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**AUG 17 2015**

**CLERK  
SUPREME COURT**

No. \_\_\_\_\_  
**IN THE SUPREME COURT OF ILLINOIS**

ILLINOIS AGRICULTURAL ASSOCIATION )  
(a/k/a Illinois Farm Bureau), CONCERNED )  
CITIZENS & PROPERTY OWNERS (“CCPO”), )  
LANDOWNERS ALLIANCE OF CENTRAL )  
ILLINOIS, NFP (“LACI”), and Mary Ellen )  
Zotos (“Zotos”) )

Movants )

v. )

ILLINOIS COMMERCE COMMISSION, )  
Brien Sheahan, Chairman )  
Ann McCabe, Commissioner )  
Sherina Maye, Commissioner )  
Miguel del Valle, Commissioner )  
John Rosales, Commissioner )

Respondents )

**MOTION FOR LEAVE TO FILE COMPLAINT FOR ORDER OF PROHIBITION**

To the Honorable Justices of the Supreme Court of Illinois:

Illinois Agricultural Association a/k/a Illinois Farm Bureau (“Farm Bureau”), Citizens & Property Owners (“CCPO”), Landowners Alliance of Central Illinois, NFP (“LACI”), and Mary Ellen Zotos (“Zotos”) (together, “Movants”), by and through their attorneys, Brown, Hay & Stephens, LLP, Laura Harmon, Senior Counsel, Farm Bureau, McNamara & Evans, Shay Phillips, Ltd., and Law Offices of Paul G. Neilan, P.C., pursuant to Illinois Supreme Court Rule 381(a), move this Court for leave to file a verified complaint, a copy of which is attached, for an order of prohibition and move that an order be entered in this cause directed to the Illinois Commerce Commission (the “ICC”). Movants seek a writ of prohibition directed against the

ICC<sup>1</sup> prohibiting it from asserting jurisdiction over the petition of Grain Belt Express Clean Line LLC (“GBX”). GBX is a private, non-utility enterprise that neither owns nor possesses nor has ever constructed or operated an electric transmission line, or other public utility facilities or business. The basis for Movant’s Motion, and complaint, is that the ICC accepted and is processing<sup>2</sup> GBX’s petition even though filed under Section 8-406.1 of the Illinois Public Utilities Act (“PUA”), which by its express terms is available only to entities that are public utilities, and it is uncontroverted that GBX is not a public utility. A petition validly filed under this section provides the applicant the advantages of an expedited process<sup>3</sup> and additional substantive statutory approval and relief, all to the disadvantage of Movants and other parties that oppose or challenge GBX’s request. In support of their Motion, Movants state as follows:

#### INTRODUCTION

On April 10, 2015, GBX filed an application under Section 8-406.1 of the PUA, which section allows public utilities to seek approval to construct new high voltage transmission line projects on an expedited basis. GBX is not and does not allege in its application that it is a public utility. Section 8-406.1 states that “[a] public utility may apply for a certificate of public

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<sup>1</sup> In addition to the ICC, Movants have named each of the five individual ICC Commissioners as nominal respondents to this Motion.

<sup>2</sup> The ICC adjudicates petitions for construction of new utility facilities as administrative proceedings in accordance with statutory and administrative procedural rules. Movants are participants by virtue of intervening in the ICC proceeding pertaining to the GBX petition.

<sup>3</sup> The advantage to GBX as the petitioner of an expedited process stems, among other things, from the substantially large package of documents it filed to initiate the proceeding before the ICC. As is the practice and custom in such proceedings, the petitioner, which takes as much time as it needs and desires to prepare and which decides unilaterally when to file its petition, files the prepared direct testimony and exhibits of all of its witnesses at the same time it files its petition. The ICC Staff and other interested parties who are notified or otherwise find out about the petition must then digest the petitioner’s filed documents and determine whether and how to respond. The Staff and other such parties, as well as the ICC administrative law judge assigned to the case, must comply with the 225 day (175 days plus one 75 day extension) limitation, which starts to run once the petition is filed, that 8-406.1 imposes on the ICC to render a decision.

convenience and necessity pursuant to this Section for the construction of any new high voltage electric service line....” 220 ILCS § 5/8-406.1 (emphasis added). An entity that is a “public utility” is a specific type of entity which the PUA defines and which has special rights and duties under the PUA, the rules and regulations of the ICC, and applicable case law.

