apply fertilizer and lime, or pay to have fertilized and limed, the disturbed ROW within 45 days, weather and Landowner permitting, after the Electric Line has been constructed.

#### **10. Repair of Damaged Soil Conservation Practices**

- A. The Company will repair or pay the Landowner to repair any soil conservation practices (such as terraces, grassed waterways, etc.), which are damaged by the Electric Line's construction.



- B. If the Company is responsible for repairing any damaged soil conservation practices, the repairs will be made in accordance with the specifications of the county SWCD. All repairs should be completed per SWCD specifications, plus the Landowner must maintain installed practices for 10 years.
- C. The work set forth in this section will be done within 45 days, weather and Landowner permitting, after the Electric Line has been constructed.
- D. Prior to construction, Company will work with the landowner to identify all conservation tracts on the ROW. Conservation tracts include but are not limited to conservation easements, established conservation practices, wetlands and sensitive areas. The Company will utilize Best Efforts to restore impacted land pursuant to the applicable conservation plan criteria.

#### 11. Removal of Construction Debris

- A. The Company will remove from the Landowner's property all material that was not there before construction commenced and which is not an integral part of the Electric Line. (Note: Materials to be removed on a daily basis include light debris, paper cups, soda cans, etc. generated by the construction crews.)
- B. The Company will use its best efforts to ensure that all construction debris will be removed within 45 days, weather and Landowner permitting, after the Electric Line has been constructed.

#### 12. Preventing Erosion

- A. The Company will work with Landowners to prevent or correct excessive erosion on all lands disturbed by construction by implementing reasonable methods to control erosion as suggested by the Landowner.
- B. If the Landowner (A) does not suggest a reasonable erosion control method, or (B) does not suggest any method of erosion control, the Company will follow the recommendations of the County SWCD.
- C. On properties subject to erosion, the Company will use all reasonable efforts to ensure that erosion control measures are implemented, or pay the Landowner to do so, within 45 days, weather and Landowner permitting, after the Electric Line has been constructed.

#### 13. Soil Removed from Support Structures Holes/Foundations

- A. Company shall provide the Landowner the option to retain excess soil material (spoils) after pier drilling and backfilling operations or the option to have excess spoils removed from the ROW.

- B. If excess spoils are requested to be removed by the Landowner, the Company shall either pay to haul them away, or pay the Landowner to remove them. Payments to the Landowner for removal shall be comparable to the area hauling rate.
- C. If spoil material is to be removed, the Company will remove or pay to have removed the spoil material within 45 days, weather and Landowner permitting, following the construction of the Electric Line.

#### 14. Clearing of Trees and Brush from the Easement

- A. If trees are to be removed from privately owned land, the Company will consult with the Landowner to see if there are trees of commercial or other value to the Landowner that are slated to be removed.
- B. If there are trees of commercial or other value to the Landowner, the Company will allow the Landowner the right to retain ownership of the trees with the disposition of the trees to be negotiated prior to the commencement of land clearing.
- C. The Company will follow the Landowner's desires, if reasonable, regarding the disposition of trees and brush of no value to the Landowner by burning, chipping or complete removal from any affected property.
- D. Prior to clearing, if there is a need to remove trees from the ROW, any trees identified as having commercial or other value will be required to be evaluated by an Illinois Licensed Forester or Accredited Forester, who will, utilizing Best Efforts and per industry custom and practice, note the number of acres covered by trees, species of trees, number of each species present, along with any estimated valuation, commercial or otherwise, for any recoverable trees.
- F. In the event of required tree harvest, the Illinois Timber Buyers Licensing Act, 225 ILCS 735/1 must be followed.

#### 15. Interference with Irrigation Systems

- A. If the construction of the Electric Line interrupts an operational (or soon to be operational) spray irrigation system, the Company will establish with the Landowner an acceptable amount of time the irrigation system may be out of service.
- B. If, as a result of Construction of the Electric Line, an irrigation system interruption results in crop damages, the Landowner will be compensated for all such crop damages per the applicable Underlying Agreement.
- C. If it is feasible and mutually acceptable to the Company and the Landowner, temporary measures will be implemented to allow an irrigation system to continue to operate across land on which the Electric Line is being constructed.

**16. Interference with Neighboring Communications Circuits**

If interference should develop between the Company's new facilities and a Landowner's communication circuits, the Company will seek to eliminate such interference at its own expense within 45 days of receiving a verbal or written notice from the affected Landowner.

**17. Advance Notice of Access to Private Property**

- A. The Company will provide the Landowner with a minimum of 24 hours prior notice before accessing his/her property for the purpose of constructing the Electric Line.
- B. Prior notice shall first consist of personal contact or a telephone contact, whereby the Landowner is actually informed of the Company's intent to access the Landowner's property. If the Landowner cannot be reached in person or by telephone, the Company will send by certified mail to the Landowner's home a dated, written notice of the Company's intent. The Landowner need not acknowledge receipt of the second notice before the Company enters the Landowner's property.

**18. Ingress and Egress Routes**

Prior to the Electric Line's installation, the Company and the Landowner will reach a mutually acceptable agreement on the route that will be utilized for entering and leaving the Electric Line ROW should access to the ROW not be practical or feasible from adjacent segments of the Electric Line ROW, from public highway or railroad right-of-way or from other suitable public access.

**19. Reporting of Inferior Agricultural Impact Mitigation Work**

Prior to the construction of the Electric Line, the Company will provide the Landowner with a number to call to alert the Company should the Landowner observe inferior work relating to the agricultural impact mitigation work that was performed on the Landowner's property.

**20. Project Reporting**

The Company shall maintain records by milepost that identify:

- (a) Applications: method of application, application rate, type of fertilizer, pH modifying agent, acreage treated, and/or seed used;
- (b) Dates of backfilling and seeding;
- (c) Names of landowners requesting special seeding treatment and a description of follow-up actions; and
- (d) Location of any subsurface drainage repairs or improvements made during restoration.

The Company shall file quarterly activity reports with the IDOA documenting: (a) the results of follow-up inspections required pursuant to the AIMA; (b) any problem areas, including those identified by Landowner; and (c) corrective actions taken for at least two (2) years following construction. These reports will include notice of construction, notice of soil movement, and notice of equipment assemblance.

**21. Indemnification**

The Company will indemnify all owners and farm tenants of Agricultural Land upon which such Electric Line is installed, their heirs, successors, legal representatives, assigns (collectively "Indemnitees"), from and against all claims by third parties losses incurred thereby, and reasonable expenses, resulting from or arising out of personal injury, death, injury to property, or other damages or liabilities of any sort related to the design, laying, maintenance, removal, repair, use or existence of such Electric Line, including damages caused by such Electric Line or any of its appurtenances, except where claims, injuries, suits, damages, costs, losses, and expenses are caused by the negligence or intentional acts, or willful omissions of such Indemnitees provided further that such Indemnitees shall tender any such claim as soon as possible upon receipt of notice thereof to the Company.

Grain Belt Express – Electric Transmission Line  
2022 Agricultural Impact Mitigation Agreement

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**Concurrence of the Parties to this AIMA**

The Company and IDOA concur that this AIMA is the complete AIMA governing the mitigation of agricultural impacts that may result from the construction of the Electric Line by the Company. The Company and IDOA further concur that reference to the Company’s adherence to this AIMA should be included in the opinions and findings of the ICC should the Commission issue any CPCN for the Electric Line that may impact Agricultural Land.

This effective date of this AIMA commences on the date of execution.

**STATE OF ILLINOIS  
DEPARTMENT OF AGRICULTURE**

**GRAIN BELT EXPRESS LLC**

  
By, Jerry Costello II, Director

DocuSigned by:  
  
