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rehearing and vacate its approval of GBX's negotiated rate authority.

I. CONCISE STATEMENT OF ISSUES AND ALLEGED ERRORS.

- A. Because the Commission makes a putatively de novo determination regarding GBX's negotiated rate authority, the Commission errs in finding that GBX's negotiated rate authority "exists," or "continues" or "is continuing" from any point in time prior to February 29, 2024, the date of the Commission's Order.
- B. The Commission errs in finding moot the Illinois Landowners' argument that FPA Section 203 approval was required for the 2020 sale of GBX, including GBX's FERC-issued negotiated rate authority, to Invenergy Transmission.
- C. The Commission's finding that GBX's negotiated rate authority is "continuing," or "continues" from some time prior to February 29, 2024, and its acquiescence in GBX's claim that it has existing negotiated rate authority, amounts to an unlawful retroactive approval of GBX's upstream ownership transfer under FPA Section 203.
- D. The Commission errs in finding that GBX will bear the full market risk of

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its project the *Chinook* factors, and that GBX will operate the Project on a merchant transmission basis.

II. FACT BACKGROUND.

A. The 2014 GBX Docket and the Original Project.

On May 8, 2014, in Docket No. ER14-409-000 (the "2014 GBX Docket"), the Commission entered its *Order Conditionally Authorizing Proposal and Granting Waivers*, 147 FERC ¶61,098 (the "2014 GBX Order") authorizing GBX (known under prior ownership as Grain Belt Express Clean Line, LLC) authority to charge negotiated rates for transmission rights on its high voltage direct current (HVDC) merchant transmission project as then proposed.

The project's general physical parameters were originally as follows: a 750-mile, 3500 megawatt (MW) HVDC transmission system running from Kansas to Indiana, with an additional interconnection point in Missouri. (2014 GBX Order, ¶3). In the 2014 GBX Docket, GBX stated to the Commission that:

[GBX] is a wholly-owned subsidiary of Grain Belt Express Holding LLC ..., a Delaware limited liability company, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC

(2014 GBX Order, ¶2).

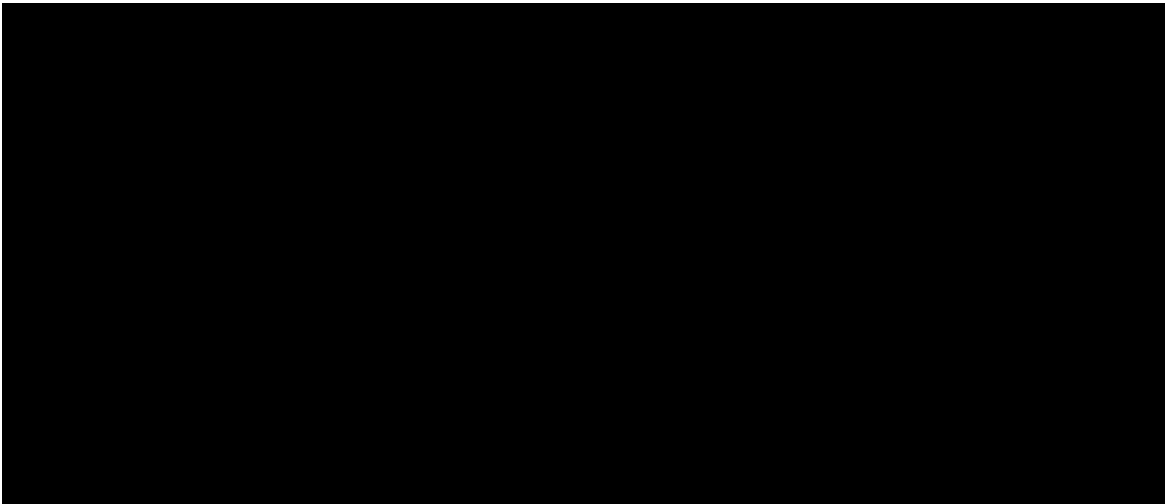
Until completion of the transactions contemplated by the Membership Interest Purchase Agreement referred to below, Grain Belt Express Holding LLC, a Delaware LLC ("GBX Holding") was the sole member of GBX. (Ill. Commerce

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Commission Docket No. 15-0277 (“ICC Dkt No 15-0277”), GBX Verified Petition, Exhibit 1.0., ¶12¹).

