

No. 131026

**IN THE
SUPREME COURT OF ILLINOIS**

CONCERNED CITIZENS & PROPERTY OWNERS; ILLINOIS AGRICULTURAL ASSOCIATION, a/k/a Illinois Farm Bureau; CONCERNED PEOPLE ALLIANCE; NAFSICA ZOTOS; and YORK TOWNSHIP IRRIGATORS,

Respondents,

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,

Petitioners.

On Petition for Leave to Appeal from the Appellate Court of Illinois, Fifth Judicial District, Appeal No. 5-23-0271,

There Heard On Appeal from the Illinois Commerce Commission, ICC Docket No. 22-0499

**ILLINOIS CHAMBER OF COMMERCE’S MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR LEAVE TO
APPEAL OF PETITIONER GRAIN BELT EXPRESS LLC**

Illinois Chamber of Commerce (“the Chamber”) respectfully requests leave to file an *amicus curiae* brief in support of the petition for leave to appeal filed by Petitioner Grain Belt Express LLC (“GBX”) because of the importance that petition presents to the Chamber and its many members. In support, the Chamber states:

1. On August 8, 2024, the Fifth District issued its order in this case, reversing the Illinois Commerce Commission’s decision to grant GBX a certificate of public convenience and necessity pursuant to the Public Utilities Act. 2014 IL App (5th) 230271-U. GBX sought the certificate to construct, operate, and maintain the Illinois portion of a multi-state project to create a high voltage direct current transmission line and related facilities. *Id.*, ¶ 7. The project is set to originate in Ford County, Kansas, then traverse the remainder of Kansas into Missouri, cross Missouri into Illinois, travel approximately 207 miles through Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark Counties, where it will ultimately cross into Indiana. *Id.*, ¶¶ 8-9. The transmission line’s approximate length is expected to be 800 miles and interconnect multiple regional electric grids including Southwest Power Pool (SPP), Midcontinent Independent System Operator (MISO), Associated Electrical Cooperative, Inc. (AECI), and PJM Interconnection, LLC (PJM). *Id.*, ¶ 8.

2. The Fifth District reversed the Commission’s conclusion that GBX “is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.” *Id.*, ¶¶ 17, 25 (citing 220 ILCS 5/8-406.1(f)(3)). The Fifth District interpreted “capable of financing” to require GBX to establish it possessed all necessary financing prior to receiving the certificate from the Commission. *Id.*, ¶ 28.

3. On October 3, 2024, GBX filed a petition for leave to appeal, arguing that this Court should review the Fifth District’s decision.

4. The Chamber has a direct interest in this matter because of the significant questions raised by the underlying decision, and the critical need of our members to ensure that the necessary infrastructure exists in Illinois for them to have access to reliable sources of affordable electricity.

WHEREFORE, the Illinois Chamber of Commerce respectfully requests this Court grant it leave to file the *amicus* brief attached to this motion.

Respectfully submitted,

/s/ Irina Y. Dmitrieva

Robert Alexander Messina, #6256393
HeplerBroom LLC
4340 Acer Grove Drive
Springfield, IL 62711
T: (217) 528-3674
F: (217) 528-3964
alec.messina@heplerbroom.com

Irina Y. Dmitrieva, #6281305
HeplerBroom LLC
70 W. Madison St., Suite 2600
Chicago, IL 60602
T: (312) 230-9100
F: (312) 230-9201
Irina.Dmitrieva@heplerbroom.com

NOTICE OF FILING AND PROOF OF SERVICE

I, Irina Y. Dmitrieva, attorney for Illinois Chamber of Commerce, certify that on October 4, 2024, I electronically filed with the Office of the Clerk of the Illinois Supreme Court, the foregoing **Motion for Leave to File, Brief of Amicus Curiae, Illinois Chamber of Commerce in Support of Petitioner Grain Belt Express LLC's Petition for Leave to Appeal**, in the above-entitled cause, a copy of which, along with this **notice of filing with proof of service**, is herewith served upon you.

The undersigned further certifies that on October 4, 2024, an electronic copy of the foregoing motion is being served to counsel of record at the e-mail addresses below.

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)
dstreicker@Polsinelli.com
bjacobi@Polsinelli.com
spluta@Polsinelli.com

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

Brian R. Kalb, #6275228
Joseph R. Harvath, #6318097
Byron Carlson Petri & Kalb, LLC
411 St. Louis Street
Edwardsville, IL 62025
Phone: 618.655.0600

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

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

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

William F. Moran, III, # 6191183
Stratton, Moran, Reichert,
Sronce & Appleton
725 South 4th Street

Fax: 618.655.4004
brk@bcplaw.com
jrharvath@bcplaw.com

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

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

Springfield, IL 62705
bmoran@stratton-law.com

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

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Irina Y. Dmitrieva

HeplerBroom LLC, #6281305
70 W. Madison St., Suite 2600
Chicago, IL 60602
T: (312) 230-9100
F: (312) 230-9201
Irina.Dmitrieva@heplerbroom.com

No. 131026

**IN THE
SUPREME COURT OF ILLINOIS**

CONCERNED CITIZENS & PROPERTY OWNERS; ILLINOIS AGRICULTURAL ASSOCIATION, a/k/a Illinois Farm Bureau; CONCERNED PEOPLE ALLIANCE; NAFSICA ZOTOS; and YORK TOWNSHIP IRRIGATORS,

Respondents,

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 Daughtery Trust Dated July 9, 2010; REX ENCORE FARMS LLC; and ILLINOIS MANUFACTURERS ASSOCIATION,

Petitioners.