On May 18 and 20th, 2015, the Farm Bureau, CCPO, LACI, and REX Encore Farms LLC moved the ICC to dismiss GBX’s application for a certificate under Section 8-406.1, on the basis and for the reason that GBX is not a public utility and, as a result, Section 8-406.1 of the PUA is not legally available to it.<sup>4</sup> The ICC Staff, also a party in the ICC proceeding, filed a Response to Motions to Dismiss and agreed that GBX “is ineligible to submit Section 8-406.1 applications” and recommended that GBX’s application be dismissed without prejudice. Staff noted that GBX may file an application under Section 8-406 of the PUA. Movants note that Section 8-406 is the section of the PUA under which applicants traditionally have sought approval to construct new utility facilities, including electric transmission lines (and which is available to GBX). On June 12, 2015, the Administrative Law Judge (“ALJ”) issued a Memorandum to the ICC Commissioners also recommending that they grant the Motions to Dismiss and allow GBX leave to file an amended Application under Section 8-406 of the PUA.

During the ICC Commissioner’s June 16, 2015 Open Meeting, ICC Chairman Sheahan moved to deny the Motions to Dismiss, and without any discussion of the motion’s merits, of the ALJ’s Memorandum, or of the Chairman’s motion and recommendation, the ICC Commissioners voted 3-2 to deny the motions.<sup>5</sup> Farm Bureau, LACI and CCPO filed Motions to

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<sup>4</sup> For the Court’s convenience, copies GBX’s Application, the Motions to Dismiss and all other documents referenced in this Motion are attached as exhibits to the verified complaint.

<sup>5</sup> During the June 16<sup>th</sup> Open Meeting, after Chairman Sheahan moved to deny the motions to dismiss, Commissioner McCabe asked the ALJ if there has been any proceeding under Section

Reconsider the ICC's decision, which the ICC denied on July 28, 2015, again on a 3-2 vote and without any discussion or explanation. This is a case of first impression before the ICC, is a matter of great public importance, and the action by three Commissioners (a bare majority) to exercise jurisdiction under Section 8-406.1 in the face of recommendations to the contrary by both ICC Staff and the ALJ is unprecedented, contrary to Illinois law and warrants this Court's exercise of jurisdiction to issue a writ of prohibition. Movants are directly and greatly prejudiced as a result of the Commissioners' erroneous rulings.

**THIS IS AN APPROPRIATE CASE FOR THIS COURT TO EXERCISE  
ITS ORIGINAL *PROHIBITION* JURISDICTION UNDER ART. VI, § 4(a)  
OF THE ILLINOIS CONSTITUTION.**

Writs of prohibition may issue when four conditions are met: (1) the act sought to be prohibited is judicial or quasi-judicial in nature, (2) the jurisdiction of the tribunal against which the writ is sought must be inferior to that of the issuing court; (3) the act sought to be prohibited is outside the jurisdiction of the lower tribunal; and (4) the movant is without any other adequate remedy. *People ex rel. No. 3 J. & E. Discount, Inc. v. Whitler* (1980) 81 Ill.2d 473, 43 Ill.Dec. 721, 410 N.E.2d 854. Movants recognize the extraordinary nature of a writ of prohibition. But the ICC's unexplained, unprecedented and unlawful assertion of jurisdiction allowing an entity that is not a public utility to use a relatively recent, special statutory alternative available only to public utilities presents a case far more extraordinary, and one that warrants this Court's exercise of original authority to prevent such abuse.

The first two requirements for issuance of the writ are easily met. First, the jurisdiction of the ICC is inferior to that of this Court. Second, the ICC exercised quasi-judicial power by

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8-406.1 where the applicant did not assert that it was a public utility in its application. The ALJ confirmed that this is the first such case and that the motions raise a threshold issue, whether an entity has to be a public utility to file an application for expedited review. Commissioners McCabe and Del Valle voted against Chairman Sheahan's motion.

denying without explanation a motion on the threshold jurisdictional issue in the case: whether any entity, even one that by its own admission is not a public utility, may apply for a certificate to construct a new high-voltage transmission line under the expedited procedure of Section 8-406.1 of the PUA. *People ex rel. Olin Corp. v. Dept. of Labor*, (5<sup>th</sup> Dist. 1981), 51 Ill.Dec. 485, 95 Ill.App.3d 1108, 420 N.E.2d 1043.