B. The Sale of GBX to Invenergy Transmission.

On or about November 9, 2018, GBX and GBX Holding entered into a Membership Interest Purchase Agreement (the "MIPA") with Invenergy Transmission LLC, a Delaware limited liability company ("Invenergy Transmission"), pursuant to which GBX Holding agreed to sell all of the membership interest in GBX to Invenergy Transmission, an unrelated entity, in an upstream ownership transfer. Pursuant to Commission Rule 903 and 18 C.F.R. 388.112, a redacted, public copy of the MIPA was filed as Exhibit A to the Motion for Summary Disposition filed on December 28, 2023 by the Illinois Landowners (the "IL Summary Disposition Motion"); a confidential copy was filed with the Commission concurrently.



¹ Available at: <https://www.icc.illinois.gov/docket/P2015-0277/documents/227725/files/401937.pdf> (last checked March 24, 2024).

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There is no genuine issue of material fact that, pursuant to the MIPA, all ownership and control over the negotiated rate authority granted by FERC to GBX in the 2014 GBX Order was transferred by means of an upstream ownership sale from GBX Holding, to Invenergy Transmission, an unrelated entity.

Nor is there is any genuine issue of material fact that the transaction value of the MIPA far exceeds the \$10,000,000 threshold amount in Federal Power Act ("FPA") Section 203(a)(1)(A), 16 USC 824b(a)(1)(A). (IL Summary Disposition Motion, pgs. 15-20, and Exhibit A thereto (Confidential)).

GBX neither sought nor obtained approval from the Commission under FPA Section 203(a)(1)(A) prior to either entering into the MIPA in November 2018 or closing on the transactions contemplated by the MIPA in January 2020.

C. The 2023 GBX Application.

GBX notified the Commission about the upstream transfer of the ownership of GBX on October 6, 2023, when it filed with the Commission its Application for Amendment to Existing Negotiated Rate Authority and Request for Expedited Consideration, Etc. (the "2023 GBX Application"). That is over three and a half years after the sale of GBX to Invenergy Transmission was closed.

The 2023 GBX Application requests Commission approval for certain changes in the project's characteristics, *inter alia*, increasing the length of the line from 750 to 800 miles; increasing the line's capacity from 3500MW to 5000MW;

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adding an interconnection point with a Missouri electric utility; and dividing the financing and construction of the project into two phases, with Phase 1 being the Kansas to Missouri portion of the line, and Phase 2 the extension of the line from Missouri to Indiana. (Order, ¶¶4-6).

The 2023 GBX Application catalogs the changes in the project's physical and financing characteristics, but these do not represent any fundamental alteration in the nature of the project. By far the most important change covered by the 2023 GBX Application is the upstream transfer of the ownership of GBX, and with it the attempted sale of GBX's FERC-issued negotiated rate authority. The Commission acknowledges as much when it states that because the circumstances of the project, including ownership, have changed, it will conduct a de novo review of the project as presented in the 2023 GBX Application. (Order, ¶22).

GBX also states in the 2023 GBX Application that if it sold or leased to unrelated parties undivided interests in its transmission line, it would have to return to the Commission for approval of those sales and leases under FPA Section 203:

Grain Belt Express anticipates transferring the remainder [i.e., the remainder after all sales of ordinary transmission service] of the Phase 1 capacity to buyers and/or lessees via sales and/or leases of undivided interests subject to FERC approval for each transfer pursuant to Section 203 of the FPA (which would reduce the portion of the project that Grain Belt Express controls).

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(2023 GBX Application, ¶18). The Order refers to this need for FPA Section 203 approval of such sales and leases four more times (Order ¶¶33, 47, 50 and 69).

D. The IL Summary Disposition Motion.

On December 28, 2023, pursuant to Commission Rules 212 and 217, the Illinois Landowners filed the IL Summary Disposition Motion. The gist of the IL Summary Disposition Motion is that because GBX never applied to the Commission under FPA Section 203 for approval of the upstream sale of GBX's FERC-issued negotiated rate authority before January 28, 2020, when GBX closed on the transaction, it no longer legally possessed any negotiated rate authority that could be amended.

E. FERC Disregards the Illinois Landowners' FPA Section 203 Arguments.

In its Order, the Commission finds moot the Illinois Landowners' argument that FPA Section 203 applies to the 2023 GBX Application and the transactions contemplated by the MIPA:

Given that we are reviewing Grain Belt's filing de novo, we find moot protestors' [i.e., the Illinois Landowners'] argument that Grain Belt may not rely on the Commission's prior grant of negotiated rate authority in the 2014 Order because Grain Belt failed to obtain section 203 approval. **Our findings here are based on Grain Belt's current ownership structure** and project design, and thus do not turn on whether prior section 203 authorization was required for either Invenenergy's acquisition of Grain Belt, or the transfer of Grain Belt's negotiated rate authority.