Shashank Sane, Executive Vice President

  
By John Teeffey, General Counsel

801 E. Sangamon Avenue, 62702  
State Fairgrounds, POB 19281  
Springfield, IL 62794-9281

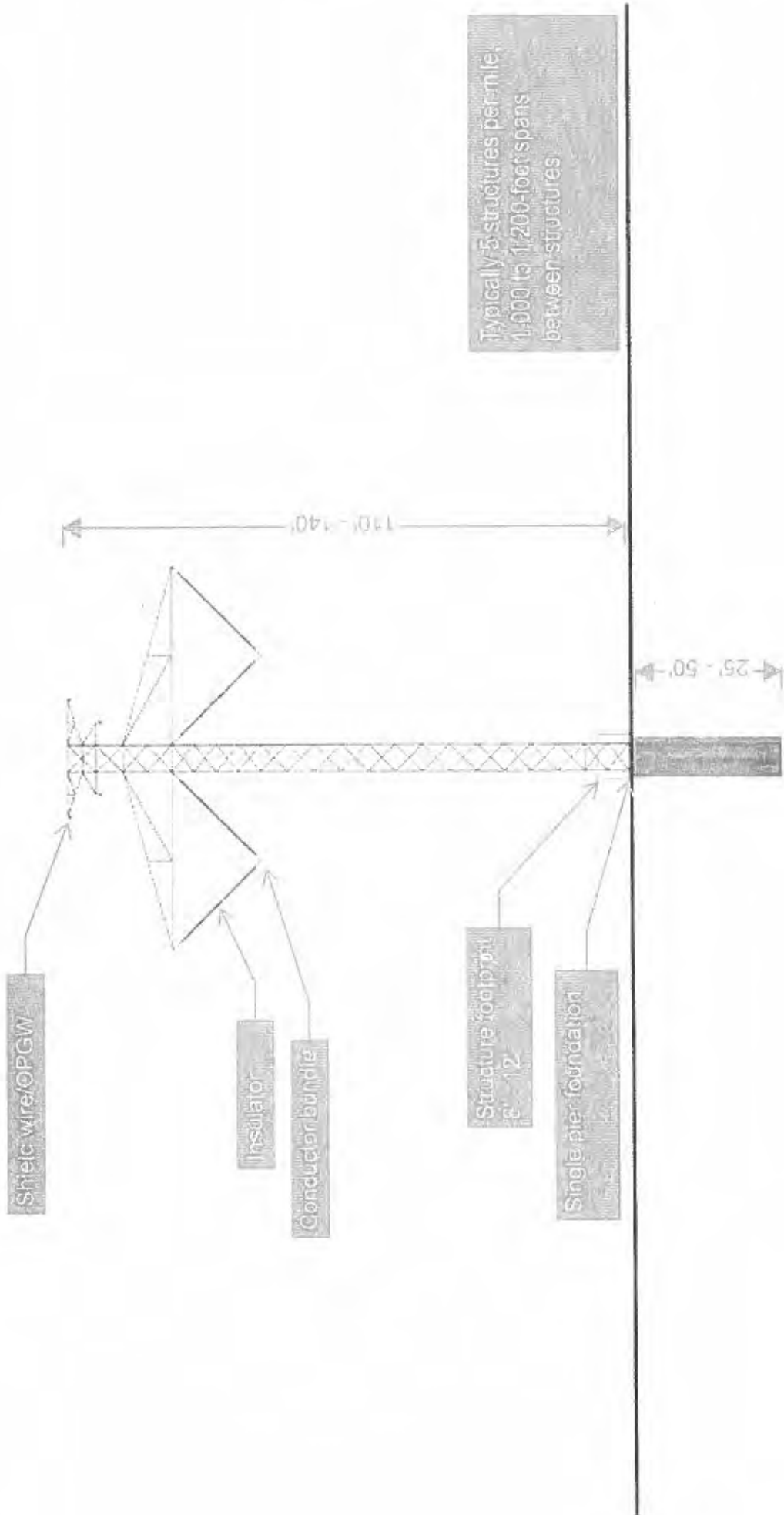
Invenergy Transmission LLC  
One South Wacker Drive, Suite 1800  
Chicago, IL 60606

7/25, 2022

7/24/2022, 2022

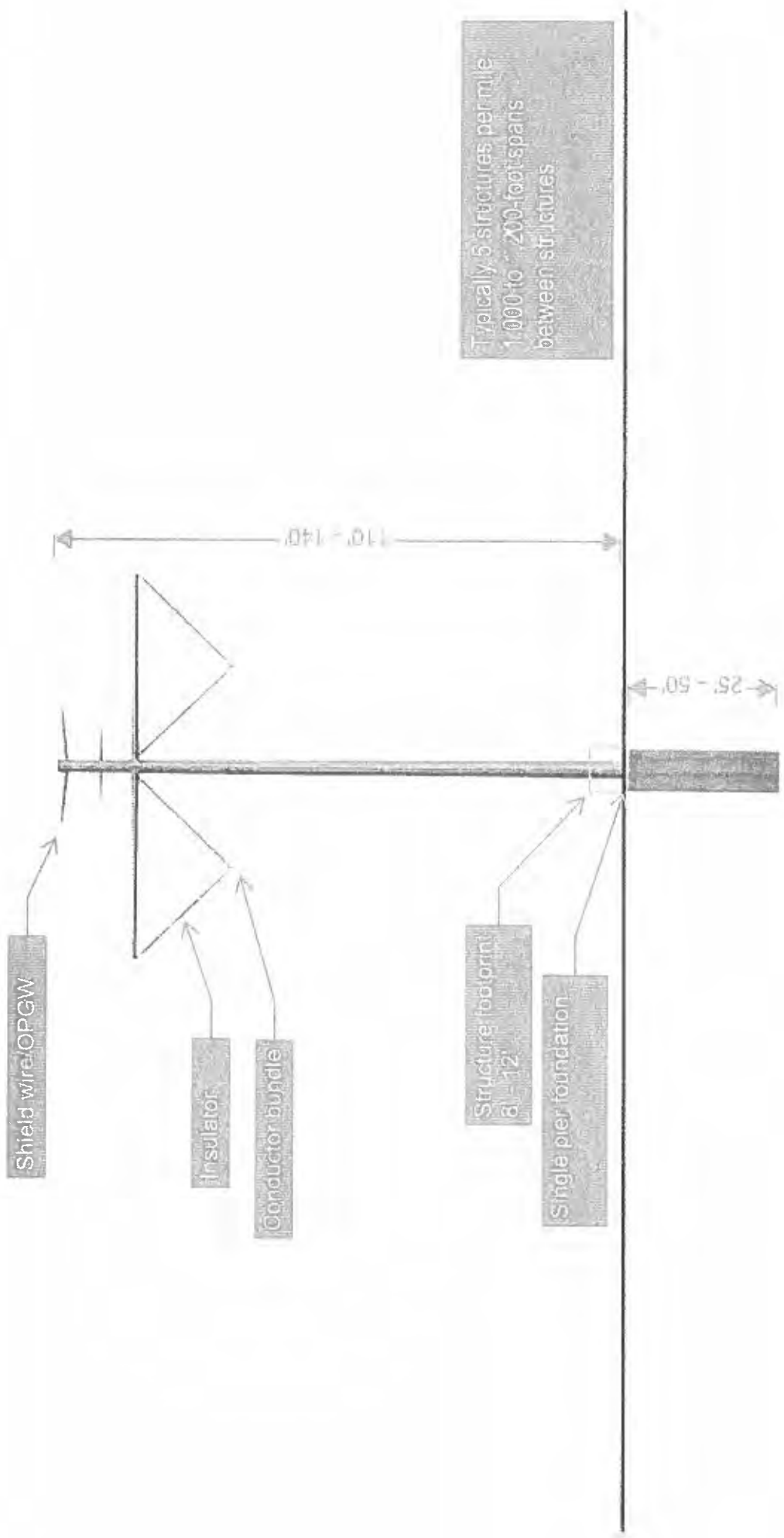
# TYPICAL LATTICE MAST STRUCTURE: 110 - 140 FEET

## Attachment 1



# TYPICAL MONOPOLE STRUCTURE: 110 - 140 FEET

## Attachment 1



**NATURAL RESOURCES CONSERVATION SERVICE  
CONSERVATION PRACTICE STANDARD**

**SUBSURFACE DRAIN**

(Ft.)

CODE 606

**DEFINITION**

A conduit installed beneath the ground surface to collect and/or convey excess water.

**PURPOSE**

This practice may be applied as part of a resource management system to achieve one or more of the following purposes:

- Remove or distribute excessive soil water.
- Remove salts and other contaminants from the soil profile.

**CONDITIONS WHERE PRACTICE APPLIES**

This standard applies to agricultural land where a shallow water table exists and where a subsurface drainage system can mitigate the following adverse conditions caused by excessive soil moisture:

- Poor health, vigor and productivity of plants.
- Poor field trafficability.
- Accumulation of salts in the root zone.
- Health risk and livestock stress due to pests such as flukes, flies, or mosquitoes.
- Wet soil conditions around farmsteads, structures, and roadways.

This standard also applies where collected excess water can be distributed through a subsurface water utilization or treatment area.

**CRITERIA**

**Laws and regulations.** Subsurface drains must be planned, designed and constructed to meet all applicable federal, state, and local laws and regulations, including the Illinois Livestock Facilities Act (LMFact) and

provisions of Title 35E, State of Illinois Rules and Regulations.

**Utilities and Permits.** The landowner and/or contractor shall be responsible for locating all buried utilities in the project area, including drainage tile and other structural measures.

The landowner shall obtain all necessary permissions from regulatory agencies, including but not limited to the Illinois Department of Agriculture, US Army Corps of Engineers, US Environmental Protection Agency, Illinois Environmental Protection Agency and Illinois Department of Natural Resources – Office of Water Resources, or document that no permits are required.

**Capacity.** Design capacity shall be based on the following, as applicable:

- Application of a locally proven drainage coefficient for the acreage drained.
- Yield of groundwater based on the expected deep percolation of irrigation water from the overlying fields.
- Comparison of the site with other similar sites where subsurface drain yields have been measured.
- Measurement of the rate of subsurface flow at the site during a period of adverse weather and groundwater conditions.
- Application of Darcy's law to lateral or artesian subsurface flow.
- Contributions from surface inlets based on hydrologic analysis or flow measurements

**Size.** The size of subsurface drains shall be computed by applying Manning's formula, using roughness coefficients recommended by the manufacturer of the conduit. The size shall be based on the maximum design flow rate

Conservation practice standards are reviewed periodically and updated if needed. To obtain the current version of this standard, contact your Natural Resources Conservation Service State Office or visit the Field Office Technical Guide.

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and computed using one of the following assumptions:

- The hydraulic grade line parallel to the bottom grade of the subsurface drain with the conduit flowing full at design flow (normal condition, no internal pressure).
- Conduit flowing partly full where a steep grade or other conditions require excess capacity.
- Conduit flowing under internal pressure with hydraulic grade line set by site conditions, which differs from the bottom grade of the subsurface drain.

All subsurface drains shall have a nominal diameter that equals or exceeds 3 inches.

**Internal Hydraulic Pressure.** Drains are normally designed to flow with no internal pressure, and the flow is normally classified as open channel. The design internal pressure of drains shall not exceed the limits recommended by the manufacturer of the conduit.

