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BY EMAIL

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Re: Comments on the Illinois Power Agency's Preliminary Draft 2024 Policy Statement

In response to the Illinois Power Agency's (the "Agency") solicitation of public comments on its Preliminary Draft 2024 Policy Study (the "Study"), the undersigned submits these comments on the portion of the Study pertaining to high voltage direct current transmission. In particular, these comments address the Study's discussion of merchant transmission development and its characterization of such development as a "public use."

1. The IPA Study Misstates the Role of Price Arbitrage in the Merchant Transmission Provider's Recovery of Costs and Earning of Profits.

On pages 149-150 of the Study, the Agency states:

An opportunity for merchant line developers to recuperate costs plus profits is presented through price arbitrage. In this case, merchant line developers would connect a market that experiences low electricity prices to one that has higher

electricity prices and profit from the price arbitrage.

(Study, pgs. 149-50). The report also includes a schematic, Figure 7-3, to illustrate this point. Figure 7-3 depicts the merchant transmission project as the entity between the supplier in a low electricity price (or low demand) area, and a purchaser in a high electricity price (or high demand) area. The report then goes on to state: "Another opportunity to recuperate costs is through selling capacity on the line, which is essentially providing a set path for generators and load serving entities to move electricity from one place to another." (Study, pg. 150).

These descriptions misstate the revenue model of a merchant transmission service provider, and the Agency's Figure 7-3 is misleading because it creates the impression that the merchant transmission service provider is obtaining commodity electricity supply at a low price and then selling that commodity electricity supply at a higher price in a different area (i.e., price arbitrage) in order to recover its costs.

A merchant transmission service provider sells transmission service, not commodity electricity supply. Pursuant to its federally-required open access transmission tariff, a merchant transmission service provider imposes its transmission service charge on the electricity shipper (that is, the electricity seller) that uses the merchant transmission line to transmit the electricity that it purchased or generated in a low-price area (the "point of receipt" on the transmission line) to a high price area (the "point of delivery" on the line). For purposes of these comments, we assume that the merchant transmission service provider is not also a generator or seller commodity electricity supply. The merchant transmission service provider does not earn revenue from supply price arbitrage between the point of receipt, such as wind generation facilities in west Kansas, and the point of delivery, such as a substation Sullivan County, Indiana in the PJM service territory. These are the contemplated receipt and delivery points, respectively, of the Grain Belt Line that the Agency mentions in its Study. The existence of supply price arbitrage is rather a necessary precondition for the merchant transmission service provider to be able to sell transmission capacity on its line.

This may be readily understood by means of a simplified example. Assume that (1) in west Kansas, the point of receipt, the locational marginal price of electricity supply (the "LMP") is 4 cents/kilowatt-hour ("kWh"), (2) at the Sullivan Substation in Indiana, in the PJM service territory, the point of delivery, the LMP is 6 cents/kWh, (3) there are no transmission line losses, (4) there is no obligation on the part of any electricity shipper to use the merchant transmission service provider's line, and (5) there are no extraneous effects on the price of the electricity supply in question, such as state or federal taxes, tax credits, subsidies, or any sale of renewable energy credits or the like. This example considers *only* the commodity supply price of the electricity shipped on the transmission line. In this example, and, we believe, as contemplated by the Agency in its Study, the price arbitrage opportunity for the electricity shipper is 2 cents/kWh. That price arbitrage opportunity is not available to the merchant transmission service provider because it sells transmission service, not commodity electricity supply. While this may seem a basic point, it is important for evaluating the merit of a merchant transmission developer's claim that its line will bring the benefit of lower electricity prices for end-users supplied from the point

of delivery.

This example shows, first, that LMP arbitrage between the point of receipt and the point of delivery is a precondition to the transmission service provider's ability to earn any revenue at all. If in our example the LMP at the point of delivery were 4 cents/kWh, there would be no economic reason for any electricity shipper to use the line because there would be no possibility of selling the shipped electricity at a profit.

Second, the example shows that arbitrage between the LMP at the point of delivery and the LMP at the point of receipt must be greater than the cost of the transmission service necessary to ship the electricity supply from the latter to the former. Were the cost of transmission service to exceed that LMP arbitrage, there would likewise be no economic reason for any electricity shipper to use the line.

The Study does not correctly describe the means by which a merchant transmission service provider earns revenues, and the mechanism that the Agency describes as secondary, viz., the sale of transmission capacity on the line (Study, pg. 150) is, in fact, primary.

2. Though Merchant Transmission Providers Claim Electricity Cost Reductions as a Benefit of Their Projects, Supply Price Reductions at the Point of Delivery Reduce Price Arbitrage.

Since the Study cites to the Grain Belt Express ("GBX") Application, Illinois Commerce Commission Docket No. 22-0499 (Study, pg. 151, n. 513) ("22-0499"), we trust the Agency will not think it amiss if we do likewise.