(Order, ¶171; emphasis added).

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The Commission concludes its Order by finding that GBX has *continuing* negotiated rate authority. The Commission also accepts without question GBX's assertion that it is amending its *existing* negotiated rate authority.

III. ARGUMENT.

A. Because the Commission is Reviewing GBX's Negotiated Rate Authority De Novo, Any Determination That GBX Has Negotiated Rate Authority Must Date Prospectively From February 29, 2024.

The Commission claims that it is making a de novo determination on GBX's negotiated rate authority. (Order, ¶¶22, 27 and 71). However, the Commission's finding that GBX's negotiated rate authority is "continuing," or "continues" from some point in time prior to February 29, 2024, and the Commission's acquiescence in GBX's claim to be amending its "existing" negotiated rate authority, mean that GBX's negotiated rate authority continues from May 8, 2014, the date of the 2014 GBX Order in which FERC originally granted that authority to GBX.

1. The Meaning of "De Novo."

De novo is Latin for "anew." De novo, Black's Law Dictionary (11th ed. 2019). In this Docket the Commission is evaluating GBX's entire project anew, on both facts and law. "A trial de novo is a trial on the entire case – that is, on both questions of fact and law – conducted as if there had been no trial in the first instance." Trial de novo, Black's Law Dictionary (11th ed. 2019). When a court decides a case de novo, that court owes no deference to any finding of fact or

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conclusions of law in the prior decision. *See Zervos v. Verizon New York, Inc.*, 252 F.3d 163, 168 (2d Cir. 2001) (“[O]ur review is independent and plenary; as the Latin term [de novo] suggests, we look at the matter anew, as though it had come to the courts for the first time.”); *see also SEC v. Callahan*, 103 F. Supp. 3d 296, 301-302, 2015 U.S. Dist. LEXIS 57996, 13-14 (E.D.N.Y. May 2, 2015).

2. The Meaning of “Continuing.”

The term “continuing” means “uninterrupted; persisting” or “not requiring renewal; enduring.” Black's Law Dictionary (11th ed. 2019). The term “continuing” means a state or condition that persists from some prior time into the future. *See In re Neosho Concrete Prods. Co.*, 2021 Bankr. LEXIS 1198, 11-12, 70 Bankr. Ct. Dec. 61, 2021 WL 1821444 (Bankr. W.D. Mo. May 6, 2021).

3. FERC’s Order Cannot Be De Novo If It Finds That GBX’s Negotiated Rate Authority is “Continuing” or “Existing.”

By finding that GBX's negotiated rate authority is “continuing,” and by its unquestioning acceptance of GBX’s assertion that that authority was “existing” when it filed the 2023 GBX Application; that is, that GBX’s negotiated rate authority persists from some prior time and does not need to be renewed, the Commission makes not a de novo determination, but a retroactive one.

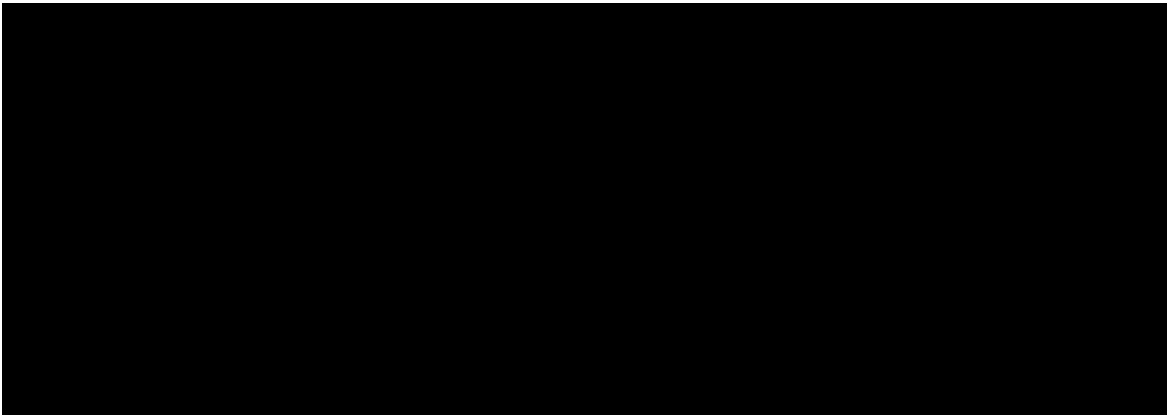
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B. FPA Section 203 Applies to The Sale of GBX and Its FERC-Issued Negotiated Rate Authority to Invenergy Transmission.

