

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Nafsica Zotos, <i>et al.</i> ,)	
<i>Petitioners,</i>)	
)	
v.)	No. 24-1213
)	
Federal Energy Regulatory Commission,)	
<i>Respondent.</i>)	

**MOTION OF GRAIN BELT EXPRESS LLC TO DISMISS PETITION
FOR JUDICIAL REVIEW AND SUSPEND BRIEFING SCHEDULE**

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MOTION TO DISMISS

Pursuant to Federal Rule of Appellate Procedure 27 and D.C. Circuit Rule 27, Intervenor Grain Belt Express LLC (GBX) moves to dismiss the petition for review for lack of standing. “To establish Article III standing, an injury must be ‘concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.’” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (citations omitted). Petitioners meet none of those requirements.

The Federal Energy Regulatory Commission (Commission or FERC) granted GBX conditional authorization to negotiate sales of transmission capacity on a merchant transmission line GBX is developing from Kansas to Indiana. *See Grain Belt Express Clean Line LLC*, 186 FERC ¶ 61,158 (Authorization Order), *reh’g denied by operation of law*, 187 FERC ¶ 62,068, *reh’g denied*, 188 FERC ¶ 61,042 (2024) (Rehearing Order). Petitioners, who collectively describe themselves as “Illinois Landowners,” assert standing because “the Landowners are owners of real property in Illinois that will be either traversed by, adjacent to, or be otherwise affected by GBX’s proposed transmission line project.” Pet’r Br. at 30. However, FERC’s order on review does not affect the Illinois Landowners’ property interests. Transmission siting decisions are governed by state law, and GBX’s authorization to develop transmission facilities in Illinois is currently pending before the Illinois Supreme Court.

The Illinois Landowners have not been, and could not be, injured by FERC's orders authorizing GBX to negotiate sales of transmission capacity on a merchant project that has not yet been built. The Federal Power Act (FPA) grants FERC jurisdiction to regulate rates for the transmission of electricity in interstate commerce, as well as contracts and practices that directly affect those rates, but "the states retain authority over the location and construction of electrical transmission lines." *Ill. Commerce Comm'n v. FERC*, 721 F.3d 764, 773 (7th Cir. 2013) (citing 16 U.S.C. § 824(b)(1)); *see New York v. FERC*, 535 U.S. 1, 24 (2002). Moreover, as FERC's orders recognize, the GBX application divided its project into two phases and was driven by GBX's intent to hold an open solicitation for Phase 1 in Kansas and Missouri, where Illinois Landowners do not reside. *See* Authorization Order at PP 5-9, A0093-96. There is no open season for Phase II in Illinois and Indiana. As noted above, the Illinois Supreme Court has yet to review the Illinois Commerce Commission (ICC) order granting GBX authorization to develop site, construct, and operate transmission facilities in Illinois pursuant to a state Certificate of Public Convenience and Necessity (CPCN). And, to the extent the GBX open solicitation process authorized by FERC is successful, any transmission service agreements and "the process that led to entering into them" will be subject to FERC review in separate, future ratemaking proceedings. *Id.* P 9, A0095.

Petitioners claim FERC's orders were procedurally defective on the ground that the acquisition of GBX in 2020 should have required approval under FPA section 203. *See* Pet'r Br. at 18-19, 30-40. But federal "courts do not opine on legal issues in response to citizens who might 'roam the country in search of governmental wrongdoing.'" *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024) (citation omitted). Here, FERC "has not required the [Petitioners]s to do anything or to refrain from doing anything," *id.* at 385, and the Illinois Landowners cannot identify any injury caused by FERC's orders that this Court could redress. On the contrary, their landowner concerns will be addressed in state litigation now pending in the Illinois Supreme Court. *See Concerned Citizens & Property Owners v. Ill. Commerce Comm'n*, No. 5-23-0271, 2024 WL 3733278 (Ill. App. Ct. Aug. 8, 2024) (holding that the CPCN granted to GBX by the ICC did not comply with state law), *pet'n for leave to appeal granted*, Nos. 131026 & 131032 (Ill. Sup. Ct. Nov. 27, 2024). The Illinois Landowners here are the same persons contesting the GBX CPCN in Illinois state court.