**Horizontal Alignment.** A change in horizontal direction of the subsurface drain shall be made by one of the following methods:

1. The use of manufactured fittings.
2. The use of junction boxes or manholes.
3. A gradual curve of the drain trench on a radius that can be followed by the trenching machine while maintaining grade.

**Location, Depth, and Spacing.** The location, depth, and spacing of the subsurface drain shall be based on site conditions including soils, topography, groundwater conditions, crops, land use, outlets, saline or sodic conditions, and proximity to wetlands.

The minimum depth of cover over subsurface drains may exclude sections of conduit near the outlet or through minor depressions, providing these sections of conduit are not subject to damage by frost action or equipment travel.

In mineral soils, the minimum depth of cover over subsurface drains shall be 2.0 feet.

In organic soils, the minimum depth of cover after initial subsidence shall be 3.0 feet. If water control structures are installed and managed to limit oxidation and subsidence of

the soil, the minimum depth of cover may be reduced to 2.5 feet.

For flexible conduits, maximum burial depths shall be based on manufacturer's recommendations for the site conditions, or based on a site-specific engineering design consistent with methods in NRCS National Engineering Handbook (NEH), Part 636, Chapter 52, Structural Design of Flexible Conduits.

For computation of maximum allowable loads on subsurface drains of all materials, use the trench and bedding conditions specified, and the compressive strength of the conduit. The design load on the conduit shall be based on a combination of equipment loads, trench loads, and road traffic, as applicable.

Equipment loads shall be based on the maximum expected wheel loads for the equipment to be used, the minimum height of cover over the conduit, and the trench width. Equipment loads on the conduit may be neglected when the depth of cover exceeds 6 feet. Trench loads shall be based on the type of backfill over the conduit, the width of the trench, and the unit weight of the backfill material.

**Minimum Velocity and Grade.** In areas where sedimentation is not a hazard, minimum grades shall be based on site conditions and a velocity of not less than 0.5 feet per second. If a sedimentation hazard exists, a velocity of not less than 1.4 feet per second shall be used to establish the minimum grades. Otherwise, provisions shall be made for preventing sedimentation by use of filters or by collecting and periodically removing sediment from installed traps, or by periodically cleaning the lines with high-pressure jetting systems or cleaning solutions.

**Maximum Velocity.** Design velocities for perforated or open joint pipe shall not exceed those given in Table 1, unless special protective measures are installed. Design velocities with protective measures shall not exceed manufacturer's recommended limits.

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**Table 1.** Maximum Flow Velocities by Soil Texture.

Soil Texture	Velocity, ft./sec.
Sand and sandy loam	3.5
Silt and silt loam	5.0
Silty clay loam	6.0
Clay and clay loam	7.0
Coarse sand or gravel	9.0

Ref: NEH 624, Chapter 4, Subsurface Drainage.

On sites where topographic or hydraulic conditions require drain placement on steep grades and design velocities greater than indicated in Table 1, special measures shall be used to protect the conduit or surrounding soil.

Protective measures for high velocities shall include one or more of the following, as appropriate:

1. Enclose continuous perforated pipe or tubing with fabric type filter material or properly graded sand and gravel.
2. Use non-perforated continuous conduit or a watertight pipe, and sealed joints.
3. Place the conduit in a sand and gravel envelope, or initial backfill with the least erodible soil available.
4. Select rigid butt end pipe or tile with straight smooth sections and square ends to obtain tight fitting joints.
5. Wrap open joints of the conduit with tar-impregnated paper, burlap, or special fabric-type filter material.
6. Install larger diameter drain conduit in the steep area to help assure a hydraulic grade line parallel with the conduit grade.
7. Install open air risers for air release or entry at the beginning and downstream end of the high velocity section.

Releases from drainage water management structures shall not cause flow velocities in perforated or open joint drains to exceed allowable velocities in Table 1, unless protective measures are installed.

**Thrust Control.** Follow pipe manufacturer's recommendations for thrust control or anchoring, where the following conditions exist:

- Axial forces that tend to move the pipe down steep slopes.
- Thrust forces from abrupt changes in pipeline grade or horizontal alignment, which exceed soil bearing strength.
- Reductions in pipe size.

In the absence of manufacturer's data, thrust blocks shall be designed in accordance with NEH, Part 636, Chapter 52, Structural Design of Flexible Conduits.

**Outlets.** Drainage outlets shall be adequate for the quantity and quality of water to be discharged.

Outlets to surface water shall be designed to operate without submergence under normal conditions.

For discharge to streams or channels, the outlet invert shall be located above the elevation of normal flow and at least 1.0 foot above the channel bottom.

Outlets shall be protected against erosion and undermining of the conduit, entry of tree roots, damaging periods of submergence, and entry of rodents or other animals into the subsurface drain.

A continuous section of pipe without open joints or perforations, and with stiffness necessary to withstand expected loads, shall be used at the outlet end of the drain line. Minimum lengths for the outlet section of conduit are provided in Table 2. Single-wall Corrugated Plastic Pipe is not suitable for the section that outlets into a ditch or channel.

For outlets into sumps, the discharge elevation shall be located above the elevation at which pumping is initiated.

**Table 2.** Minimum Length of Outlet Pipe Sections.

Pipe Diameter, in.	Min. Section Length, ft.
8 and smaller	10
10 to 12	12
15 to 18	16
Larger than 18	20

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The use and installation of outlet pipe shall conform to the following requirements:

- If burning vegetation on the outlet ditch bank is likely to create a fire hazard, the material from which the pipe is fabricated must be fireproof.
- At least two-thirds of the pipe section shall be buried in the ditch bank, and the cantilever section must extend to the toe of the ditch side slope, or the side slope shall be protected from erosion.
- If ice or floating debris may damage the outlet pipe, the outlet shall be recessed to the extent that the cantilevered part of the pipe will be protected from the current of flow in the ditch or channel.
- Headwalls used for subsurface drain outlets must be adequate in strength and design to avoid washouts and other failures.

**Protection from Biological and Mineral Clogging.** Drains in certain soils are subject to clogging of drain perforations by bacterial action in association with ferrous iron, manganese, or sulfides. Iron ochre can clog drain openings and can seal manufactured (fabric) filters. Manganese deposits and sulfides can clog drain openings.

Where bacterial activity is expected to lead to clogging of drains, access points for cleaning the drain lines shall be provided.

Where possible, outlet individual drains to an open ditch to isolate localized areas of contamination and to limit the translocation of contamination throughout the system.

**Protection from Root Clogging.** Problems may occur where drains are in close proximity to perennial vegetation. Drain clogging may result from root penetration by water-loving trees, such as willow, cottonwood, elm, soft maple, some shrubs, grasses, and deep-rooted perennial crops growing near subsurface drains.

The following steps may reduce the incidence of root intrusion:

- Install a continuous section of non-perforated pipe or tubing with sealed joints, through the root zone.
- Remove water-loving trees for a distance of at least 100 feet on each side of the

drain, and locate drains a distance of 50 feet or more from non-crop tree species.

- Provide for intermittent submergence of the drain to limit rooting depth by installing a structure for water control (e.g. an inline weir with adjustable crest) that allows for raising the elevation of the drain outlet.

**Water Quality.** Septic systems shall not be directly connected to the subsurface drainage system, nor shall animal waste be directly introduced into the subsurface drainage system.

**Materials.** Subsurface drains include flexible conduits of plastic, bituminized fiber, or metal; rigid conduits of vitrified clay or concrete; or other materials of acceptable quality.

The conduit shall meet strength and durability requirements for the site. All conduits shall meet or exceed the minimum requirements of the appropriate specifications published by the American Society for Testing and Materials (ASTM), American Association of State Highway Transportation Officials (AASHTO), or the American Water Works Association (AWWA).

**Foundation.** If soft or yielding foundations are encountered, the conduits shall be stabilized and protected from settlement. The following methods are acceptable for the stabilization of yielding foundations:

- Remove the unstable material and provide a stable bedding of granular envelope or filter material.
- Provide continuous cradle support for the conduit through the unstable section.
- Bridge unstable areas using long sections of conduit having adequate strength and stiffness to ensure satisfactory subsurface drain performance.
- Place conduit on a flat, treated plank. This method shall not be used for flexible conduit (e.g. Corrugated Plastic Pipe) without proper bedding between the plank and conduit.

**Filters and Filter Material.** Filters shall be used around conduits, as needed, to prevent movement of the surrounding soil material into the conduit. The need for a filter shall be determined by the characteristics of the surrounding soil material, site conditions, and

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the velocity of flow in the conduit. A suitable filter shall be used if any of the following conditions exist:

- Local experience with soil site conditions indicates a need.
- Soil materials surrounding the conduit are dispersed clays, silts with a Plasticity Index less than 7, or fine sands with a Plasticity Index less than 7.
- The soil is subject cracking by desiccation.
- The method of installation may result in inadequate consolidation between the conduit and backfill material.

If a sand-gravel filter is specified, the filter gradation shall be designed in accordance with NEH, Part 633, Chapter 26, Gradation Design of Sand and Gravel Filters.

Specified filter material must completely encase the conduit such that all openings are covered with at least 3 inches of filter material, except where the top of the conduit and side filter material are covered by a sheet of plastic or similar impervious material to reduce the quantity of filter material required. In all cases, the resulting flow pattern through filter material shall be a minimum of 3 inches in length.

Geotextile filter materials may be used, provided that the effective opening size, strength, durability, and permeability are adequate to prevent soil movement into the drain throughout the expected life of the system. Geotextile filter material shall not be used where the silt content of the soil exceeds 40 percent.