1. Invenergy Transmission's Main Objective Under the MIPA Was to Obtain GBX's FERC-Issued Negotiated Rate Authority.

At the time of the 2014 GBX Order, the general physical parameters of GBX's project were a 750-mile HVDC transmission line with a capacity of 3500MW. (Order, ¶13). These are not materially different from those described in the 2023 GBX Application, in which GBX states it is increasing the project's total capacity to 5000 MW, extending the line from 750 to 800 miles, adding an interconnection point in Missouri, and splitting the project's financing, construction, and commercial operations into two phases. (Order, ¶14).

But GBX's changes to the project's physical parameters and financing are immaterial compared to the upstream ownership transfer of GBX that occurred after the 2014 GBX Order and more than three and a half years prior to the 2023 GBX Application. The Commission itself acknowledges in its Order that the upstream ownership of GBX has changed since it issued the 2014 GBX Order. (Order, ¶122).



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FPA Section 203 applies to the sale of GBX because the most significant asset that changed hands was the negotiated rate authority that FERC granted to GBX in 2014. GBX Holding is no longer the sole member of GBX, and the MIPA effected a transfer of GBX's negotiated rate authority to Invenergy Transmission, a new, unrelated party, without any approval by FERC.

2. The Commission Errs By Treating the Upstream Transfer of the Ownership of GBX, the Project Entity, as Simply a Modification of the Project.

The Commission conflates the changes to GBX's project, which are minor, with the change in ownership of the project entity itself. Changes in the physical, financial and construction characteristics of a project are fundamentally and conceptually different from changes in the ownership of the entity that is supposed to build and operate that project. FERC's failure to distinguish physical and financial changes to a project from changes in the ownership of that project leads to its unquestioning acceptance of GBX's claim that it is merely amending its "existing" negotiated rate authority. Having accepted GBX's assertion that a change of ownership of a project is the same as a 500-mile addition to the line or a division of a project into two phases, the Commission goes on to erroneously find that GBX's negotiated rate authority "continues" from a point in time prior to February 29, 2024.

FERC thus errs in finding moot the Illinois Landowners' argument that FPA Section 203 applies to the 2023 GBX Application. FPA Section 203 is directly

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relevant to the 2023 GBX Application because the Commission can neither accept GBX's assertion that it has an "existing" negotiated rate authority, nor find that GBX's negotiated rate authority "continues" from some time prior to the date of the Order, without implicitly and retroactively approving GBX's upstream ownership transfer under FPA Section 203.

3. GBX Itself Acknowledges That Transfers of Lesser Interests in its Project Would Require Approval Under FPA Section 203.

GBX itself acknowledges that if it sells or leases any undivided interests in the line, which would reduce the portion of the line that GBX controls, such sales or leases would require the Commission's approval under FPA Section 203 because such transfers would reduce GBX's control over its project. (Order, ¶¶8, 33 and 47).

The upstream ownership transfer from GBX Holding to Invenergy Transmission did not simply reduce GBX Holding's control over the project; it eliminated it. It is absurd for GBX to promise that it would seek the Commission's prior approval under FPA Section 203 were it to reduce its control over the project through the sale or lease of undivided interests in the line, and then, without the least intimation of inconsistency, declare FPA Section 203 inapplicable to the relinquishment of all control over the project and its FERC-issued negotiated rate authority through an upstream ownership transfer.

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**4. FERC-Issued Negotiated Rate Authority Is By Definition
FERC-Jurisdictional.**

What is worse, though, is that the FPA Section 203 question that FERC dodges is the all-important one: is GBX a public utility under the FPA? GBX claims that it is not because it has no FERC-jurisdictional assets. (Order, ¶¶61, 68). [REDACTED]

[REDACTED] FERC's avoidance of the GBX/public utility question is insupportable because it presupposes that GBX's FERC-issued negotiated rate authority, granted in the 2014 GBX Order, is not a FERC-jurisdictional asset. In its Order the Commission elides this problem, perhaps recognizing that, were it to expressly state that a FERC-issued negotiated rate authority is not a FERC-jurisdictional asset, its Order could never be wrestled into coherence.