The third condition for issuance of the writ is that the action be outside the lower tribunal's jurisdiction. The PUA does not support the ICC's denial of the motions to dismiss GBX's application under Section 8-406.1. Despite the availability of the statutory procedural alternative under Section 8-406, GBX requested relief under Section 8-406.1, which on its face is available solely to public utilities for the limited purpose of obtaining authorization to construct new transmission lines on an expedited basis. In addition, an ICC order under Section 8-406.1 includes an automatic authorization under Section 8-503 of the PUA ordering or authorizing the applicant to construct the proposed utility facilities. By contrast, an applicant proceeding under Section 8-406 must separately apply for authorization and prove the applicable elements under Section 8-503, rather than this latter authorization being automatic.<sup>6</sup> The Section 8-503 aspect is an important factor in that section because it is a prerequisite for an entity to seek and obtain eminent domain authority from the ICC under PUA Section 8-509.

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<sup>6</sup> Although a Section 8-503 Order is a prerequisite to obtaining eminent domain authority, under Section 8-406.1, the ICC has no ability to review and determine that GBX does not currently meet the requirements of a Section 8-503 Order. The ICC did just this in Docket 12-0560, when it considered an application under Section 8-406 by an affiliate of GBX, Rock Island Clean Line LLC ("RICL"). The ICC granted conditional approval to construct the project under Sections 8-406(a) and (b) but it did not grant Section 8-503 authority directing RICL to construct the project. *See Rock Island Clean Line LLC*, Docket No. 12-0560 (Order, Nov. 25 2014), at 214-216. (pet. for review pending); *Commonwealth Edison v. ICC et al*, 3<sup>rd</sup> Dist, Case Nos. 3-15-0099, 3-15-0103 & 3-15-0104.

Additional reasons exist to grant this Motion and the relief Movants seek in their complaint. In contrast to Section 8-406.1, Section 8-406, Certificate of public convenience and necessity (in part) states:

- (a) No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission... shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.
  
- (b) No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity.  
(emphasis added)

Section 8-406.1 is not simply a fast-track alternative to authority under Section 8-406. To the contrary, Section 8-406.1 by its terms applies only to an applicant that is a “public utility” at the time of the application. Section 8-406.1 does not contain language – as does Section 8-406(a) – authorizing consideration of an applicant’s authority to transact business as a public utility in Illinois in the first place.<sup>7</sup> Section 8-406.1 does not provide a means for GBX, a non-public utility, to become a public utility.

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<sup>7</sup> An authorization under Section 8-406(b) does not include authorization under Section 8-406(a). The Commission has previously distinguished between those authorizations, not only in its analyses, but also in the certificate issued by the Commission. *See Rock Island Clean Line LLC*, Docket No. 12-0560 (Order, Nov. 25 2014), at 8-205, 226. (pet. for review pending); *Commonwealth Edison v. ICC et al*, 3<sup>rd</sup> Dist, Case Nos. 3-15-0099, 3-15-0103 & 3-15-0104. The issue of whether Section 8-406 allows a non-utility to simultaneously request authority under Sections 8-406(a) and (b) is on review.

Moreover, GBX did not request authority to transact business as a public utility in its application, and as the ICC Staff pointed out to the ICC, GBX's "filing is defective on its face because it requests authority to transact business in this state under a provision that does not provide such authority." ICC Staff Response to Motions to Dismiss at 8. Like the ICC Staff, movants wonder how the ICC will be able to grant GBX authority to transact business as a public utility if the ICC grants authority to construct the transmission line under Section 8-406.1.

Where, as here, the ICC patently and unambiguously lacks jurisdiction to allow GBX's case to proceed under Section 8-406.1 and the petitioners cannot seek interlocutory review from the ICC's non-final order, this Court should exercise its authority and issue a writ of prohibition.<sup>8</sup> Prohibition requires that the petitioners be without an adequate remedy, a condition amply met in this case. In *Board of Governors of State Colleges and Universities v. Illinois Fair Employment Practices Commission*, this Court recognized that the "purposes for the exhaustion requirement are not served where an administrative assertion of authority to hear or determine certain matters is attacked on its face on the grounds that the assertion of jurisdiction is not authorized by statute." 399 N.E.2d 590, 78 Ill.2d. 143, 147-48.