In short, FERC's orders on review cannot injure the Illinois Landowners' asserted standing interest to protect their real property from acquisition by eminent domain. Petitioners acknowledge that, "[a]bsent a CPCN, GBX cannot avail itself of the power of eminent domain under Section 8-509 of the Illinois PUA, 220 ILCS 5/8-509." Pet'r Br. at 8. That is a question of state law that the Illinois Supreme

Court will decide; it is beyond the jurisdiction of FERC or this Court. Further litigation of this petition for review is unwarranted and the petition should be dismissed forthwith without further briefing or argument.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Merchant Transmission Facilities and the GBX Project

GBX is developing an approximately 800-mile, overhead, multi-terminal 600 kilovolt high-voltage, direct current merchant transmission line and associated facilities, including converter stations and alternating current connector lines (GBX Project). *See* Authorization Order at PP 3-6, A0092-93. The GBX Project will provide the capacity to deliver up to 5,000 MW, primarily from renewable energy generation facilities in Western Kansas, to load serving entities in the Midwest and adjacent regions via an interconnection with Midcontinent Independent System Operator, Inc., PJM Interconnection, L.L.C., and Associated Electric Cooperative, Inc. *Id.* P 4, A0093. Phase I of the GBX Project is located in Kansas and Missouri; Phase 2 is located in Illinois and Indiana. *Id.* PP 5-6, A0093-94.

Unlike traditional transmission projects developed by franchised transmission utilities, who recover their costs from captive customers during and after construction, investors in merchant transmission projects assume the cost of the project and attempt to recoup those costs from willing transmission customers, *i.e.*, generators or utilities who purchase tranches of transmission capacity to sell energy

to wholesale customers or retail ratepayers. *Allocation of Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038, at P 2 (2013) (2013 Policy Statement). When construction is complete, the Commission requires a merchant transmission developer whose projects are connected to a regional transmission organization (RTO) or independent system operator (ISO), as the GBX Project will be, to turn over operational control of the project to the relevant RTO/ISO. *See* Authorization Order at P 57, A0112.

In 2013, GBX requested Commission authorization to sell transmission capacity on the GBX Project to willing transmission customers at negotiated contract rates. *See Grain Belt Express Clean Line LLC*,¹ 147 FERC ¶ 61,098, at P 6 (2014). FERC conditionally authorized GBX to negotiate contracts for transmission capacity after determining, among other things, that GBX would be assuming full financial risk for the GBX Project and had no captive customers. *See id.* P 15.

These types of applications are routinely filed by merchant transmission developers to support project financing before transmission lines are built by describing how a developer intends to evaluate requests to purchase transmission capacity. FERC reviews “the terms and conditions of a merchant transmission developer’s open season,” to ensure there is no undue preference or discrimination

¹ GBX changed its name to Grain Belt Express LLC in 2020 following its sale to Invenergy Transmission. *See* Rehearing Order at P 3 n.6, A0155.

in the sale of trans-mission capacity to transmission customers who need it. *See* 2013 Policy Statement at P 4; Authorization Order at P 43, A0107. For example, FERC requires applicants to “issue broad notice of the project in a manner that ensures that all potential and interested customers are informed of the proposed project.” Authorization Order at P 44, A0107; *see* 2013 Policy Statement at P 23. Developers must disclose the results of their capacity allocation process and show how it conforms to the Commission’s open access goals. Authorization Order at P 45, A0107; *see* 2013 Policy Statement at P 30.