#### **Envelopes and Envelope Material.**

Envelopes shall be used around subsurface drains if needed for proper conduit bedding or to improve flow characteristics into the conduit.

Materials used for envelopes do not need to meet the gradation requirements of filters, but they must not contain materials that will cause an accumulation of sediment in the conduit, or materials that will render the envelope unsuitable for bedding of the conduit.

Envelope materials shall consist of sand-gravel, organic, or similar material. 100 percent of sand-gravel envelope materials shall all pass a 1.5-inch sieve; not more than 30 percent shall pass a Number 60 sieve; and

not more than 5 percent shall pass the Number 200 sieve.

Organic or other compressible envelope materials shall not be used below the centerline of flexible conduits. All organic or other compressible materials shall be of a type that will not readily decompose.

**Placement and Bedding.** Placement and bedding requirements apply to both excavation trenching and plow type installations.

Place the conduit on a firm foundation to ensure proper alignment.

Conduits shall not be placed on exposed rock, or on stones greater than 1½ inches for conduits 6 inches or larger in diameter, or on stones greater than ¾ inch for conduit less than 6 inches in diameter. Where site conditions do not meet this requirement, the trench must be over-excavated a minimum of 6 inches and refilled to grade with a suitable bedding material.

If installation will be below a water table or where unstable soils are present, special equipment, installation procedures, or bedding materials may be needed. These special requirements may also be necessary to prevent soil movement into the drain or plugging of the envelope, if installation will be made in materials such as soil slurries.

For the installation of Corrugated Plastic Pipe with diameters of 8 inches or less, one of the following bedding methods shall be specified:

1. A shaped groove providing an angle of support of 90 degrees or greater shall be provided in the bottom of the trench for tubing support and alignment.
2. A sand-gravel envelope, at least 3 inches thick, to provide support.
3. Compacted bedding material beside and to 3 inches above the conduit.

For the installation of Corrugated Plastic Pipe with diameters larger than 8 inches, the same bedding requirements shall be met except that a semi-circular or trapezoidal groove shaped to fit the conduit with a support angle of 120 degrees will be used rather than a V-shaped groove.

For rigid conduits installed in a trench, the same requirements shall be met except that a

groove or notch is not required. For trench installations where a sand-gravel or compacted bedding is not specified, the initial backfill for the conduit shall be selected material containing no hard objects (e.g. rocks or consolidated chunks of soil) larger than 1.5 inches in diameter. Initial backfill shall be carried to a minimum of 3 inches above the conduit.

**Auxiliary Structures and Protection.** The capacity of any structure installed in the drain line shall be no less than that of the line or lines feeding into or through them.

Structures for water table management, with provisions to elevate the outlet and allow submergence of the upstream drain, shall meet applicable design criteria in NRCS Conservation Practice Standards, Structure for Water Control (587), and Drainage Water Management (554).

If the drain system is to include underground outlets (Conservation Practice Standard 620), the capacity of the surface water inlet shall not be greater than the maximum design flow in the downstream drain line or lines. Covers or trash racks shall be used to ensure that no foreign materials are allowed in the drain lines. Inlets shall be protected from entry of animals or debris. If sediment may pose a problem, sediment traps shall be installed.

Pressure-relief wells may be used to allow excess flow to escape the conduit and flow over the ground surface. Only use pressure relief wells where there is a stable outlet for the flow from the relief well. Cover pressure relief wells with a grate or other appropriate covering to prevent the entry of small animals and debris. For relief wells used as outlets, the subsurface drain system shall have a positive hydraulic grade line to the relief well. Inline relief wells shall have a positive hydraulic grade line from the relief well to the outlet of the system.

The capacity of a relief well system shall be based on the flow from the aquifer, the well spacing, and other site conditions, and shall be adequate to lower the artesian water head to the desired level. Relief wells shall not be less than 4 inches in diameter.

Junction boxes, manholes, catch basins, and sand traps must be accessible for maintenance. A clear opening of not less than

2.0 feet will be provided in either circular or rectangular structures.

The drain system shall be protected against turbulence created near outlets, surface inlets or similar structures. Continuous non-perforated or closed-joint pipe shall be used in drain lines adjoining the structure where excessive velocities will occur.

Junction boxes shall be installed where three or more lines join or if two lines join at different elevations. If the junction box is buried, a solid cover should be used, and the junction box should have a minimum of 1.5 feet of soil cover. Buried boxes shall be protected from traffic.

If not connected to a structure, the upper end of each subsurface drain line will be closed with a tight-fitting cap or plug of the same material as the conduit, or other durable materials.

Watertight conduits designed to withstand the expected loads shall be used where subsurface drains cross under irrigation canals, ditches, or other structures.

**Stabilization.** Revegetate or otherwise protect from erosion, disturbed areas that will not be farmed, as soon as possible after construction.

## CONSIDERATIONS

When planning, designing, and installing this practice, the following items should be considered:

- Protection of shallow drains, auxiliary structures, and outlets from damage due to freezing and thawing.
- Proper surface drainage to reduce the required intensity of the subsurface drainage system.
- Designs that incorporate drainage water management practices (or facilitate its future incorporation) to reduce nutrient loading of receiving waters.
- Drainage laterals oriented along elevation contours to improve the effectiveness of drainage water management structures.
- The effects of drainage systems on runoff volume, seepage, and the availability of soil water needed for plant growth.

- Confirmation of soil survey information with site investigation, including auguring and shallow excavations to identify soil profile hydraulic characteristics, soil texture layering, water table depth, etc.
- The effects of drainage systems on the hydrology of adjacent lands.
- Subsoiling or ripping of soils with contrasting texture layers to improve internal drainage.
- Installations in dry soil profile to minimize problems of trench stability, conduit alignment, and soil movement into the drain.
- The effects to surface water quality.
- Use of temporary flow blocking devices to reduce risk of drain water contamination from surface applications of manure.

#### PLANS AND SPECIFICATIONS

Plans and specifications for installing subsurface drains shall be in keeping with this standard and shall describe the requirements for applying the practice to achieve its intended purpose.

At a minimum, plans and specifications shall include, as applicable: location of drainage system; wetland delineation(s) if applicable; conduit lengths, grades, sizes, and type of materials; structure locations, dimensions, and elevations; outlet locations, elevations, and

protection required; and normal water level elevations in outlet ditches or streams.

#### OPERATION AND MAINTENANCE

The Operation and Maintenance (O&M) Plan shall provide specific instructions for operating and maintaining the system to insure proper function as designed. At a minimum, the O&M Plan shall address:

- Necessary periodic inspection and prompt repair of system components (e.g. structures for water control, underground outlets, vents, drain outlets, trash and rodent guards).
- Winterization protection from freezing conditions for drainage systems in cold climates.

#### REFERENCES

Illinois Department of Agriculture, Livestock Management Facilities Act [510 ILCS 77/1 et seq.]

USDA-NRCS, National Engineering Handbook, Part 624, Chapter 4, Subsurface Drainage.

USDA-NRCS, National Engineering Handbook, Part 633, Chapter 26, Gradation Design of Sand and Gravel Filters.

USDA-NRCS, National Engineering Handbook, Part 636, Chapter 52, Structural Design of Flexible Conduits.

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**NATURAL RESOURCES CONSERVATION SERVICE  
ILLINOIS CONSTRUCTION SPECIFICATION  
SUBSURFACE DRAIN**

**Scope**

The work consists of furnishing and installing conduits and appurtenances for the subsurface drain system as shown on the drawings and specified herein.

**Utilities**

The landowner and/or contractor are responsible for locating all buried utilities in the project area, including drainage tile and other structural measures.

**Inspection and Handling of Materials**

Carefully inspect conduit materials before installation. Look for any deficiencies, such as thin spots or cracking, prior to installation. Where applicable, check clay and concrete tile for damage from freezing and thawing prior to installation. Protect bituminized fiber and plastic pipe and tubing from hazards causing deformation or warping. Avoid installing materials with physical imperfections.

**Materials**

Materials for subsurface drains must meet the requirements as shown in the plans and specifications.

Where perforated conduit is required, the water inlet area should be at least 1 in.<sup>2</sup>/ft of conduit length. Round perforations must not exceed 3/16-in. in diameter except where filters, envelopes, or other protection is provided or for organic soils, where a maximum hole diameter of 1/2 in. may be used. Slotted perforations should not exceed 1/8 in. in width.

The following reference specifications pertain to products currently acceptable for use as subsurface drains:

<b>REFERENCE SPECIFICATIONS FOR UNDERGROUND OUTLET MATERIALS</b>	
<b>Description</b>	<b>ASTM</b>
<b>Plastic</b>	
Corrugated Polyethylene (PE) Pipe and Fittings	F405 F667
Poly Vinyl Chloride (PVC) Pipe and Fittings	F949 D1785 D2241
Styrene-Rubber (SR) Plastic Drain Pipe and Fittings	D2852
<b>Dual Wall Polyethylene Pipe</b>	
Corrugated Polyethylene (PE) Pipe and Fittings	F2306 F2648 F405 F667
Elastomeric Seals and Joints (Gaskets)	F477 D3212
<b>Clay</b>	
Clay Drain Tile and Pipe	C4 C700 C301
<b>Concrete</b>	
Concrete Drain Tile and Pipe	C412 C118 C14 C76 C444
Test Methods for Concrete Pipe	C497
Portland Cement	C150
<b>Metal</b>	
Corrugated Aluminum Pipe	B745
Corrugated Steel Pipe	A760

NRCS, Illinois  
August 2013

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**Placement**

All subsurface drains should be laid to line and grade and covered with approved blinding, envelope, or filter material to a depth of not less than 3 inches over the top of the drain. No reversals in grade of the conduit are permitted. Material used for blinding must contain no rocks greater than 1½ inches in diameter for conduits 6 inches or larger in diameter, or ¾ inch for smaller conduits. The cover over all buried conduit lines must be at least 2 feet deep unless otherwise specified on the plans.