In *Board of Governors v. FEPC*, this Court also granted a writ of prohibition where the administrative agency issued a complaint outside of the time period set forth by statute and noted that a "writ of prohibition is an extraordinary judicial process whereby a superior court may prevent inferior tribunals or persons from exercising jurisdiction with which they have not been vested by law." *Id.* At 149-50. It is well settled that where "the remedy of administrative and judicial review would come only after a hearing which the administrative agency has no jurisdiction to hold, it can be said as a matter of law, that petitioner has no adequate remedy other

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<sup>8</sup> It is well settled that only a final order from the ICC is appealable. *Candlewick Lake Utilities Co. v. ICC*, (1<sup>st</sup>. Dist. 1978) 65 Ill.App.3d 185, 382 N.E.2d 88, 21 Ill.Dec. 794,

than a writ of prohibition.” *People ex rel. Olin Corp. v Dept. of Labor*, (1981) 95 Ill.App.3d 1108, 1112, 420 N.E.2d 1043, 1047; *Lake County State’s Attorney v. Illinois Human Rights Comm’n* (1990) 200 Ill.App.3d 151, 157, 558 N.E.2d 668, 671. This principal applies to the current petition. Because the ICC’s action is patently outside its jurisdiction, any consideration of the significance of a potential remedy that might be available through the traditional appellate process is immaterial.

Although as a matter of law, movants are without an adequate remedy at law, the need for a writ preventing the ICC from unlawfully exercising jurisdiction and granting an order under Section 8-406.1 is further heightened by the inability of petitioners to prosecute an appeal under the traditional review process without the immediate threat by an unlawfully designated public utility seeking eminent domain under a special expedited eminent domain process under Section 8-509. If this case is allowed to illegally proceed under Section 8-406.1 and GBX’s application is granted, not only is the ICC required to issue a Section 8-503 Order which is a prerequisite to obtaining eminent domain authority from the ICC, under Section 8-509, the ICC shall issue an Order under Section 8-509 within 45 days after the utility files its petition. Thus, Section 8-406.1 allows public utilities to obtain fast track for approval of new high voltage transmission line projects and even faster approval for obtaining eminent domain for such projects. If the ICC grants GBX a certificate to construct under Section 8-406.1 and an order under Section 8-503, it’s possible that GBX could pursue eminent domain against landowners before movants have the opportunity to use the traditional appellate process.

Movants, the ICC Staff and other intervenors in the GBX proceeding that oppose or challenge GBX’s petition have been and will continue to be prejudiced by the ICC’s action. The documents referenced in footnote 4 above describe such prejudice.



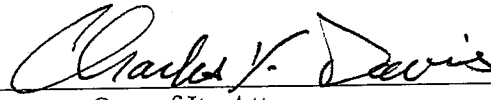
## CONCLUSION

Based on the foregoing, Movants request that this Court grant its motion for leave to file a Complaint for Writ of Prohibition, assume jurisdiction over their Complaint and issue a writ of prohibition preventing the Illinois Commerce Commission from exercising jurisdiction under Section 8-406.1 of the Public Utilities Act in Docket No. 15-0277.

Dated this 14<sup>th</sup> day of August, 2015.

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

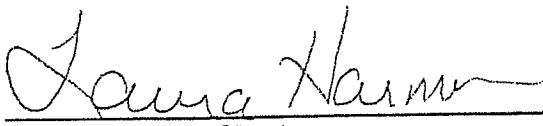
By: \_\_\_\_\_



One of Its Attorneys

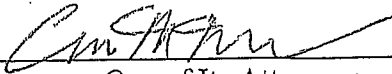
**BROWN, HAY & STEPHENS, LLP**  
Claire A. Manning (Reg. No. 3124724)  
Charles Y. Davis (Reg. No. 6286010)  
205 South Fifth Street, Suite 700  
P.O. Box 2459  
Springfield, IL 62705  
(217) 544-8491  
Fax: (217) 544-9609  
[cmanning@bhslaw.com](mailto:cmanning@bhslaw.com)  
[cdavis@bhslaw.com](mailto:cdavis@bhslaw.com)