GBX has obtained CPCNs from Kansas, Missouri, and Indiana which are not at issue in this proceeding.² In Illinois, certain changes in law were required to

² *See In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity Authorizing It to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and an Associated Converter Station Providing an Interconnection on the Maywood - Montgomery 345kV Transmission Line*, EA-2016-0358, 2019 WL 1354055 (Mo.P.S.C. Mar. 20, 2019); *In the Matter of the Application of Kansas Power Pool for a Certificate of Convenience and Authority to Transact the Business of an Electric Public Utility in the State of Kansas for Transmission Rights Only in Cross Service Territory of Southern Pioneer Electric Company and Ninnescah Rural Electric Company*, No. 18-KPPE-343-COC, 2018 WL 5804414 (Kan.S.C.C. Nov. 1, 2018); *Petition of Grain Belt Express Clean Line for: (1) A Determination of Its Status as a “Public Utility” Under Indiana Law; (2) A Determination That It Has the Technical, Managerial, and financial Capability to Operate as a Public Utility in Indiana’ (3) Authority to Operate as a Public Utility in Indiana, Including All Rights and Privileges as a Public Utility in Indiana; (4) Authority to Transfer Functional Control of Operation of Its Transmission Facilities to Be Constructed in India to a Fully Functioning Regional Transmission Organization; (6) A Determination That the Commission Should Decline to Exercise certain Aspects of Its Jurisdiction Over Petitioner Clean Line LLC; (6) Authority to*

facilitate project permitting. The ICC approved GBX's first application in 2015, but the Appellate Court of Illinois held that GBX was not a "public utility" under state law. *See Concerned Citizens v. Ill. Commerce Comm'n*, 112 N.E.3d 128, 136 (Ill. App. Ct. 2018). The Illinois legislature subsequently amended the state's Public Utilities Act to authorize a "qualifying direct current applicant" to obtain a CPCN without yet owning or operating equipment or property in Illinois. *See Concerned Citizens*, No. 5-23-0271, 2024 WL 3723378 at P 6. On July 26, 2022, GBX filed its second CPCN application, which the ICC approved under the amended state law. *Grain Belt Express, LLC*, No. 22-0499, 2023 WL 2560141 (Ill.C.C. Mar. 8, 2023). The Appellate Court of Illinois reversed the ICC's second order granting GBX a CPCN as non-compliant with state law on August 8, 2024. *See Concerned Citizens*, No. 5-23-0271, 2024 WL 3723378 at P 28. That decision has been stayed pending review by the Illinois Supreme Court, which granted ICC and GBX leave to appeal on November 27, 2024. *See Concerned Citizens & Property Owners v. Ill. Commerce Comm'n*, Nos. 131026 & 131032 (Ill. Sup. Ct. Nov. 27, 2024).

Locate Its Books and Records Outside the State of Indiana; (7) Consent by the Commission to Boards of County Commissioners for Petitioner Clean Line LLC to Occupy Public Rights of Way, to the Extent It May Be Necessary; and (8) All Other Appropriate Relief, Case No. 44264 (May 22, 2013).

B. Invenergy Acquisition of GBX

In 2019, Invenergy Transmission agreed to acquire GBX from Grain Belt Express Holding LLC. The acquisition was finalized in January 2020 after securing approval from Kansas and Missouri, the two states in which GBX held a CPCN. GBX did not pursue Commission approval of the acquisition under FPA section 203 because GBX was not—and still is not—a “public utility” that owns or operates FERC-jurisdictional facilities. *See* 16 U.S.C. § 824b(a)(1)(A) (“No *public utility* shall, without first having secured an order of the Commission authorizing it to do so – sell, lease, or otherwise dispose of the whole of *its facilities subject to the jurisdiction of the Commission*, or any part thereof of a value in excess of \$10,000,000.”) (emphasis added).