On Petition for Leave to Appeal from the Appellate Court of Illinois, Fifth Judicial District, Appeal No. 5-23-0271,

There Heard On Appeal from the Illinois Commerce Commission, ICC Docket No. 22-0499

**BRIEF OF *AMICUS CURIAE* ILLINOIS CHAMBER OF COMMERCE
IN SUPPORT OF PETITIONER
GRAIN BELT EXPRESS LLC'S PETITION FOR LEAVE TO APPEAL**

Robert Alexander Messina, #6256393
HeplerBroom LLC
4340 Acer Grove Drive
Springfield, IL 62711
T: (217) 528-3674
F: (217) 528-3964
alec.messina@heplerbroom.com

Irina Y. Dmitrieva, #6281305
HeplerBroom LLC
70 W. Madison St., Suite 2600
Chicago, IL 60602
T: (312) 230-9100
F: (312) 230-9201
Irina.Dmitrieva@heplerbroom.com

Counsel for Illinois Chamber of Commerce

**TABLE OF CONTENTS
AND POINTS AND AUTHORITIES**

	Page(s)
INTERESTS OF <i>THE AMICUS CURIAE</i>	1
ARGUMENT	2
<i>Concerned Citizens & Property Owners et al. v. Illinois Commerce Comm'n et al.</i> , 2024 IL App (5th) 230271-U.....	2, 3
220 ILCS 5/8-406.1	3
Climate and Equitable Jobs Act, Pub. Act No. 102-662	3
20 ILCS 3855/1-129	3
CONCLUSION	5
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF FILING AND SERVICE	

INTERESTS OF THE *AMICUS CURIAE*

The Illinois Chamber of Commerce (“the Chamber”) is an association that focuses on improving Illinois’ business climate. The Chamber has a strong interest in this case because of the critical need of our members to ensure that the necessary infrastructure exists in Illinois to guarantee that they have access to reliable sources of affordable electricity.

Since its inception in 1919, the Chamber has been the unifying voice of the business community in Illinois. The Chamber has more than 1,800 members in virtually every sector of the business community, including retailers and wholesalers, manufacturers, chemical producers, refineries, and construction companies, among others, as well as members who operate in every segment of the energy sector. It advocates on behalf of its members to achieve an optimal business environment that enhances job creation and economic growth. It also regularly files *amicus curiae* briefs in cases before this Court that, like this one, raise issues of importance to the State’s business community. The Court has acknowledged the value of the Chamber’s perspective in explaining the impact of rulings on the Illinois business community by granting the Chamber leave to file *amicus* briefs in many cases.

Left unaddressed, the Fifth District’s decision in this case will have an adverse impact on the business community, including slowing the development of energy infrastructure projects, which in turn would impact electricity reliability and affordability. This, in turn, would imperil the attraction of new

businesses to Illinois who will demand reliable sources of affordable electricity before committing to our State.

In short, the Chamber has a significant interest in the grant of GBX's Petition for Leave to Appeal and can provide this Court with insights on the effects of this case on parties other than the named litigants.

ARGUMENT

This Court Should Grant GBX's Petition for Leave to Appeal Because It Raises Critical Issues Concerning the Development of Energy Infrastructure Projects, As Well As the Ability of Illinois to Attract New Business Who Depend Upon Reliable, Affordable Electricity.

This Court should grant GBX's petition for leave to appeal because of the significant impact this matter will have on Illinois' business community.

In this case, the Fifth District reversed the Illinois Commerce Commission's decision to grant GBX a certificate of public convenience and necessity pursuant to the Public Utilities Act. 2024 IL App (5th) 230271-U. GBX sought the certificate to construct, operate, and maintain the Illinois portion of a multi-state project to create a high voltage direct current transmission line and related facilities. *Id.*, ¶ 7. The project is set to originate in Ford County, Kansas, then traverse the remainder of Kansas into Missouri, cross Missouri into Illinois, travel approximately 207 miles through Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark Counties, where it will ultimately cross into Indiana. *Id.*, ¶¶ 8-9. The transmission line's approximate length is expected to be 800 miles and interconnect multiple regional electric grids including Southwest Power Pool

(SPP), Midcontinent Independent System Operator (MISO), Associated Electrical Cooperative, Inc. (AECI), and PJM Interconnection, LLC (PJM). *Id.*, ¶ 8.

The Fifth District disagreed with the Commission’s conclusion that GBX “is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.” *Id.*, ¶¶ 17, 25 (citing 220 ILCS 5/8-406.1(f)(3)). The Fifth District interpreted “capable of financing” to require GBX to establish it possessed all necessary financing prior to receiving the certificate from the Commission. *Id.*, ¶ 28.