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

By:   
One of Its Attorneys

Laura A. Harmon  
Senior Counsel  
Illinois Agricultural Association  
Office of the General Counsel  
1701 Towanda Avenue  
P.O. Box 2901  
Bloomington, IL 61702-2901  
(309) 557-2470  
Fax: (309) 557-2211  
[lharmon@ilfb.org](mailto:lharmon@ilfb.org)

**CONCERNED CITIZENS & PROPERTY  
OWNERS**

By:  \_\_\_\_\_  
One of Its Attorneys

Edward D. McNamara, Jr.  
Joseph H. O'Brien  
McNamara & Evans  
P.O. Box 5039  
931 South Fourth Street  
Springfield, IL 62705-5039  
(217) 528-8476  
Fax: (217) 528-8480  
[McNamara.Evans@gmail.com](mailto:McNamara.Evans@gmail.com)

LANDOWNERS ALLIANCE OF CENTRAL  
ILLINOIS, NFP

By: \_\_\_\_\_

*William M. Shay*

One of Its Attorneys

William M. Shay  
Jonathan LA Phillips  
John T.D. Bathke  
Shay Phillips, Ltd.  
456 Fulton Street  
Suite 255  
Peoria, IL 61602  
(309) 494-6155  
Fax: (309) 494-6156  
[wshay@skplawyers.com](mailto:wshay@skplawyers.com)  
[iphillips@skplawyers.com](mailto:iphillips@skplawyers.com)  
[jbathke@skplawyers.com](mailto:jbathke@skplawyers.com)

MARY ELLEN ZOTOS

By:   
One of Her Attorneys

Paul G. Neilan  
Law Offices of Paul G. Neilan, P.C.  
33 North LaSalle Street  
Suite 3400  
Chicago, IL 60602-2667  
312.580.5483 Tel.  
312.674.7350 Fax  
847.354.0311 Cell  
[pgneilan@energy.law.pro](mailto:pgneilan@energy.law.pro)

**PROOF OF SERVICE**

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

Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Brien J. Sheahan, Chairman  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Ann McCabe, Commissioner  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Sherina E. Maye, Commissioner  
Illinois Commerce Commission  
527 East Capitol Avenue  
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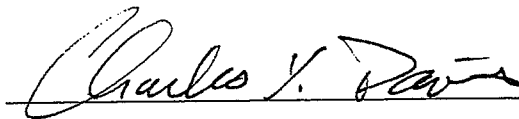
Office of General Counsel  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

John R. Rosales, Commissioner  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Miguel del Valle, Commissioner  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Mr. Owen E. McBride  
Schiff Hardin LLP  
Suite 6600  
233 South Wacker Drive  
Chicago, IL 60606

by enclosing the same in an envelope addressed to such party at the above address and hand-delivering such envelope on this 17<sup>th</sup> day of August, 2015.

  
\_\_\_\_\_

**IN THE SUPREME COURT OF ILLINOIS**

ILLINOIS AGRICULTURAL ASSOCIATION	)	
(a/k/a Illinois Farm Bureau), CONCERNED	)	
CITIZENS & PROPERTY OWNERS ("CCPO"),	)	
LANDOWNERS ALLIANCE OF CENTRAL	)	
ILLINOIS, NFP ("LACI") and MARY ELLEN	)	
ZOTOS,	)	
	)	Case No.
Complainants,	)	
	)	
ILLINOIS COMMERCE COMMISSION,	)	
Brien Sheahan, Chairman	)	
Ann McCabe, Commissioner	)	
Sherina Maye, Commissioner	)	
Miguel del Valle, Commissioner	)	
John Rosales, Commissioner	)	
Respondents	)	

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**COMPLAINT FOR WRIT OF PROHIBITION**

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**NOW COMES** the ILLINOIS AGRICULTURAL ASSOCIATION a/k/a Illinois Farm Bureau, CONCERNED CITIZENS & PROPERTY OWNERS ("CCPO"), LANDOWNERS ALLIANCE OF CENTRAL ILLINOIS, NFP ("LACI") and MARY ELLEN ZOTOS, for this Complaint states:

**JURISDICTION**

1. This Court has jurisdiction over original actions in prohibition brought to prevent the unlawful assertion of jurisdiction by the Illinois Commerce Commission ("ICC") under Supreme Court Rule 381(a).
2. This Complaint for a Writ of Prohibition ("Complaint") seeks an order of the Court preventing the ICC from asserting jurisdiction in ICC Docket No. 15-0277 under Section

8-406.1 of the Illinois Public Utilities Act (“PUA”). This complaint also seeks such other orders as are necessary to correct any actions unlawfully undertaken by the ICC.