C. Proceedings Below

On October 6, 2023, GBX requested FERC approval to amend its existing negotiated rate authority. GBX’s proposed amendments increased the GBX Project’s total potential capacity to 5,000 MW, added an additional interconnection in Missouri, and divided the project into two phases. *See Grain Belt Express LLC*, Docket No. ER24-59-000, Application for Amendment to Existing Negotiated Rate Authority and Request for Expedited Consideration and Shortened Comment Period of Grain Belt Express LLC at PP 3-4 (Oct. 6, 2023), A0092-93. GBX sought “increased flexibility with respect to its future open solicitation(s) to allow bidders

to submit bids with flexible bidding terms and conditions and that it will use an independent evaluator to assist with its open solicitation.” *Id.* P 15, A0096-97. Illinois Landowners moved for summary disposition of GBX’s application because, in their view, Invenergy’s acquisition of GBX without Commission approval violated FPA section 203.³ *Id.* PP 63-67, A0114-16. FERC found that motion moot because FERC reviewed GBX’s application *de novo*—based solely on GBX’s current ownership structure and project design—and granted GBX’s application in part.⁴ *See id.* P 71, A0118. FERC also clarified that GBX was not required to seek advance authorization in the first place because “developers like Grain Belt, which have existing negotiated rate authority under the 2013 Policy Statement, are not required to seek Commission approval *prior* to conducting a solicitation that deviates from their existing negotiated rate authority,” but rather “continue to have flexibility under the 2013 Policy Statement to seek Commission approval *after* completing a capacity allocation process.” *Id.* P 31, A0102.

The Illinois Landowners requested rehearing and continued to quibble that FERC mischaracterized its grant of authorization to GBX as “continuing” because,

³ The Missouri Landowners Alliance (MLA) made the same argument. *See* Authorization Order at P 16, A0097. FERC rejected MLA’s arguments. *See id.* PP 40, 71. MLA did not seek rehearing and is not a party to this proceeding.

⁴ The Commission reserved judgment on whether GBX’s application satisfied two of the four factors laid out in *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009). Petitioners have abandoned that issue on review.

in their view, that alleged mischaracterization “amounts to an unlawful retroactive approval of GBX’s upstream ownership transfer under FPA Section 203.” *See* Illinois Landowners Rehearing Request at 2, A0121. Specifically, the Illinois Landowners argued that FERC erred in finding the Illinois Landowners’ argument moot because they doubt the sincerity of FERC’s “putatively de novo determination regarding GBX’s negotiated rate authority.” *Id.* The Illinois Landowners further argued, for the first time, that FERC should not classify GBX as a merchant transmission provider because, in their view, GBX had not accepted “full market risk” for the Project. *Id.* at 2-3, A0121-22. That argument was abandoned on review and appears nowhere in Petitioners’ brief.

FERC denied the request for rehearing by operation of law, explaining that it would issue a substantive order in due course. *See Grain Belt Express*, 187 FERC ¶ 62,068, A0153. In its subsequent order, FERC again rejected the Illinois Landowners’ theory that the Authorization Order constituted a retroactive violation of FPA section 203 as moot, finding it “without merit because the premise of this argument—that the Commission’s determination relied on Grain Belt’s claim that it had existing negotiated rate authority to amend—is incorrect.” Rehearing Order at P 7, A0157. FERC also rejected the Landowners’ new claim that GBX did not assume “full market risk” as a merchant project. That argument was procedurally barred because it was raised for the first time on rehearing despite the fact the ICC

order on which that claim was based issued long before the Illinois Landowners intervened at FERC. *Id.* P 8, A0157. FERC also found the Landowners’ argument concerning market risk “turns Grain Belt’s commitment *not* to pursue [retail rate] recovery on its head, and [their] speculation that Grain Belt might hypothetically seek such approval [from the ICC] in the future is not evidence that Grain Belt fails to bear the full market risk of the Project.” *Id.* P 9, A0158.