**C. The Commission's Order Amounts to an Unlawful Retroactive
Approval of the Sale of GBX Under FPA Section 203.**

**1. The Commission's Order Admits That GBX's Ownership
Structure Has Entirely Changed Since 2014.**

In ¶71 of its Order, the Commission finds that FPA Section 203 is irrelevant to its determinations in this Docket because "...its findings here are based on [GBX's] *current ownership structure*." (Emphasis added). Taken by itself, that statement is consistent with the Commission's assertion that it is making a *de novo* determination of GBX's negotiated rate authority. The Commission's statement would not be problematic if its decision on GBX's negotiated rate

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authority were effective only prospectively from February 29, 2024.

But the Commission accepts without question GBX's claim that the 2023 GBX Application is an amendment of GBX's *existing* negotiated rate authority (Order, ¶¶2, 11, 15, 31 and 70), and the Commission itself characterizes GBX's negotiated rate authority as a *continuing* one (Order, ¶59). By claiming that it is basing its findings in the Order on GBX's *current ownership structure*, while admitting at the same time that GBX's ownership structure has changed since the 2014 GBX Order (Order, ¶¶2 fn. 2, 22, 71), the Commission retroactively approves the change in GBX's ownership structure under FPA Section 203. The Commission's claim that it is making a de novo determination on GBX's negotiated rate authority is illusory.

The Commission tries to evade this problem by its conclusory assertion that FPA Section 203 is irrelevant. (Order, ¶71). But the only way that the Commission can hold that FPA Section 203 is irrelevant to the 2023 GBX Application, while at the same time admitting that GBX's ownership structure has entirely changed, is through its unspoken assumption that there is no legal difference between a change in the physical or financial characteristics of a project and a change in the ownership of the project entity. That implicit assumption by the Commission defies both common and, in the light of the plain language of FPA Section 203, legal sense.

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2. The Commission’s Recognition of GBX’s Negotiated Rate Authority as “Continuing” is an Unlawful Retroactive Approval under FPA Section 203 of the Sale of GBX.

Because the Commission expressly recognizes the change in GBX’s ownership structure between the time of the 2014 GBX Order and February 29, 2024 (Order, ¶¶2 n.2, 16, 22, 61, 63, 67 and 71), the date of the Order; because the Commission unquestioningly accepts GBX’s assertion that the 2023 GBX Application is an amendment of GBX’s *existing* negotiated rate authority (Order, ¶¶11, 15, 31 and 41); and because the Commission finds that GBX’s negotiated rate authority is a *continuing* one (i.e., an authority that continues from a point in time prior to February 29, 2024) (Order, ¶59), the Commission has, without expressly stating it, retroactively approved under FPA Section 203 the January 2020 sale of GBX’s negotiated rate authority to Invenergy Transmission.

3. Neither FPA Section 203 Nor Prior FERC Precedent Allow for Retroactive Approval of Ownership Changes.

Nothing in FPA Section 203 empowers the Commission to retroactively approve the transfer of a FERC-issued negotiated rate authority by one entity to another, and the Commission’s Order contravenes FPA Section 203.

Failure to obtain FPA Section 203 approval when required can result in adverse regulatory and commercial consequences. FERC has imposed civil penalties for failure to obtain needed authorization under FPA section 203, it has required a company to disgorge revenues received under wholesale electric sales

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contracts transferred in violation of FPA section 203, and it has threatened other consequences for unauthorized transactions. In one case, FERC noted the "obvious risk to the public utility that a disposition implemented without prior [FPA Section 203] authorization may be voidable in court by any affected party." *Pdi Stoneman*, 104 F.E.R.C. ¶¶61,270, 61900, 2003 FERC LEXIS 1805, 20 (F.E.R.C. September 11, 2003).

D. Because GBX Has Not Assumed The Full Market Risk of Its Project It Is Not a Merchant Transmission Owner.

1. FERC's Definition of a "Merchant" Transmission Project.

FERC's definition of a "merchant" transmission project is set forth clearly and unambiguously in its *Final Policy Statement on Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, FERC Dockets A.D. 12-9-000 and A.D. 11-11-000, 142 FERC ¶61,038 (January 17, 2013) (the "2013 Policy Statement"). In the 2013 Policy Statement, FERC states:

[FERC] first granted negotiated rate authority to a merchant transmission project developer over a decade ago, finding that merchant transmission can play a useful role in expanding competitive generation alternatives for customers. [Citation omitted.] Unlike traditional utilities recovering their costs-of-service from captive and wholesale customers, **investors in merchant transmission projects assume the full market risk of development.**

2013 Policy Statement, pg. 2, ¶2 (emphasis added).

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In the 2014 GBX Order, FERC also emphasized the importance of GBX's assumption of the full market risk of its project as a precondition of FERC's grant of negotiated rate authority to GBX under its prior ownership:

To approve negotiated rates for a transmission project, [FERC] must find that the rates are just and reasonable. To do so, [FERC] **must determine that the merchant transmission owner has assumed the full market risk for the cost of constructing its proposed transmission project.**

(2014 GBX Order, ¶12) (emphasis added).