### **PARTIES**

3. The parties to this Complaint are Illinois Agricultural Association a/k/a Illinois Farm Bureau (“Farm Bureau”), Concerned Citizens & Property Owners (“CCPO”), Landowners Alliance of Central Illinois, NFP (“LACI”) and Mary Ellen Zotos. Each of the Complainants have intervened in Docket No. 15-0277 before the ICC.
4. The Farm Bureau is an Illinois not-for-profit corporation operating under the leadership of its membership, farmers who join the association through their county Farm Bureau, with the mission to improve the economic well-being of agriculture and enrich the quality of farm family life. The Farm Bureau represents over 80,000 farm members in local, state and national legislative and political activities. Members of the Farm Bureau reside in every county in Illinois, including the counties of Pike, Scott, Greene, Morgan, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark, which could be in the path of the transmission line proposed in ICC Docket No. 15-0277.
5. CCPO is a voluntary unincorporated association, and the landowners and residents comprising Concerned Citizens & Property Owners, which total 86, own land and/or reside on, along or in the vicinity of one of the alternative routes proposed for the transmission line project that is the subject of the application described in Paragraph 9 below.
6. LACI was incorporated in Illinois on March 19, 2015, as a not-for-profit corporation. LACI members, which total more than 120, include persons who own, lease or engage in farming operations on land that lies on, along or in the vicinity of one of the alternative



routes proposed for the transmission line project that is the subject of the application described in Paragraph 9 below.

7. Mary Ellen Zotos is an Illinois citizen whose property or property rights may be traversed or otherwise affected if the transmission line proposed in ICC Docket No. 15-0277 is built.
8. The ICC is an administrative agency, led by five Commissioners, created by Illinois statute and holds varying degrees of authority, including authority to regulate electric utilities, and it adjudicates petitions for construction of new utility facilities as administrative proceedings in accordance with statutory and administrative procedural rules as defined by the Public Utilities Act. John R. Rosales, Ann McCabe, Miguel del Valle and Sherina E. Maye are Commissioners. Brien J. Sheahan is the Chairman of the Commission. The Jurisdiction of the ICC is inferior to the Jurisdiction of this Court.

### **INTRODUCTION**

9. On April 10, 2015, Grain Belt Express Clean Line LLC (“GBX”) filed an application under Section 8-406.1 of the (“PUA”) which allows public utilities to seek approval to construct new high voltage transmission line projects, and notably on an expedited basis. GBX is not and does not allege in its application that it is a public utility. GBX’s verified application seeks from the ICC an Order (1) granting GBX a certificate of public convenience and necessity pursuant to Section 8-406.1 of the PUA to construct, operate, and maintain a 206 mile long high voltage electric service transmission line and related facilities (“Project”), and to conduct a transmission public utility business, and (2) authorizing GBX, pursuant to Section 8-503 of the PUA to construct the electric

transmission line. Attached hereto as Exhibit 1, is a copy of GBX's Verified Application, ICC Docket No. 15-0277.