II. THE COURT SHOULD DISMISS THE PETITION FOR REVIEW FOR LACK OF STANDING

The Illinois Landowners lack standing to challenge the Authorization Order. A petitioner must demonstrate an injury in fact that is “concrete, particularized, and actual or imminent” that is “fairly traceable” to the challenged action and redressable by a favorable ruling. *Clapper*, 568 U.S. at 409. FERC’s Authorization Order does not require the Illinois Landowners “to do anything or to refrain from doing anything.” *All. for Hippocratic Med.*, 602 U.S. at 385. Although standing is not always precluded in cases when a petitioner is not “the object of the government action or inaction he challenges . . . it is ordinarily substantially more difficult to establish.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992). When, as here, the claimed injury “arises from the government’s allegedly unlawful regulation (or lack of regulation) of someone else, much more is needed.” *Id.*

The Illinois Landowners claim the Authorization Order was defective because FERC did not approve the acquisition of GBX by Invenergy years earlier, not that

the Illinois Landowners suffered any identified injury from granting GBX negotiated rate authority, which did not even include Illinois. *See* Rehearing Request at 2-3 (listing specifications of error), A0121-22;⁵ Pet. for Review at 3-4; Pet’r Br. at 18-19 (statement of issues); *id.* at 30 (standing); *id.* at 30-40 (argument). Their argument is that “FERC’s recognition of GBX’s negotiated rate authority as ‘continuing’ from, or ‘existing’ at, any time between the January 2020 upstream ownership transfer of GBX to Invenergy Transmission LLC (‘Invenergy’) and the issuance of the 2/29 FERC Order is an unlawful retroactive approval of that transfer in violation of FPA Section 203(a)(1)(A), 16 U.S.C. §824b(a)(1)(A).” Pet’r Br. at 18-19; *accord* Rehearing Request at 2, A0121. At no point do the Illinois Landowners explain how they are harmed by FERC’s alleged mischaracterization of GBX’s pre-existing negotiated rate authority due to an allegedly “unlawful retroactive approval” of GBX’s upstream ownership transfer four years earlier.

Petitioners appear to be frustrated and confused about FERC’s longstanding practices concerning merchant transmission developers, struggling to understand why developers that are not yet public utilities must meet certain requirements under FERC’s 2013 Policy Statement, but do not require Commission approval for changes

⁵ The Illinois Landowners may not raise arguments on review that were not raised or preserved in their request for rehearing to FERC. *See* 16 U.S.C. § 825l(b); *see, e.g., Consol. Edison Co. of N.Y., Inc. v. FERC*, 45 F.4th 265, 530 (D.C. Cir. 2022).

in upstream ownership under FPA section 203. *See* Pet'r Br. at 31-40; Rehearing Request at 2, 10-16, A0121, A0129-35.⁶ Those policy concerns are not a basis for standing here. Federal courts do not “operate as an open forum for citizens ‘to press general complaints about the way in which government goes about its business.’” *All. for Hippocratic Med.*, 602 U.S. at 379 (quoting *Allen v. Wright*, 468 U.S. 737, 760 (1984)). “To obtain a judicial determination of what the governing law is, a [petitioner] must have a ‘personal stake’ in the dispute.” *Id.* (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021)).

It is difficult to perceive how the Authorization Order caused the Illinois Landowners any cognizable injury at all, particularly when FERC clarified that GBX was “not required to seek Commission approval *prior* to conducting a solicitation” because “developers continue to have flexibility under the 2013 Policy Statement to

⁶ The answer is simple: FPA section 203 only applies to “public utilities,” 16 U.S.C § 824b(a), but “merchant transmission developers . . . become public utilities at the time their projects are energized,” 2013 Policy Statement at P 22. *See, e.g., Pattern Energy Grp. LP*, 178 FERC ¶ 61,090, at P 10 (2022) (approving updated negotiated rate authority in light of new project ownership without requiring section 203 approval); *TransWest Express LLC*, 174 FERC ¶ 61,160, at P 3 n.4 (2021) (“TransWest states that it is not submitting a rate schedule for the TWE Project at this time and does not own any other facilities subject to the Commission's jurisdiction under the FPA; therefore, Commission action on this filing does not make TransWest a public utility.”); *Ameren Transmission Co. Lucky Corridor, LLC*, 172 FERC ¶ 61,123 (2020) (approving updated negotiated rate authority following a change in upstream ownership where no section 203 approval was required or obtained); *New York Transco, LLC*, 151 FERC ¶ 61,005, at P 16 (2015) (dismissing a section 203 application for lack of jurisdiction where the transmission facilities to be transferred were not yet in existence, energized, or in service).