Under FERC's scheme for merchant transmission projects, the developer's assumption of the full market risk of its transmission project is the chief determinant of whether a merchant transmission owner's negotiated rates are just and reasonable. "FERC looks first to whether that owner has assumed the full market risk of the project." *Chinook Power Transmission, LLC*, 126 FERC ¶61,134, at ¶38. As the Commission itself states in its Order:

To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable. In determining whether negotiated rates will be just and reasonable, the Commission considers whether the merchant transmission developer has assumed the full market risk for the cost of constructing its proposed project....

(Order, ¶32).

2. GBX Does Not Assume the Full Market Risk of Its Project.

Although GBX claims in this Docket that it is a merchant transmission

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company and that it is assuming the full market risk of the project (Order, ¶¶33 and 37), in its proceeding before the Illinois Commerce Commission (the “ICC”) GBX sings quite a different tune. Far from committing to bear the full market risk of its project, GBX expressly reserves the right to allocate the costs of its project to Illinois ratepayers, although it agreed to first obtain permission to do so from the ICC. GBX and the ICC call this GBX's "Cost Allocation Condition," and it is incorporated into the Certificate of Public Convenience and Necessity granted to GBX by the ICC. Ill. C. C. Docket 22-0499, Final Order at pgs. 49-50 and 96-99.² Copies of these pages of the Illinois Commerce Commission's Final Order are attached as Exhibit 2 to this Request.

3. GBX’s Version of Full Market Risk: Heads GBX Wins, Tails Ratepayers Lose.

By reserving its right to allocate the costs of its line to ratepayers, GBX gets the best of both worlds: if GBX's sale of transmission service at negotiated rates (or its sale or lease of undivided interests in the line) is profitable, it gets to keep the upside benefit of the market. But if its project doesn't generate sufficient profits, or should it lose money, GBX can then shift the downside market risk of its project to Illinois ratepayers through tariffed cost-of-service rates. The Cost Allocation Condition that GBX won in Illinois is the antithesis of FERC’s first

² FN. The ICC’s complete Final Order is available at: <https://www.icc.illinois.gov/docket/P2022-0499/documents/334872/files/583350.pdf> (Last checked 20240327).

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Chinook requirement that a merchant transmission owner must assume the full market risk of its project. GBX does not, and therefore it does not have negotiated rate authority.

IV. CONCLUSION.

WHEREFORE, for the above-stated reasons, the Illinois Landowners respectfully request that the Commission rehear the IL Summary Disposition Motion and:

- A. Vacate its February 29, 2024 Order approving GBX's negotiated rate authority;
- B. Find that FPA Section 203 applies to the upstream ownership transfer of GBX from GBX Holding to Invenergy Transmission because that transaction effected a transfer of a FERC-jurisdictional asset, namely, the negotiated rate authority that FERC itself granted in the 2014 GBX Order;
- C. If the Commission does approve the January 2020 transfer of GBX's negotiated rate authority to Invenergy Transmission under FPA Section 203, find that that approval cannot lawfully be granted retroactively approval, but rather dates prospectively only from the date of the Commission's Order in this Docket, which would be consistent with the Commission's claim that it is ruling de novo on GBX's negotiated rate authority; and

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D. Find that GBX does not have negotiated rate authority because it does not assume the full market risk of its transmission project and thus fails the first *Chinook* factor.

Dated: March 28, 2024

Respectfully submitted,

THE ILLINOIS LANDOWNERS

NAFSICA ZOTOS

By: /s/ Paul G. Neilan
Her Attorney

**ILLINOIS AGRICULTURAL ASSOCIATION, d/b/a
ILLINOIS FARM BUREAU**

By: /s/ Charles Y. Davis
Its Attorney

**CONCERNED CITIZENS AND PROPERTY
OWNERS**

By: /s/ Kara J. Wade
Its Attorney

CONCERNED PEOPLES ALLIANCE

By: /s/ Brian R. Kalb
Its Attorney

YORK TOWNSHIP IRRIGATORS

By: /s/ William F. Moran, III
Their Attorney

Attachments:

Exhibit 1 -- REDACTED

Exhibit 2 -- Ill. C. C. Docket 22-0499, Final Order at pgs. 49-50 and 96-99.