10. On May 18 and 20th, 2015, the Farm Bureau, CCPO, LACI and REX Encore Farms LLC moved to dismiss GBX's application for a Certificate under Section 8-406.1, since GBX is not a public utility and not qualified to use the expedited review process under Section 8-406.1, and thereby automatically to be granted Section 8-503 authority. For the Court's convenience, a copy of the Motions to Dismiss are attached as Group Exhibit 2.
11. The ICC Staff filed a Response to Motions to Dismiss and agreed that GBX "is ineligible to submit Section 8-406.1 applications" and recommended that GBX's application be dismissed without prejudice, and noted that GBE may file an application under Section 8-406. Staff's Response is attached as Exhibit 3.
12. On June 12, 2015, the Administrative Law Judge ("ALJ") assigned to preside over the ICC administrative proceeding issued a Memorandum to the Commission recommending that it grant the Motions to Dismiss and allow GBX leave to file an amended Application under Sections 8-406 and 8-503 of the Public Utilities Act. The ALJ's Recommendation is attached as Exhibit 4.
13. During the June 16, 2015 Open Meeting of the ICC Commissioners, the ALJ responded to a question posed by Commissioner McCabe, and advised the Commissioners that she is not aware of any Section 8-406.1 proceeding where the applicant did not assert that it was a public utility in its application at the time it was filed and that the question before the Commission is whether or not an entity has to be a public utility in order to qualify to file the application under Section 8-406.1. There was no discussion on the record why the Commissioners moved to deny the Motions to Dismiss. The Commission denied the

Motions to Dismiss with a 3-2 vote and served its Notice of Commission Action herein on June 19, 2015 (“Order”). The transcript and Voting Record from the June 16, 2015 Open Meeting is attached as Group Exhibit 5.

14. Farm Bureau, LACI, and CCPO filed Motions to Reconsider the ICC’s June 16, 2015 Order and copies of those Motions to Reconsider are attached as Group Exhibit 6.
15. On July 28<sup>th</sup>, during the ICC’s Open Meeting, counsel for Farm Bureau addressed the ICC during the Public Participation portion of the meeting, but the ICC denied the motions to reconsider, again on a 3-2 vote and without any discussion or explanation. The Voting Record from the July 28, 2015 Open Meeting is attached as Exhibit 7<sup>1</sup>.

**THE ICC LACKS AUTHORITY TO ALLOW A NON-PUBLIC UTILITY TO  
USE SECTION 8-406.1 OF THE PUBLIC UTILITY ACT**

16. There is no support in the PUA for the Commission’s denial of the motions to dismiss. Section 8-406.1 states that a public utility may apply for a certificate of public convenience and necessity pursuant to this Section for the construction of any new high voltage electric service line and related facilities. GBX admits that it is not a public utility and there’s no legal or policy rationale which supports allowing a start-up company that has never built a transmission line to use expedited review procedures reserved for public utilities.
17. Section 8-406.1 is not simply a fast-track alternative to authority under Section 8-406, the latter section one under which GBX could (and which Complainants contend should) have filed its Application, and which does not require an expedited procedure and does not result in automatic Section 8-503 authority. To the contrary, Section 8-406.1 by its terms applies only to an applicant that is a “public utility” at the time of the application

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<sup>1</sup> As of the date of filing, the transcript from the July 28<sup>th</sup> Open Meeting has not been filed on the ICC docket.

Section 8-406.1 does not contain language – as does Section 8-406(a) – authorizing consideration of an applicant’s authority to transact business as a public utility in Illinois in the first place. Section 8-406.1 does not provide a means for GBX, a non-public utility, to become a public utility.

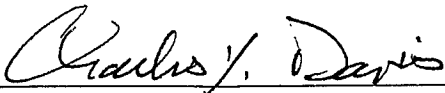
18. GBX’s “filing is defective on its face because it requests authority to transact business in this state under a provision that does not provide such authority.” ICC Staff Response to Motions to Dismiss at 8.
19. The ICC exercised quasi-judicial power by denying without explanation a motion on the threshold jurisdictional issue in the case: whether any entity, even one that by its own admission is not a public utility, may apply for a certificate to construct a new high-voltage transmission line under the expedited procedure of Section 8-406.1 of the PUA.

**COMPLAINANTS HAVE NO ADEQUATE REMEDY AT LAW**

20. The ICC’s unlawful actions will cause injury to Complainants for which there is no adequate remedy at law.

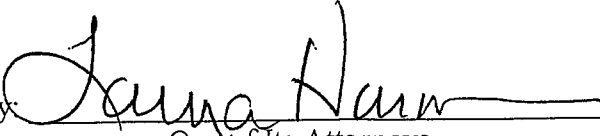
**WHEREFORE**, the ILLINOIS AGRICULTURAL ASSOCIATION a/k/a the Illinois Farm Bureau, CONCERNED CITIZENS & PROPERTY OWNERS, LANDOWNERS ALLIANCE OF CENTRAL ILLINOIS, NFP and MARY ELLEN ZOTOS respectfully request that the Court enter an Order preventing the ICC from asserting jurisdiction under Section 8-406.1 of the Public Utilities Act in Docket No. 15-0277.