Unless otherwise specified in the construction plans, provide a shaped groove with an angle of support of 90 degrees in the bottom of the trench for corrugated plastic tile (CPT) 8 inches diameter or less. For larger CPT, use a semi-circular or trapezoidal shaped groove with support angle of 120 degrees.

Rigid conduits such as clay or concrete tile will not need the V groove, but all other applicable placement and bedding requirements will be adhered to. Joints between drain tiles must have the closest possible fit.

If not connected to a structure, the upper end of the subsurface drain line must be closed with a tight-fitting cap or plug of the same material as the conduit, or other durable materials.

**Backfill**

Place earth backfill material in the trench in such a manner that displacement of the conduit will not occur and so that the filter and

bedding material, after backfilling, will meet the requirements of the drawings and specifications. Backfill within 2 feet of conduit shall have no rock particles larger than 1.5 inches in diameter. All backfill shall contain no stones larger than 6 inches in diameter, frozen material, or large dry clods.

**Outlet**

A continuous section of non-perforated conduit shall be used at the outlet as described in the construction plans, unless a headwall is used. All outlets must have an animal guard, hinged to allow passage of debris.

Unless otherwise specified in the construction plans, acceptable materials for use at the outlet include the following:

- Corrugated metal pipe, galvanized or aluminum, 16-gauge, minimum thickness,
- Smooth steel pipe with 3/16 of an inch minimum thickness,
- Smooth plastic pipe, polyvinyl chloride (PVC), with a SDR of 35 or less or schedule 40 or heavier, and
- Dual wall corrugated polyethylene pipe.

Use plastic pipe for the outlet only where fire will not be used to manage the vegetation. All plastic and polyethylene pipe outlets must include an ultra-violet stabilizer. Conduit ends must be protected from sun damage during installation.



## Appendix A.

### Guidelines for Conducting Proper and Successful Decompaction

1. Decompaction is required when all three conditions apply.
  - A. the area has been trafficked or traversed by vehicles or construction equipment, and
  - B. the soil penetrometer readings are 300 psi or greater, and
  - C. The soil strength (psi) in the right-of-way area is greater than that of the non-trafficked area.
  
2. An Environmental and/or Agricultural Inspector (AI), with experience and training in the proper identification of compacted soil and operation methods of deep decompaction tools is required to observe the daily operation of the ripper/subsoiler to ensure the conditions are appropriate for decompaction efforts and that the proper equipment is utilized and that equipment is set-up and operated correctly.
  
3. To achieve the most effective shatter of the compacted soil the following guidelines have been established:
  - A. Conduct ripping when the soil is dry. Follow the "Soil Plasticity Test Procedures" detailed in Appendix B to determine if soil conditions are adequately dry to conduct decompaction efforts.
  - B. Deep ripping shall be conducted using a ripper or subsoiling tool with a shank length of no less than 18 inches and a shank spacing of approximately the same measurement as the shank length.
  - C. Use a ripper with a knife length of no less than 2 inches more than the desired depth of decompaction.
  - D. To best promote revegetation and restore crop production, a total depth of 30 or more inches of soil (topsoil plus subsoil) is required.
  - E. The minimum depths of decompaction stated above in 3.D. are required where possible. A safe distance from sub-surface structures (tile drains, pipelines, buried utilities, bedrock, etc.) must be maintained at all times. Where such structures exist, a lesser depth of decompaction will be required to prevent damage to equipment and the structures as well as to maintain a safe work environment. The allowable decompaction depth in these instances will be determined on a site by site basis.
  - F. When the knives are in the soil to the desired depth, the tongue of the ripper should be parallel to the surface of the ground.
  - G. Select a tractor that has enough horsepower to pull the ripper at a speed of 1.5 to 2 mph and whose footprint is of equal or lesser width than the ripper. Tracked equipment is preferred and typically required to achieve this criteria.
  - H. The ripper shanks should not create ruts, channels, or mixing of the sub-soil with topsoil. A speed of 1.5 to 2 mph is recommended to minimize the risk of rutting and soil mixing. The ideal operating speed can vary with soil characteristics, tractor and ripping tool used. An excessive travel speed will often increase mixing of soil horizons.
  - I. When the equipment is set up and operated correctly, the ripper should create a wave across the surface of the ground as it lifts and drops the soil.

- J. Make one ripping pass through the compacted area. Using a penetrometer, the AI will measure the PSI between the ripped knife tracks to determine if the single ripping pass was successful. Additional passes should only be used where needed as they may reduce the effectiveness of the ripping by recompacting the soil shattered in the previous pass.
- K. If the first pass does not successfully decompact the soil, additional passes will be needed. Should multiple passes of the ripper be needed to achieve decompaction between the knives tracks of the ripping tool, the subsequent passes should be positioned so the knife tracks from the previous pass are split by the second pass. If three or more passes have been made and sufficient decompaction has not yet been achieved the AI may choose to halt further decompaction efforts in that area until conditions improve or better methods are determined.
- L. Following ripping, all stone and rock three or more inches in size which has been lifted to the surface shall be collected and removed from agricultural areas.
- M. After ripping has been conducted, do not allow unnecessary traffic on the ripped area.
- N. In agricultural lands and croplands that will not be replanted to vegetation by the Company, recommend to landowners to plant a cover crop (cereal rye, clover, alfalfa, tillage radish, turnips, etc.) following decompaction. Reduced compaction created by the ripper pass will not remain over time without subsequent root penetration. Root penetration into the shattered soil is necessary to establish permanent stabilized channels to conduct air and water into the soil profile. Two good sources for landowner cover crop education are <http://www.mccc.msu.edu/CCinfo/cropbycrop.html> and <http://mcccdev.anr.msu.edu/>. For local expertise, consult with your county's Soil and Water Conservation District /USDA Natural Resource Conservation Service (NRCS) office for cover crop selection and compliance with NRCS planting deadlines.

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## Appendix B.

### Soil Plasticity Test Procedures

The Agricultural Inspector will test the consistency of the surface soil to a depth of approximately 4 to 8 inches using the Field Plasticity Test procedure developed from the *Annual Book of ASTM Standards, Plastic Limit of Soils* (ASTM D-4318).

1. Pull a soil plug from the area to be tilled, moved, or trafficked to a depth of 4-8 inches.
2. Roll a portion of the sample between the palms of the hands to form a wire with a diameter of one-eighth inch.
3. The soil consistency is:
  - A. Tillable (able to be worked) if the soil wire breaks into segments not exceeding  $\frac{3}{8}$  of an inch in length.
  - B. Plastic (not tillable) if the segments are longer than  $\frac{3}{8}$  of an inch before breaking.
4. This Procedure is to be used to aid in determining when soil conditions are dry enough for construction activities to proceed.
5. Once the soil consistency has been determined to be of adequate dryness, the plasticity test is not required again until the next precipitation event.

121614

1           A.     I don't recall the specifics of all the  
2 entities that roll up to Invenergy LLC.

3           Q.     Okay. For accounting purposes, do  
4 you -- does Invenergy measure -- does it have an  
5 accounting year based upon the calendar year?

6           A.     I believe so, yes.

7           Q.     So it would be January 1 to  
8 December 31st from year to year, as opposed to some  
9 sort of a different fiscal year?

10          A.     Correct.

11          Q.     Okay. So for the year that ended  
12 December 31, 2021, somewhere there's some facts and  
13 figures that show, for that particular time period,  
14 money in, money out. Profit and loss is what I  
15 call it. Right?

16          A.     That's right.

17          Q.     And Invenergy would have control of that  
18 information somewhere?

19          A.     That's correct.

20          Q.     And that information, I don't believe,  
21 is in the record to date; is that correct?

22          A.     Not to my knowledge.

1 Q. So maybe to put it another way, you  
2 can't -- excuse me -- you can, but you have not  
3 disclosed in this record, whether you operate --  
4 Invenergy operated a profit during the calendar  
5 year ending December 31, 2021?

6 A. Correct.

7 Q. Do you do P&L statements, profit and  
8 loss statements, that are updated, for instance, on  
9 a monthly basis, if you know?

10 A. I don't know.

11 Q. But you do know that you prepare them at  
12 least on a calendar basis?

13 A. I know that we regularly prepare annual  
14 financial statements. I don't know all of the  
15 entities that we provide or prepare financial  
16 statements for.

17 Q. And the annual financial statements, in  
18 part, consist of a profit and loss statement,  
19 right?

20 A. Correct.

21 Q. Would the annual financial statements  
22 include a balance sheet as of December 31 of a

1 particular year?

2 A. That is typical.

3 Q. Well, and more importantly, it's what  
4 you do, is it not?

5 A. Me personally?

6 Q. Not you personally, but Invenergy  
7 generally.

8 MR. STREICKER: Just objection to asked and  
9 answered. Generally or typically, I don't know if  
10 there's...

11 BY MR. McNAMARA:

12 Q. Does Invenergy, somewhere in its  
13 records, have a balance sheet that would show a  
14 snapshot of the picture of Invenergy as of  
15 December 31, 2021?

16 A. Which Invenergy entity are you referring  
17 to?

18 Q. Well, maybe we'll go to Invenergy LLC.  
19 Is there a balance sheet somewhere in existence as  
20 of December 31, 2021, for Invenergy LLC?