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EXHIBIT 1

to

**Request for Rehearing
of the
Illinois Landowners**

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EXHIBIT 2

to

**Request for Rehearing
of the
Illinois Landowners**

**Ill. C.C. Docket No. 22-0499
March 8, 2023 Final Order of the Illinois Commerce Commission
Pages 49-50 and 96-99**

finance the Project, the Landowner Alliance argues that the Commission must deny Grain Belt Express' Application.

4. Commission Analysis and Conclusion

Based 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 that it is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. The Commission notes that Grain Belt Express 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. The Commission relies on the testimony of Grain Belt Express and Staff that the project financing approach is commonly used in the energy and infrastructure industries. There is ample evidence of the need for the Project and the interest of renewable energy developers to support the conclusion that Grain Belt Express will be able to enter into sufficient transmission contracts to support the project financing.

The Commission concurs with Staff that with Grain Belt Express agreeing to be bound by the Revised Financing Condition, the Applicant has satisfied this section of the statute. Section 8-406.1(f)(3) must be considered in its entirety: that the applicant "is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers." The Commission notes that the applicant must be capable of raising the necessary capital without adverse financial consequences. The Commission points out that this type of financing condition has been approved by the Commission in the past. The Revised Financing Condition prevents adverse financial consequences, specifically, that Grain Belt Express would commence construction but be unable to complete it due to insufficient funding. If Grain Belt Express were unable to satisfy the Revised Financing Condition and therefore fails to construct the Project, the only parties experiencing adverse financial consequences would be Grain Belt Express investors. The Commission notes Grain Belt Express' commitment that if the Project is terminated, all easements that have been acquired will be released.

Therefore, the Commission finds that Grain Belt Express satisfies Section 8-406.1(f)(3) and Staff's recommended Revised Financing Condition is adopted. The Revised Financing Condition is attached to the Order as Appendix B.

E. Additional Proposed Conditions for the Certificate

1. Grain Belt Express' Position

No party proposed additional conditions, however, Grain Belt Express proposed two conditions concerning cost allocation and an interconnection agreement requirement.

Grain Belt Express states that, as a merchant transmission project, it will recover the costs of constructing and operating the Project directly through its charges to the transmission service customers that purchase transmission capacity and service on the Project. Grain Belt Express states that it does not plan to attempt to recover the costs of constructing and operating the Project as a traditional public utility through RTO cost allocation processes or through other mechanisms that would spread and recover the costs from the general body of retail ratepayers in an RTO footprint or the service areas of one or more utilities (e.g., by recovering the costs from all ratepayers through an RTO

transmission tariff). See GBX Ex. 1.0 at 18–19. 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 RTO transmission tariff without first seeking additional approval from the Commission to do so.

Grain Belt Express also states that the western Kansas converter station of the Project will be interconnected with the transmission grid of the SPP RTO, and the Project will have interconnection and delivery points with the AECI and MISO transmission grids in northeast Missouri and with the PJM transmission grid in western Indiana. GBX App. at 25-26. The purpose of these interconnection processes is to ensure that the Project's interconnections with the existing transmission grids comply with all local, regional, and federal reliability standards and requirements. Grain Belt Express must enter into definitive interconnection agreements with SPP, AECI, MISO before it energizes Phase I of the Project, and additionally with PJM before it energizes Phase II of the Project. Grain Belt Express asserts that it is willing to commit that it will not energize Phase I or Phase II of the Project until it has obtained the necessary interconnection agreements for those respective phases. Accordingly, Grain Belt Express is willing to have the following requirement included in this Order:

Prior to energizing Phase I or Phase II of the Project, Grain Belt Express will fully comply with the applicable interconnection requirements of, and sign all necessary interconnection agreements with SPP, AECI, and MISO before energizing Phase I of the Project, and additionally with PJM before energizing Phase II of the Project.

2. Landowner Alliance's Position

The Landowner Alliance generally objects to other proposed conditions, however it does not specifically address the Cost Allocation Condition or the Interconnection Agreement Conditions.