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

By:   
One of Its Attorneys

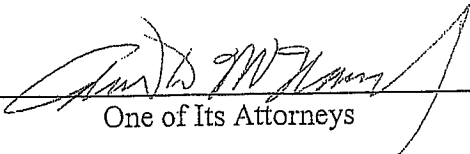
**BROWN, HAY & STEPHENS, LLP**  
Claire A. Manning (Reg. No. 3124724)  
Charles Y. Davis (Reg. No. 6286010)  
205 South Fifth Street, Suite 700  
P.O. Box 2459  
Springfield, IL 62705  
(217) 544-8491  
Fax: (217) 544-9609  
[cmanning@bhslaw.com](mailto:cmanning@bhslaw.com)  
[cdavis@bhslaw.com](mailto:cdavis@bhslaw.com)

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

By  \_\_\_\_\_  
One of Its Attorneys

Laura A. Harmon  
Senior Counsel  
Illinois Agricultural Association  
Office of the General Counsel  
1701 Towanda Avenue  
P.O. Box 2901  
Bloomington, IL 61702-2901  
(309) 557-2470  
Fax: (309) 557-2211  
[lharm@ilfb.org](mailto:lharm@ilfb.org)

**CONCERNED CITIZENS & PROPERTY  
OWNERS**

By:   
One of Its Attorneys

Edward D. McNamara, Jr.  
Joseph H. O'Brien  
McNamara & Evans  
P.O. Box 5039  
931 South Fourth Street  
Springfield, IL 62705-5039  
(217) 528-8476  
Fax: (217) 528-8480  
[McNamara.Evans@gmail.com](mailto:McNamara.Evans@gmail.com)

**LANDOWNERS ALLIANCE OF CENTRAL  
ILLINOIS, NFP**

By: \_\_\_\_\_


*William M. Shay*

One of Its Attorneys

William M. Shay  
Jonathan LA Phillips  
John T.D. Bathke  
Shay Phillips, Ltd.  
456 Fulton Street  
Suite 255  
Peoria, IL 61602  
(309) 494-6155  
Fax: (309) 494-6156  
[wshay@skplawyers.com](mailto:wshay@skplawyers.com)  
[jphillips@skplawyers.com](mailto:jphillips@skplawyers.com)  
[jbathke@skplawyers.com](mailto:jbathke@skplawyers.com)



MARY ELLEN ZOTOS

By:   
One of Her Attorneys

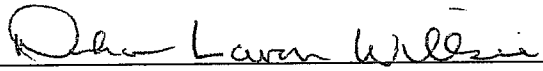
Paul G. Neilan  
Law Offices of Paul G. Neilan, P.C.  
33 North LaSalle Street  
Suite 3400  
Chicago, IL 60602-2667  
312.580.5483 Tel.  
312.674.7350 Fax  
847.354.0311 Cell  
[pgneilan@energy.law.pro](mailto:pgneilan@energy.law.pro)

**VERIFICATION**

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

  
\_\_\_\_\_  
CHARLES Y. DAVIS

SUBSCRIBED and SWORN to before me this 17 day of August, 2015.

  
\_\_\_\_\_  
Notary Public



**PROOF OF SERVICE**

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

Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Brien J. Sheahan, Chairman  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Ann McCabe, Commissioner  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Sherina E. Maye, Commissioner  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

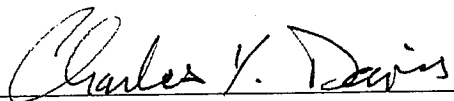
Office of General Counsel  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

John R. Rosales, Commissioner  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Miguel del Valle, Commissioner  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Mr. Owen E. McBride  
Schiff Hardin LLP  
Suite 6600  
233 South Wacker Drive  
Chicago, IL 60606

by enclosing the same in an envelope addressed to such party at the above address and hand-delivering such envelope on this 17<sup>th</sup> day of August, 2015.

  
\_\_\_\_\_