seek Commission approval *after* completing a capacity allocation process.” Authorization Order at P 31, A0102. Bluntly put, FERC held that GBX did not require authorization to proceed with its solicitation in the first place, so the Illinois Landowners would gain nothing even if this Court vacated FERC’s orders below.

The Authorization Order does not accept or reject any contract or other legal obligation that could affect the Illinois Landowners; those rights could only be implicated in a hypothetical future FERC proceeding subject to *de novo* review in a new docket. If the GBX open season produces any Transmission Service Agreements (TSAs), interested parties may challenge those “Initial TSAs at such time as Grain Belt submits a filing providing sufficient detail to evaluate whether the capacity allocation process satisfied the Commission’s requirements.” Authorization Order at P 27, A0101; *id.* P 9, A0095 (noting GBX’s intent to seek approval of the Initial TSAs in a post-solicitation compliance filing); Rehearing Order at P 7 n.21, A0157 (same).

Finally, the Illinois Landowners cannot be injured by the Authorization Order because the status of GBX’s CPCN in Illinois remains subject to future state judicial and regulatory actions that are outside the jurisdiction of the Commission or this Court. *See Concerned Citizens & Property Owners*, Nos. 131026 & 131032 (Ill. Sup. Ct. Nov. 27, 2024) (granting leave to appeal).

A. Illinois Landowners Have Not Alleged a Cognizable Injury Arising from the Authorization Order

The Illinois Landowners cannot, and do not even try, to show that the Authorization Order caused them a cognizable injury. An injury in fact is the “invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560. This requirement serves to “screen[] out” litigants “who might have only a general legal, moral, ideological, or policy objection to a particular government action.” *All. for Hippocratic Med.*, 602 U.S. at 368; *see Lujan*, 504 U.S. at 560 n.1. However, litigants do not have standing to challenge government regulatory action solely because they believe government action is unlawful. *See All. for Hippocratic Med.*, 602 U.S. at 381 (citing *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 473, 487 (1982)).

Courts have recognized that FERC orders may threaten several types of injury to parties that FERC does not regulate. When FERC acts as a siting and permitting agency, for example, in its role certifying pipeline facilities under the Natural Gas Act, petitioners have alleged: aesthetic or other environmental injury, *see, e.g., Sierra Club v. FERC*, 867 F.3d 1357, 1365-66 (D.C. Cir. 2017); takings of property, *see, e.g., id.*; and property devaluation, *see, e.g., Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1317 (D.C. Cir. 2015). When FERC acts in its role as the regulator of electric rates in interstate commerce, such petitioners have

alleged: competitive injury, *see, e.g., LSP Transmission Holdings II, LLC v. FERC*, 45 F.4th 979, 989-90 (D.C. Cir. 2022); and ratepayer injury, *see, e.g., Belmont Mun. Light Dep't v. FERC*, 38 F.4th 173, 185 (D.C. Cir. 2022). The Illinois Landowners have not plausibly alleged that FERC's orders below caused these or any other injuries. Petitioners claim standing on the basis of their real property interests, *see* Pet'r Br. at 30, but any threat to those interests is a question of state law that will be resolved by the Illinois Supreme Court.