21 A. I don't know.

22 Q. Do you know if somewhere there is a

1 balance sheet that would include the assets and  
2 liabilities of the five companies listed on  
3 Exhibit 1.1 that's in front of you?

4 A. I'm not familiar with whether we have  
5 produced financial statements for all five entities  
6 on this chart.

7 Q. Do you know if you produced financial  
8 statements for any of the entities on that chart?

9 A. I believe we have financial statements  
10 for Invenergy Renewable Holding.

11 Q. The top entity listed on the chart; is  
12 that correct?

13 A. Yes.

14 Q. Invenergy Renewable Holding Inc. -- or  
15 Holding -- excuse me -- LLC, there would be a  
16 snapshot of the assets and liabilities for that  
17 company, to the best of your belief, as of  
18 December 31, 2021?

19 A. I said I believe so. But as of the date  
20 that you referenced, I don't know.

21 Q. Okay. Give me a date, to the best of  
22 your belief, where you would have a balance sheet

1 for Invenergy Renewables Holding LLC.

2 A. We would probably have financials from  
3 this year.

4 Q. More current, is what you're telling me;  
5 is that correct?

6 A. Yes.

7 Q. What would be the most current  
8 financials that you would have for Invenergy  
9 Renewables Holding LLC? What would be the most  
10 current financial statements for that company?

11 A. I don't know specifically. Our  
12 accounting department is the one that produces the  
13 financials and has specific calendars as to the  
14 schedule in which they prepare the statements.

15 Q. But you know there's financials for that  
16 company that are more recent than December 31,  
17 2021?

18 A. The audits that we do on our entities  
19 are only performed on an annual basis.

20 Q. And your annual basis is a calendar  
21 year; is that correct?

22 A. Correct.



1 Q. Not a fiscal year?

2 A. Correct.

3 Q. And your fiscal year would be ending  
4 December 31 -- excuse me. Your calendar year would  
5 be ending December 31, '21; that would be the  
6 latest calendar year, correct?

7 A. Correct.

8 Q. So to the best of your knowledge, would  
9 you have a balance sheet for Invenergy Renewables  
10 Holding LLC as of December 31, 2021?

11 A. I don't know.

12 Q. And part of your financials, I think you  
13 mentioned also, would be what I call a profit and  
14 loss statement, correct?

15 A. Correct.

16 Q. Would there be any other type of  
17 financials that I'm missing, other than a balance  
18 sheet and a profit and loss statement?

19 A. There's usually a cash flow statement.

20 Q. Okay. And then any other statements  
21 that I'm not asking about?

22 A. No.

1 Q. So somewhere within the Invenergy  
2 system, to the best of your knowledge, there would  
3 be the most recent balance sheet, the most recent  
4 profit and loss statement, and the most recent cash  
5 flow statement somewhere; we're not sure of the  
6 time -- or you're not sure of the time?

7 A. I'm not sure of the time.

8 Q. But I believe you previously stated the  
9 time frame would be -- or the time would be more  
10 recent than December 31, 2021; is that correct?

11 A. Yes. I think that those are ones that  
12 are reviewed internally. I'm not sure that they  
13 are formal financial statements in the format that  
14 we were just describing.

15 Q. But --

16 A. The only complete set of financials --

17 Q. Pardon me? I'm sorry?

18 A. The only complete set of financials are  
19 produced annually.

20 Q. Okay. So backing up again, there would  
21 be complete sets of financial statements, and the  
22 most recent annual financials would be as of

1 December 31, 2021?

2 A. I believe so, yes.

3 Q. Okay. And that information, those three  
4 documents, are available within the Invenergy  
5 group?

6 A. Yes.

7 Q. And to the best of your knowledge,  
8 they're summarized for the company known as  
9 Invenergy Renewables Holding LLC?

10 A. I believe that's right.

11 Q. And going downstream, Invenergy  
12 Renewables LLC, as we come down the flowchart  
13 there, owns all of the outstanding membership  
14 interest in Grain Belt Express LLC?

15 A. That's correct.

16 Q. And those financial documents have not  
17 been filed, to the best of my knowledge, as part of  
18 your application or part of your evidence in this  
19 case?

20 MR. STREICKER: Is that a question to her?

21 MR. McNAMARA: That's a question, sir.

22 MR. STREICKER: Or to the best of her

1 knowledge?

2 MR. McNAMARA: To her knowledge, sure.

3 THE WITNESS: To my knowledge, no.

4 BY MR. McNAMARA:

5 Q. And am I correct that you're an employee  
6 of Invenergy LLC?

7 A. That's correct.

8 Q. I believe I've been addressing most of  
9 your questions to the financing aspect of various  
10 projects. Is that kind of your understanding as my  
11 questions today to you, pretty much directed to  
12 financial getting the money in to make the thing  
13 work; that's your job, right?

14 MR. STREICKER: Restate the question. You're  
15 talking -- we were just talking about accounting  
16 questions.

17 MR. McNAMARA: No, I'm not talking about  
18 accounting. I'm talking about Ms. Shine being the  
19 person that actually manages, obtains, the money to  
20 bring to fruition these projects, whether it be --  
21 well, it is financing.

22 MR. STREICKER: Project finance, that's right.

1 A. Correct.

2 Q. And just a moment ago we talked about  
3 your contracts requiring investment-grade credit  
4 ratings or additional security before you'll enter  
5 into contracts with transmission customers; is that  
6 correct?

7 A. Correct.

8 Q. But these are not in place today?

9 A. Correct.

10 Q. Right. So as you sit here today, you  
11 can't say that, yes, GBX can finance the project  
12 because none of this exists, correct?

13 A. I can say that Grain Belt can finance  
14 the project.

15 Q. You can finance the project?

16 A. We can finance the project once the  
17 project has achieved an advanced stage of  
18 development. So we definitely have the  
19 capabilities to finance the project; we know what  
20 is necessary to finance the project. And that is  
21 what our development team is undertaking right now.

22 Q. Right. But it's not in place today?

1 A. Correct.

2 Q. So when you say that GBX can finance the  
3 project, isn't that really a statement that, if GBX  
4 can finance the project, it can finance the  
5 project? That seems to be the tautology.

6 MR. STREICKER: Just, again, object to a  
7 mischaracterization. You're talking about putting  
8 pieces in place and then financing. Is that your  
9 question?

10 MR. NEILAN: Every part of the question I've  
11 asked is drawn directly from the witness's  
12 testimony, verbatim. So I really have to object  
13 out of hand to a characterization that I'm  
14 mischaracterizing --

15 MR. STREICKER: Your question was if you can't  
16 finance, you can't finance.

17 MR. NEILAN: Correct.

18 BY MR. NEILAN:

19 Q. That you can't say today -- this is  
20 November 22nd -- 29th. Excuse me. Wrong day.  
21 Kennedy assassination.

22 As you sit here today, you can't say

1 that you can finance this project today because the  
2 pieces are not in place?

3 A. What I'm saying is that we have  
4 successfully gone through the process of raising  
5 funds for all of our projects. We are going  
6 through the development process right now in this  
7 room. This will be one of the milestones that we  
8 need to check off. There are other milestones we  
9 will need to achieve, and as we continue to develop  
10 this project, we will be able to finance it.

11 Q. I hear your answer, but I just want to  
12 ask the question a different way and break this up.

13 As you sit here today, you don't know  
14 who the buyers or lessees with interests in the  
15 line will be; is that correct?

16 A. That's correct. But we know what they  
17 need to look like.

18 Q. So the answer is yes; is that correct?

19 A. Yes. We know the types of customers  
20 that we will need to enter into revenue contracts  
21 with.

22 MR. NEILAN: Your Honor, this is

1 cross-examination. I'm entitled to a yes-or-no  
2 answer, or they don't understand the question, or  
3 they don't know.

4 THE COURT: Yeah.

5 MR. STREICKER: The question being,  
6 specifically, do you have the contracts in place as  
7 we sit here today?

8 MR. NEILAN: The question -- I'll say it  
9 again. I don't need Counsel to restate it for me.

10 BY MR. NEILAN:

11 Q. So as you sit here today, you don't know  
12 who the buyers or lessees of the GBX line will be;  
13 is that correct?

14 A. No, we don't.

15 Q. Thank you. And as you sit here today,  
16 you don't know who the customers -- the  
17 transmission services customers of the GBX line  
18 will be; is that correct?

19 A. No, we don't.

20 Q. Thank you. And as you sit here today,  
21 with regard to various contracts, you don't know  
22 how long contracts may be; you don't know what



1 types of contracts or their tenor, if you will,  
2 will be; is that correct?

3 A. No, we don't.

4 Q. Thank you.

5 The GBX project is a merchant  
6 transmission service provider; it's a merchant  
7 transmission project; is that correct?

8 A. That's correct.

9 Q. Do you agree with me that, as a merchant  
10 transmission service provider, that GBX assumes all  
11 market risk of the merchant transmission project?

12 A. Yes.

13 Q. Thank you. If you would please refer to  
14 your direct testimony, page 9, line 196, which will  
15 be page 9. No, that's the wrong reference. Excuse  
16 me.

17 In your testimony you refer to  
18 unforeseen operational and commercial problems that  
19 may arise; is that correct? I'll get that  
20 reference for you, if you like.

21 A. Line 198 to 199.

22 Q. I think I wrote the wrong reference. Is

STATE OF ILLINOIS  
102nd GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES  
TRANSCRIPTION DEBATE

54th Legislative Day

9/9/2021

carbon emissions, we will pass that point of no return. One of my colleagues mentioned code red for humanity."