The Fifth District’s decision raises significant questions about this State’s ability to develop the necessary infrastructure to ensure businesses’ access to reliable sources of affordable electricity. Illinois is in the midst of an energy transition that will have enormous impacts not just on the way we generate electricity, but how that electricity makes its way to members of the Illinois Chamber that depend on its reliability and affordability.

In 2021, Illinois became the first state in the Midwest to mandate a clean energy future when it enacted the Climate and Equitable Jobs Act (Public Act 102-662). *See* 20 ILCS 3855/1-129. Through the Climate and Equitable Jobs Act, Illinois established a plan to completely decarbonize its energy sector by 2050 in an equitable manner. *Id.* Chamber members are currently planning to address their short, medium, and long-term electricity needs as energy markets continue to adjust to the energy transition embodied in the Climate and Equitable Jobs Act. Unsurprisingly, this planning would be significantly

complicated if the ability of Illinois to develop the necessary infrastructure becomes uncertain or is substantially delayed.

Beyond the challenges with planning, Chamber members also stand to lose millions of dollars in electricity costs if Illinois cannot develop the needed infrastructure. Whether it is due to the requirements contained within the Climate and Equitable Jobs Act, the increasing cost of regulatory compliance, or the realities of aging coal-fired generation, existing electric generating assets are going offline and will need to be replaced by a host of different sources of generation. If that generation is not developed, or the ability to transport that electricity is delayed, Illinois businesses will face extraordinarily increased costs to maintain their operations as they are forced to pay for electricity in a market that has tightened because of Illinois' and others failure to successfully manage the aforementioned energy transition.

Finally, the Chamber is an eager supporter of the State's efforts to attract new business to Illinois. Data centers, quantum, and artificial intelligence businesses are being courted by states throughout the country, and decisions are being made now regarding where best to locate. These decisions are certainly made on a host of factors, but for businesses that utilize significant amounts of electricity, reliable, affordable electricity is critical. The Chamber is concerned with the impact this matter may have on energy infrastructure as this is a critical factor in attracting new businesses to Illinois.

Key decisions are being made now by Chamber members to ensure the continued flow of reliable and affordable electricity, and potential new members are weighing these very same issues as they consider where to make millions, if not billions, of dollars in investments. The Chamber believes it is of paramount importance to the business climate in Illinois to have the Court accept this appeal and provide clarity on a matter that will have such a wide-ranging impact on Illinois' business climate.

CONCLUSION

For these reasons, the Illinois Chamber of Commerce requests that this Court grant GBX's Petition for Leave to Appeal.

Respectfully submitted,

By: /s/ Irina Y. Dmitrieva
Attorney

Robert Alexander Messina,
#6256393
HeplerBroom LLC
4340 Acer Grove Drive
Springfield, IL 62711
T: (217) 528-3674
F: (217) 528-3964
alec.messina@heplerbroom.com

Irina Y. Dmitrieva, #6281305
HeplerBroom LLC
70 W. Madison St., Suite 2600
Chicago, IL 60602
T: (312) 230-9100
F: (312) 230-9201
Irina.Dmitrieva@heplerbroom.com

Counsel for Illinois Chamber of Commerce

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 1129.

Respectfully submitted,

By: /s/ Irina Y. Dmitrieva
Attorney

Robert Alexander Messina,
#6256393
HeplerBroom LLC
4340 Acer Grove Drive
Springfield, IL 62711
T: (217) 528-3674
F: (217) 528-3964
alec.messina@heplerbroom.com

Irina Y. Dmitrieva, #6281305
HeplerBroom LLC
70 W. Madison St., Suite 2600
Chicago, IL 60602
T: (312) 230-9100
F: (312) 230-9201
Irina.Dmitrieva@heplerbroom.com

Counsel for Illinois Chamber of Commerce

CERTIFICATE OF FILING AND SERVICE

I, Irina Y. Dmitrieva, attorney for the Illinois Chamber of Commerce, certify that I electronically filed via Odyssey EFile IL the foregoing motion for leave to file *amicus curiae* brief with the Clerk of the Supreme Court on October 4, 2024.

The undersigned further certifies that on October 4, 2024, an electronic copy of the foregoing motion is being served to counsel of record at the e-mail addresses below.

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)
dstreicker@Polsinelli.com
bjacobi@Polsinelli.com
spluta@Polsinelli.com

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

Brian R. Kalb, #6275228
Joseph R. Harvath, #6318097
Byron Carlson Petri & Kalb, LLC
411 St. Louis Street
Edwardsville, IL 62025
Phone: 618.655.0600

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

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

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

William F. Moran, III, # 6191183
Stratton, Moran, Reichert,
Sronce & Appleton
725 South 4th Street
Springfield, IL 62705
bmoran@stratton-law.com

Fax: 618.655.4004
brk@bcplaw.com
jrharvath@bcplaw.com

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

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

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

Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Irina Y. Dmitrieva

Irina Y. Dmitrieva, #6281305
HeplerBroom LLC
70 W. Madison St., Suite 2600
Chicago, IL 60602
T: (312) 230-9100
F: (312) 230-9201
Irina.Dmitrieva@heplerbroom.com