First, Illinois Landowners' arguments reflect "general legal, moral, ideological, or policy objection[s] to a particular government action," but do not describe cognizable injuries arising from FERC's orders. *All. for Hippocratic Med.*, 602 U.S. at 368. Illinois Landowners quibble that FERC mischaracterized its own holdings in policy statements and prior orders concerning GBX because, in their view, FERC was required to authorize the sale of GBX to Invenergy Transmission four years ago. *See* Pet'r Br. at 31-40; Rehearing Request at 8-13, 19, A0127-33, A0138; Pet. for Review at 3-4. However, Illinois Landowners do not claim to suffer any injuries from that alleged error, and standing cannot be based on a general interest in "good governance." *Inner City Contracting, LLC v. Charter Twp. of Northville, Mich.*, 87 F.4th 743, 750 (6th Cir. 2023); *see All. for Hippocratic Med.*, 602 U.S. at 368, 381.

The Illinois Landowners’ vaguely expressed general, indirect concerns regarding potential future costs to “ratepayers” that are contingent on hypothetical future proceedings at FERC or the ICC if GBX is ultimately authorized to construct transmission facilities in Illinois. *See* Rehearing Request at 18, A0137.⁷ However, those concerns were not developed below and the Petitioners’ brief, including their standing claim, never mentions potential ratepayer impacts. To the extent any such argument actually existed below, it has been forfeited on review. *See, e.g., Twin Rivers Paper Co. LLC v. SEC*, 934 F.3d 607, 615-16 (D.C. Cir. 2019).

B. The Authorization Order Did Not Cause An Injury To Illinois Landowners, and the Court Cannot Redress an Injury That Does Not Exist

Illinois Landowners fail to show how the Commission’s Authorization Order caused them an injury at all, much less explain how the Authorization Order caused an injury that this Court could redress.

To prove causation, Illinois Landowners must show that their injury—whatever that may be—is “fairly traceable” to the Commission’s action, *see Murthy v. Missouri*, 144 S. Ct. 1972, 1977 (2024) (quoting *Clapper*, 568 U.S. at 409), and

⁷ At most, the Illinois Landowners suggested that, if a merchant transmission line is built, they may someday indirectly pay a portion of the costs of that project in transmission rates, just like any other retail customer. However, there can be no ratepayer costs unless and until GBX builds and energizes a transmission line, neither of which has happened. And there can be no transmission rate unless and until GBX seeks, and FERC accepts, a transmission rate filing in a new proceeding under FPA section 205. *See* 16 U.S.C. § 824d(c).

not “the result of the independent action of some third party not before the court,” *Lujan*, 504 U.S. at 560 (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)). The “links in the chain of causation,” *Allen*, 468 U.S. at 759, cannot be overly speculative or attenuated, *see Clapper*, 568 U.S. at 410-11.

The Illinois Landowners’ sole basis for standing is that they “are owners of real property in Illinois that will be either traversed by, adjacent to, or be otherwise affected by GBX’s proposed transmission line project.” Pet’r Br. at 30. However, the Illinois Landowners never explain how those interests are somehow injured by FERC’s orders on review. That explanation is absent because there is no causal link.

First, the GBX application was driven by a planned open season for Phase I of the GBX project, which is in Kansas and Missouri, not Illinois. Authorization Order at PP 5-9, A0093-95. Second, as evident in the pending CPCN case before the Illinois Supreme Court, states are solely responsible for transmission siting, not FERC. *See, e.g., Applications for Permits to Site Interstate Electric Transmission Facilities*, Order No. 1977, 187 FERC ¶ 61,069, at P 2 (May 13, 2024) (“The authority to site electric transmission facilities has traditionally resided solely with the States.”). Any imagined threat to the Illinois Landowners’ property interests is being addressed by the Illinois Supreme Court. Indeed, the Illinois Landowners state that this case would be rendered moot if the Illinois Landowners ultimately prevail against GBX in the Illinois Supreme Court, Pet’r Brief at 8, which underscores the

Petitioners' exclusive interest in state law claims affecting landowner rights that are beyond FERC's jurisdiction. Third, the petitioners' argument on review is that FERC improperly granted GBX negotiated rate authority because, in their view, FERC should have been required to approve the sale of GBX to Invenergy several years earlier. *See* Pet'r Br at 30-40. That claim cannot affect the Illinois Landowners' asserted property interests, even in the highly unlikely event that this Court grants the Illinois Landowners' petition for review. The Illinois Landowners do not even attempt to establish a link between their FPA section 203 argument and their property interests.