Speaker Harris: "Representative."

Stoneback: "So, I'd like to strongly urge an 'aye' vote'. And please, everyone here, let's act in the best interest of all of our districts and all of our constituents."

Speaker Harris: "Representative Halbrook."

Halbrook: "Thank you, Speaker. Will the Sponsor yield?"

Speaker Harris: "He'll yield."

Halbrook: "Leader Evans, Representative Meier and Representative Davidsmeyer made some great points. And I want to dive into this eminent domain issue just a moment, if we could. It's my understanding, as I read this legislation, that there is only seven counties that were spelled out in this eminent domain language. Can you explain why only those seven counties?"

Evans: "It's where the transmission line grain belt will be located."

Halbrook: "So, can you explain a little bit about the transmission line? Is that a public company or a private company?"

Evans: "Private company."

Halbrook: "So, can you justify to the Members of this Body why this Body would want to grant a private company access to someone else's private property? Why is that okay?"

Evans: "Yeah, it's not an issue of explanation. It's an issue of.. transmission lines are built throughout this country. My own district in southern Cook County, pipelines and transmission lines are critical infrastructure and.."

Halbrook: "Yeah. I understand that, but those are public utilities.."



# Grain Belt Express

An INVENERGY TRANSMISSION Project

GrainBeltExpress.com connect@GrainBeltExpress.com 866.452.4082

via Certified Mail Return Receipt Requested

[REDACTED]  
Rosamond, IL 62083-2025

RE: Tax Parcel ID: [REDACTED] Christian County, Illinois

Dear B G Farms, Inc.,

We are contacting you about the Grain Belt Express transmission line project. The project is an overhead electric transmission line being designed and built by Grain Belt Express LLC, a subsidiary of Invenergy Transmission LLC. On March 8, 2023, the Illinois Commerce Commission ("ICC") granted Grain Belt Express a Certificate of Public Convenience and Necessity and authorized Grain Belt Express to construct the transmission line and related facilities under Sections 8-406(b-5), 8-406.1 and 8-503 of the Public Utilities Act in Docket 22-0499. Accordingly, Grain Belt Express is a public utility. In this letter, you will find additional information about the project.

Grain Belt Express is an electric transmission infrastructure project connecting four states—Kansas, Missouri, Illinois, and Indiana—across 800 miles. It will carry more affordable, reliable power to millions of homes and businesses across the Midwest and other regions, delivering 100% domestic, clean electricity while powering economic opportunity and energy security.

The project will enter Illinois approximately 6.5 miles west of New Canton, Illinois, in Pike County and will traverse Illinois for approximately 207 miles through Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland and Clark Counties, Illinois. The 207-mile route in Illinois consists primarily of a high voltage, direct current ("HVDC") transmission line and includes approximately three to eight miles of an alternating current ("AC") transmission line. The AC line will run from a converter station proposed in Clark County, Illinois—where current will be converted between DC and AC—to the Indiana border.

**You are receiving this notice because, according to the records of the tax assessor for your county, property in which you have an interest lies within the approved route of this transmission line.**

Grain Belt Express is now beginning to acquire the easements needed to construct, operate and maintain the transmission line. These transmission line right-of-way easements will typically be between 150 and 200 feet wide around the centerline of the approved route, with the exception of locations that require an atypical span to accommodate terrain features, land considerations and other local factors, in which case Grain Belt Express may require a permanent easement up to 300 feet, and additional

temporary easements of (i) 50 feet beyond the permanent right-of-way as required for purposes of access, turning and laydown yard easements during the construction of the project and (ii) up to 600 feet beyond the permanent right-of-way at those locations with turning structures at 15- to 90- degree angles. Landowners will continue to own the property within the easement area. The easement will be only for the exclusive right to construct, operate and maintain the Grain Belt Express transmission line. Construction, operation and maintenance of the transmission line may require certain rights to access and enter the easement area and temporary construction easements. The project will be built with monopole structures, lattice mast structures and lattice structures.

Grain Belt Express is committed to building transmission infrastructure the right way—by treating landowners with respect and fairness. It is our intention to negotiate a fair and reasonable agreement with you to acquire a voluntary easement or other land rights on the above-referenced property to construct, maintain and operate the transmission line. Grain Belt Express has hired Contract Land Staff, LLC (“CLS”) to conduct landowner outreach and easement negotiations for the project.

Through CLS, you will have a land representative assigned to work with you or your designated representative on easement negotiations.

We invite you to contact the Grain Belt Express project team by leaving a voicemail at 866.452.4082 or sending an email to [Connect@GrainBeltExpress.com](mailto:Connect@GrainBeltExpress.com). Please reference your name and parcel number in your voicemail or email. A member of the team will respond to you soon to arrange a mutually agreeable time for an appointment with a CLS land representative to discuss the matter further. If we do not hear from you, then a CLS land representative working on behalf of Grain Belt Express will contact you in the coming weeks to schedule a meeting.

At your meeting with our CLS land representative, the land representative will show you a map of the area where Grain Belt Express is seeking an easement or other land rights on your land; provide you technical information about the project; discuss an easement agreement and associated compensation; and address questions you may have.

In the meantime, we have enclosed the “Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Land or Land Rights-of-Way by Illinois Utilities and Common Carriers by Pipeline” for your review. We have also enclosed a project map. We encourage you to view the ICC Order and other documents relating to this case, which can be located on the ICC’s website at [www.icc.illinois.gov](http://www.icc.illinois.gov), by following the link to “e-Docket” and entering Docket Number 22-0499. You may also obtain additional information about this project on the Grain Belt Express website, [www.grainbeltexpress.com](http://www.grainbeltexpress.com).

Sincerely,

Brad Pnazek  
Vice President, Transmission Development  
One South Wacker Drive, Suite 1800  
Chicago, IL 60606  
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866.452.4082

Enclosures:

- Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Land or Land Rights-of-Way by Illinois Utilities and Common Carriers by Pipeline
- Grain Belt Express – Illinois Project Map

# ADMINISTRATIVE CODE

**TITLE 83: PUBLIC UTILITIES**

**CHAPTER I: ILLINOIS COMMERCE COMMISSION**

**SUBCHAPTER b: PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF  
UTILITY**

**PART 300 GUIDELINES FOR LAND AND RIGHT-OF-WAY ACQUISITIONS**

**SECTION 300.APPENDIX A STATEMENT OF INFORMATION FROM THE ILLINOIS  
COMMERCE COMMISSION CONCERNING ACQUISITION OF LAND OR LAND  
RIGHTS-OF-WAY BY ILLINOIS UTILITIES AND COMMON CARRIERS BY PIPELINE**

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**Section 300.APPENDIX A Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Land or Land Rights-of-Way by Illinois Util Common Carriers by Pipeline**

A representative of a public utility or a common carrier by pipeline (collectively the company) is contacting you to negotiate the purchase of property or the acquisition of land or land right-of-way over or through property that you own, or in which you have an interest as an owner. The company proposes to construct, operate and maintain certain facilities on the property set forth in the accompanying letter. The company representative contacting you will first explain the proposed project.

The purpose of this Statement is to provide you with general information regarding the Illinois Commerce Commission's (Commission's) regulatory process governing a company's proposed project, including the procedures that companies must follow before they can exercise their power of eminent domain to acquire land or land rights. Eminent domain is the power of the State, or those to whom the power is delegated by the State, to take private property for public use without payment of just compensation to the landowner as is determined by the courts. This Statement covers several questions that landowners commonly pose to Commission staff members at public hearings and proceedings at the Commission that relate to a company's proposed project when a company seeks to place facilities on or near those landowners' property. This Statement, however, is not an opinion concerning your rights under the law, or the Commission's rules. It also is not a legal analysis of the procedures involved. If you have any questions concerning your legal rights, you may wish to consult an attorney.

**Requests for a Commission Certificate under  
Section 8-406, 8-406.1, or 15-401 of the Public Utilities Act**

Ordinarily, before constructing major new facilities, a public utility must obtain a certificate of public convenience and necessity from the Commission under Section 8-406 or 8-406.1 of the Public Utilities Act [220 ILCS 5/8-406 or 8-406.1]. Likewise, a common carrier by pipeline ordinarily must obtain a certificate in good standing from the Commission under Section 15-401 of the Public Utilities Act [220 ILCS 5/15-401] before constructing a pipeline or other facility. In either case, to obtain a certificate, the utility or common carrier files an application with the Commission describing the proposed project. The Commission then initiates a proceeding to consider evidence regarding the application and notifies affected landowners of the date, time and place of the initial hearing regarding the proposed project. If you have concerns about the company's proposal, the Commission encourages you to participate in the Commission's certificate proceeding. Changes to a company's proposal are much less likely after the Commission has approved the proposal and issued the company a certificate. Landowners may participate in the proceeding, either through oral or written statements, or by intervening in the proceeding. In this type of proceeding, the Commission considers such factors as the public need for the proposed project, the type of facilities to be constructed, and the feasibility of the proposed project. If the Commission determines that a company has met the requirements for obtaining a certificate and it approves the facility's design and location, it will grant a certificate to the company authorizing construction of the facility and the route that the facility will take over or through property not owned or controlled by the company.

obtain a certificate under Section 8-406 or 15-401, or separately. If a company seeks an order pursuant to Section 8-503 in a separate proceeding, the Commission will notify affected landowners of the Section 8-503 proceeding, and affected landowners may participate in that proceeding in the same manner as is described above for applications for certificates under Section 8-406 or 15-401. If, at the conclusion of the proceeding, the Commission grants the company's request for an order pursuant to Section 8-503, it will issue an order authorizing the proposed project or directing the company to construct the proposed project, including the route of the facility. If the Commission grants a company's request for a certificate under Section 8-406.1, the Section 8-406.1 order must also contain an order pursuant to Section 8-503 authorizing or directing the construction of the high voltage electric service line.