3. Commission Analysis and Conclusion

As the Commission found in 2015, the Commission has the authority to enforce the Cost Allocation Condition. The Commission has the continuing jurisdiction over any CPCN that is granted and within the authority of the Commission, it may rescind a CPCN if a change in facts or circumstances warrants rescission. Grain Belt Express does not have a right to recover its costs through RTO regional cost allocation. As such, the Commission will incorporate a Cost Allocation Condition whereby Grain Belt Express will have to both obtain permission from the Commission to utilize cost allocation to recover costs from Illinois retail electricity ratepayers and to demonstrate to the applicable RTO or RTOs that the benefits of the Project were such that costs should be allocated to all customers through the RTO's transmission tariff.

The Commission also finds that the following Interconnection Agreement Condition is consistent with the Commission's jurisdiction and the Commission adopts the condition set forth below:

Prior to energizing Phase I or Phase II of the Project, Grain Belt Express will fully comply with the applicable interconnection requirements of, and sign all necessary

VIII. COMMISSION CONCLUSION

Having reviewed the record evidence, the Commission finds that Grain Belt Express has satisfied the criteria in Sections 8-406(b-5) and 8-406.1. It is clear from the language in these Sections, that they were created specifically to allow applicants to construct, operate, and maintain an HVDC transmission line and to operate a transmission public utility business, without consideration of other Sections of the Act. For these reasons, the Commission finds that Grain Belt Express' request for a CPCN, pursuant to Section 8-406(b-5) and 8-406.1 of the Act, subject to the Revised Financing Conditions and Accounting Condition, should be granted and that Grain Belt Express should be issued a CPCN as set forth herein. The Commission also finds that pursuant to Section 8-406.1(i) and Section 8-503 of the Act, Grain Belt Express 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.

IX. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the Application and evidentiary record, is of the opinion that:

- (1) Grain Belt Express is a limited liability company organized under the laws of the State of Indiana and is duly authorized to do business in the State of Illinois;
- (2) the Commission has jurisdiction over Grain Belt Express and the subject matter of this proceeding;
- (3) the recitals of fact and conclusions of law reached by the Commission in the prefatory portion of this Order are supported by the evidence and hereby adopted as findings of fact;
- (4) Grain Belt Express and the Project meet the requirements to proceed under Section 8-406(b-5) of Act;
- (5) Grain Belt Express has fulfilled the requirements of Section 8-406.1 of the Act;
- (6) pursuant to Section 8-406.1(f) of the Act, subject to the determinations made in this Order, the Commission finds that the Project will promote the public convenience and necessity; pursuant to Section 8-406.1(f)(1), the Project is necessary to provide adequate, reliable, and efficient service to Grain Belt Express' customers and is the least-cost means of satisfying the service needs of its customers or 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;
- (7) pursuant to Section 8-406.1(f)(2) of the Act, subject to the determinations made in this Order, the Commission finds that Grain Belt Express is capable of efficiently managing and supervising the construction process for the Project and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction of the Project;

- (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 ± 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.

IT IS FURTHER ORDERED that pursuant to Section 4-404 of the Public Utilities Act, all confidential information placed into the record of this proceeding shall be treated as proprietary and confidential for a period of five years from the date of this Order.

IT IS FURTHER ORDERED that any and all motions, objections and requests not ruled upon in this proceeding are hereby deemed disposed of in a manner consistent with the determinations and ultimate conclusions herein.

IT IS FURTHER ORDERED that, pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission, this 8th day of March, 2023.

(SIGNED) CARRIE ZALWESKI

Chairman

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Grain Belt Express LLC)	Docket No. ER24-59-000
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NOTICE OF FILING

TO: The Parties on the Attached Service List

PLEASE TAKE NOTICE that on March 28, 2024, the undersigned, Paul G. Neilan, an attorney, filed with the Federal Energy Regulatory Commission through its e-File system, the attached **Request for Rehearing of the Illinois Landowners**, a copy of which is hereby served upon you.

Dated: March 28, 2024

By: */s/ Paul G. Neilan*

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CERTIFICATE OF SERVICE

I, Paul G. Neilan, an attorney, hereby certify and state that on March 28, 2024 I served a copy of the foregoing **(1) Notice of Filing of Request for Rehearing of the Illinois Landowners**, and **(2) Request for Rehearing of the Illinois Landowners**, by electronic mail to each of the persons on the attached Service List.

By: /s/ *Paul G. Neilan*

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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Grain Belt Express LLC

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Docket No. ER24-59-000

**SERVICE LIST
ILLINOIS LANDOWNER ALLIANCE**

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