Finally, Illinois Landowners have not explained how an order from this Court will redress their unidentified injury. The Court cannot redress an injury that petitioners have neither identified nor shown to be caused by FERC's orders. *See, e.g., All. for Hippocratic Med.*, 602 U.S. at 1555.

III. THE COURT SHOULD DISMISS THE PETITION FOR REVIEW WITHOUT DELAY AND SUSPEND THE BRIEFING SCHEDULE

GBX respectfully requests that the Court act on this motion to dismiss the petition for review without referring to the merits panel. The Illinois Landowners' case for standing is glaringly meritless. Taking this dispute any further would waste the resources of the parties and the Court to litigate the far-fetched claims in the Illinois Landowner's petition for review. This is neither the time nor the forum for the Illinois Landowners to ventilate their purely academic concerns about FERC's

longstanding policies toward merchant transmission providers under FPA section 203 and the 2013 Policy Statement.

By contrast, as GBX has explained in prior pleadings in this case, further delays in the final resolution of this petition will continue to inflict injury on GBX by undermining the company's ability to develop segments of the GBX Project outside Illinois, including the segments located in Kansas and Missouri that are the sole subject of FERC's order on review and have no bearing at all on the Illinois Landowners' property rights.

GBX respectfully requests that the Court suspend the briefing schedule until this motion has been resolved.

CONCLUSION

WHEREFORE, for the reasons set forth above, GBX respectfully requests that the Court dismiss the petition for review.

Respectfully submitted,

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Dated: December 13, 2024

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Nafsica Zotos, <i>et al.</i> ,)	
<i>Petitioners</i> ,)	
)	
v.)	No. 24-1213
)	
Federal Energy Regulatory Commission,)	
<i>Respondent</i> .)	

**CERTIFICATE AS TO PARTIES,
RULINGS, AND RELATED CASES**

In accordance with Circuit Rule 27(a)(4), intervenor Grain Belt Express LLC (GBX) submits this certificate as to parties, rulings and related cases.

I. Parties, Intervenors, and Amici Before the Court

Petitioners

Nafsica Zotos

Illinois Agricultural Association, d/b/a Illinois Farm Bureau

Concerned Citizens and Property Owners

Concerned Peoples Alliance

York Township Irrigators

Respondent

Federal Energy Regulatory Commission

Intervenors

GBX for Respondent.

Amici

At present, no entities have moved for leave to participate as *amici curiae*.

II. Rulings Under Review

Grain Belt Express LLC, Order Granting in Part Application for Revised Negotiated Rate Authority, Docket No. ER24-59-000, 186 FERC ¶ 61,158 (Feb. 29, 2024);

Grain Belt Express LLC, Order Addressing Arguments Raised on Rehearing, Docket No. ER24-59-001, 188 FERC ¶ 61,042 (July 12, 2024).

III. Related Cases

Undersigned counsel are not aware of any related cases pending in this Court or any other Court. GBX recognizes that Petitioners cited pending litigation in Illinois state court as related proceedings in their brief (at 7-8). GBX disagrees with that characterization, as explained in its Motion to Dismiss and its Rule 28(j) response filed on December 5, 2024.

Respectfully submitted,

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Dated: December 13, 2024

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the requirements of Rules 27(d)(1)(E), 32(a)(5), and 32(a)(6) of the Federal Rules of Appellate Procedure because it was prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that the response complies with the type-volume limitations of Rule 27(d)(2)(A) because it contains 4,947 words, excluding the parts exempted by Rule 32(f), according to the count of Microsoft Word.

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CERTIFICATE OF SERVICE

I certify that on December 13, 2024, I caused the Motion to Dismiss and Suspend Briefing Schedule to be electronically filed with the Clerk of this Court by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

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