#### Requests for Eminent Domain Authority Pursuant to Section 8-509 of the Public Utilities Act

A company seeking a certificate under Section 8-406.1 or a Commission Order under Section 8-503 may also apply to the Commission for authorization under Section 8-509 [25/8-509] to use the power of eminent domain through the courts pursuant to the Eminent Domain Act [735 ILCS 30] to acquire the land or land rights necessary for the project. The company is not required to seek Commission authorization pursuant to Section 8-509, either in conjunction with its request for a certificate under Section 8-406.1 or for a Commission Order under Section 8-503 separately. If the Commission authorizes the use of eminent domain under Section 8-509 and the company is unable to reach agreement with the landowners to acquire the property interests necessary to complete the proposed project, the company will file a condemnation lawsuit in the appropriate circuit court where the property is located in order to obtain the property interests that the project requires. The courts, not the Commission, make the final decision as to whether the company can acquire land or land rights by eminent domain and, if so, the compensation that the company must pay to the landowner.

#### Attempts by Companies to Acquire Property Rights

Before seeking a Commission Order authorizing or directing a company to construct a project, a company may choose to acquire land or land rights from landowners. A company may seek to purchase land or acquire a right for use of the land. Alternatively, a company may obtain an option to purchase land or land rights at a future date. A company representative should provide affected landowners with information regarding the price and other terms that the company intends to offer for the land or land rights. Such a company uses its own forms for this type of transaction. The Commission does not require a company seeking to acquire land or land rights to use any particular form.

The price and other terms for the land or land rights is a matter of negotiation between the landowner and a company. The Commission does not participate in the negotiation. The Commission also does not establish or approve the negotiated price and other terms for the acquisition of land or land rights. Negotiation involves discussion and bargaining in an effort to reach a mutual agreement. During the negotiations, and at any time, you may be represented by an attorney. However, you are under no obligation to retain anyone to provide legal counsel. You are under no obligation to negotiate or reach an agreement with the company that is seeking to acquire land or land rights. The Commission does not require such a company to obtain a fixed amount or percentage of land or land rights necessary for the project before



as the specific route of the project will not be reconsidered in subsequent Section 8-509 proceedings before the Commission and in subsequent condemnation proceedings before courts. You should not delay in taking whatever action that you believe is, or may be, necessary to protect your property interests. If you elect to negotiate with a company, the Commission encourages you or your representative to negotiate vigorously.

If you have any questions about this Statement or Commission rules and procedures, contact:

Director, Safety & Reliability Division  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62701

Please address specific questions concerning your individual property to the company representative.

(Source: Amended at 37 Ill. Reg. 2864, effective March 1, 2013)

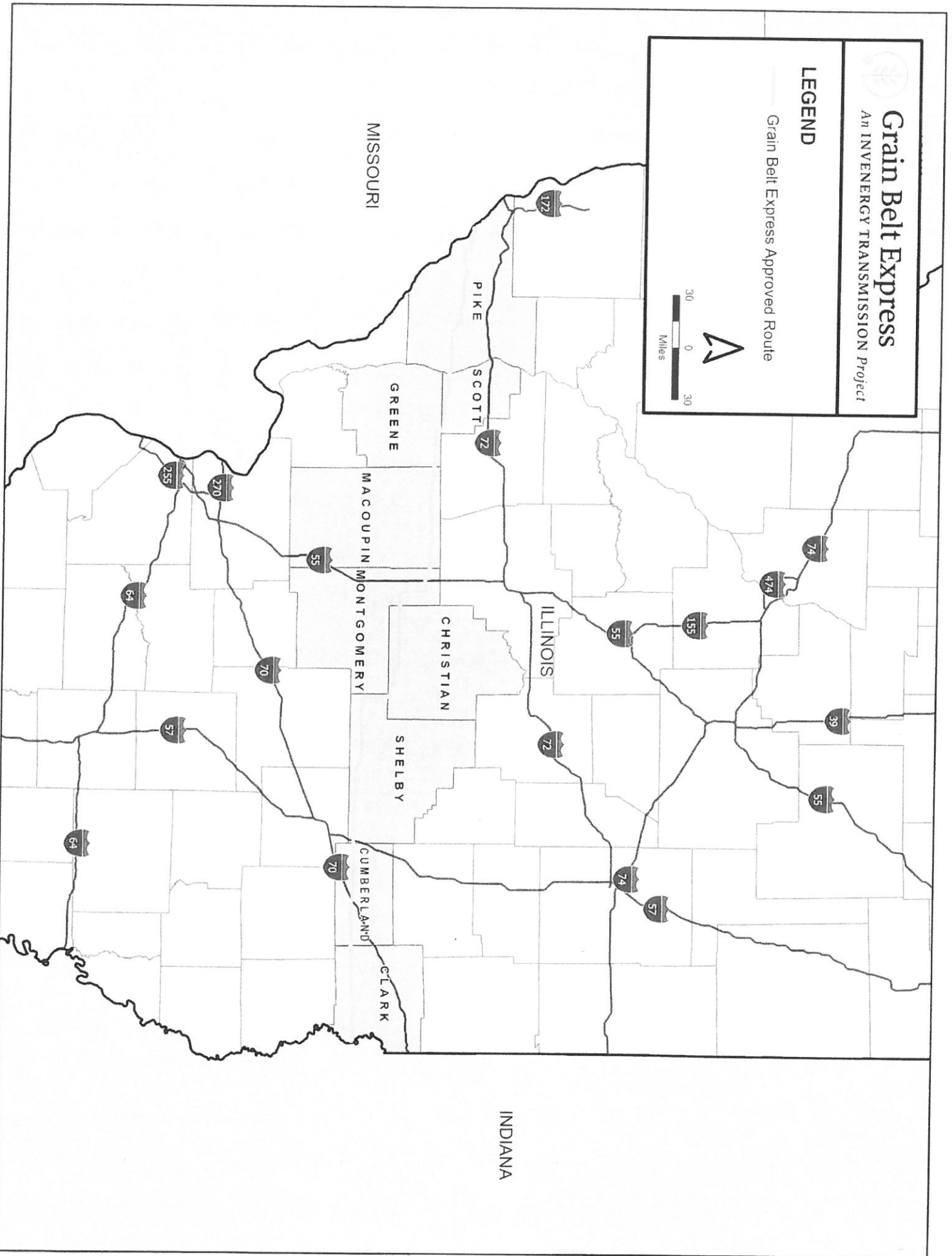
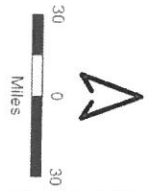


# Grain Belt Express

An INVENENERGY TRANSMISSION Project

## LEGEND

Grain Belt Express Approved Route



**AFFIDAVIT OF PAUL G. NEILAN**

I, Paul G. Neilan, under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure [[735 ILCS 5/1-109](#)], certify that the statements set forth in this instrument are true and correct, except as to any matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true. I further state that:

1. I am counsel to Nafsica Zotos, one of the Petitioners-Appellants in the proceeding captioned Concerned Citizens & Property Owners et al. v Illinois Commerce Commission, Grain Belt Express LLC et al, Case No. 5-23-0271 (the “Appeal”) now pending before the Illinois Appellate Court for the Fifth District (the “Court”). This Affidavit is being provided in connection with the Motion for Stay Pending Appeal (the “Motion”) of the Order of the Illinois Commerce Commission (the “Commission”) in Ill. C.C. Docket No. 22-0499, which is being filed with the Court by the Landowner Alliance (as defined in the Motion).
2. On July 19, 2023, I conferred by telephone with Mr. D. Streicker, counsel to Grain Belt Express LLC (“GBE”) in the Appeal, and Ms. K Wade, counsel to Concerned Citizens and Property Owners.
3. The subject of this telephone conference was GBE’s present, ongoing effort to acquire easements across properties along the proposed route of GBE’s transmission line.
4. During this telephone conference, I explained to Mr. Streicker that GBE’s effort to acquire easements now was putting affected Illinois landowners to significant effort and expense while the Appeal is still pending. I stated that, among other things, GBE asked for, and received from the Commission, a five-year period in which to begin construction of its project. I stated that, in the view of the Landowner Alliance, given the pendency of the Appeal and the fact that any easements so acquired may not be used for five years, GBE’s efforts to acquire such easements now are premature. I requested on behalf of the Landowner Alliance that GBE stop any further effort to acquire easements from landowners until the Appeal is resolved.
5. On July 20, 2023, Mr. Streicker informed me and Ms. Wade that GBE would not grant our request, and that GBE would continue its effort to acquire easements from Illinois landowners along the route of its proposed transmission line.
6. Included in the Appendix to the Motion is an excerpt from the legislative debate in the Illinois General Assembly concerning the amendment to the Illinois Public Utilities Act pertaining to Section 8-406(b-5) thereof (220 ILCS 5/8-406(b-5)). That excerpt is a true

Affidavit of Paul G. Neilan

and correct copy of page 62, 102<sup>nd</sup> Gen. Assembly, Ill. House of Representatives, Debate during 54<sup>th</sup> Legislative Day, September 9, 2021.

Further Affiant sayeth not.

Dated: July 20, 2023

*/s/ Paul G. Neilan*

**AFFIDAVIT OF PAUL G. NEILAN**

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