Though merchant transmission developers may claim that their projects will reduce electricity costs for consumers, as the example above shows, any decrease in the electricity price at the point of delivery necessarily reduces the price arbitrage opportunity and is, therefore, contrary to the merchant transmission developer's economic self-interest as a profit-maximizing enterprise. This was made clear in 22-0499 when GBX's witnesses, on cross examination, did not wish to even admit the necessity of price arbitrage between the point of receipt and point of delivery on their proposed transmission line. (Hearing Transcript, R193 – R213). A copy of the relevant portion of the transcript is attached as Exhibit A to this correspondence. We attribute GBX's reluctance to admit this to the fact that the necessity of price arbitrage undermines its main benefit claim, namely, that merchant transmission reduces electricity costs for consumers. The straightforward arithmetic of the example above shows that any LMP decrease at the point of delivery reduces the profit-making opportunity of the merchant transmission service provider because it squeezes the amount it can charge for its transmission service. The price arbitrage between the points of receipt and delivery acts as a cap on the amount that a merchant transmission provider can charge for its service, and this basic arithmetic falsifies any merchant transmission developer's claim that it has as one of its objectives the reduction of the cost of electricity in the territory served from the point of delivery. The merchant transmission

developer's own profit-maximizing self-interest precludes such an objective.

3. Merchant Transmission Developers' Extravagant Claims of Consumer Electricity Cost Savings Are Illusory.

In 22-0499, GBX alleged that its line will save Illinois ratepayers \$6.6 billion over the forty-year period from 2027-2066. (GBX Exh. 8.0, pg. 4, lines 77-80, C1996). To arrive at this alleged \$6.6 billion in savings for Illinois ratepayers, GBX uses a "Carbon Price Assumption" that it tucks into a footnote in its witness's testimony. (GBX Exh. 8.0, pg. 5 n.2, C1997). GBX's Carbon Price Assumption is developer-speak for a national carbon tax that GBX hopes will become effective in 2026 at a rate of \$24.55 per short ton and increase by 2.2 percent per year over the forty-year period from 2027-2066.

However, in 22-0499, GBX failed to present-value these alleged forty years' worth of savings, which is tantamount to denying the existence of the time value of money. Unrebutted expert testimony in 22-0499 disclosed that present-valuing GBX's claimed savings reduces them from \$6.6 billion to about \$3.8 billion.

But the most glaring flaw in GBX's savings claim is its dependence on a carbon tax. There is no national carbon tax in the United States, and it is unlikely that any such tax, especially one with all the features GBX desires, will be enacted in the foreseeable future. Yet GBX needs its assumed carbon tax to artificially raise the cost of carbon-based electricity resources, such as natural gas-fired generation, which generally sets the margin in the real time and day ahead electricity markets operated by PJM. Because wind power is carbon-free, the electricity that GBX's proposed line would allegedly bring into Illinois would not be subject to GBX's assumed carbon tax. Unrebutted expert testimony in 22-0499 showed that GBX's imagined carbon tax would raise the price of competing natural gas-fired generation by approximately 0.92 cents/kWh, which is more than ten times the very small 0.072 cents/kWh reduction in Illinois wholesale electricity prices based on GBX's own expert study. (LA Exh. 2.0, pg. 6, line 116 – pg. 7, line 130, C4141-C4142). When GBX's Carbon Price Assumption is removed, its merchant transmission line affords no benefit at all to Illinois ratepayers. (LA Exh. 1.0, pg. 5, lines 82-87, C3583). Stated in simpler terms, GBX's carbon tax assumption is a fancier version of the old retailer's trick of doubling the price of everything in the store and then running a store-wide 50% off sale. (See, e.g., Federal Trade Commission Guides Against Deceptive Pricing, 16 C.F.R. Ch 1, Subch. B, Part 233). The savings GBX alleged in 22-0499 are illusory because its carbon tax artificially boosts the electricity price against which its alleged "savings" are benchmarked. In its defense, GBX's witnesses countered that its Carbon Pricing Assumption was "broadly consistent" with integrated resource plans ("IRPs") of utilities such as Ameren. (GBX Exh. 8.3, pg. 7, lines 145-149, C3986). But IRPs are not used to justify the involuntary taking of private property under the state's power of eminent domain.

4. The Agency's Study Assumes Without Question That Merchant Transmission Is A Public Use Warranting the Taking of Private Property by Eminent Domain.

In its discussion of "Land Ownership," which the Study presents as a mere obstacle to merchant transmission development, the Agency states:

In cases where the public utility commission or transmission siting authority approves a transmission line, the state has the authority to use the land for public use and pay the landowner compensation.

(Study, pg. 159). Here, the Agency accepts without question the proposition that a merchant transmission project is a "public use" of the private property of Illinois landowners. This acceptance ignores the nature of merchant transmission as an entirely profit-driven enterprise. In 22-0499, the only party alleging that GBX's merchant transmission project is needed to relieve grid congestion, enhance reliability, or provide adequate service was GBX itself. Such self-serving assertions may be entirely discounted.

Generally, there is nothing wrong with an incentive to maximize profits. It lies at the heart of our capitalist system. The problem, however, is that unlike most profit-driven businesses, which purchase their real property requirements from willing sellers, merchant transmission is inextricably bound up with the state's power of eminent domain because transmission lines must traverse hundreds of miles of private property. Eminent domain – whether exercised or merely threatened – is essential to the siting of a transmission line, and is the chief, if not the only, reason why merchant transmission developers submit themselves to the jurisdiction state utility commissions. Merchant transmission is entirely dependent on the power of the state, obtained through the good offices of state utility commissions, to force private landowners to yield up rights-of-way across their land so that merchant transmission developers can reap private profits.

Our earlier discussion of purported electricity cost savings achieved through merchant transmission projects relates directly to the developer's quest for eminent domain authority because these alleged savings are eagerly presented as the "public benefits" of merchant transmission. "Public use" is the *sine qua non* of any taking of private property by power of eminent domain. In its Study, the Agency makes the mistake of assuming that merchant transmission's benefits, particularly in alleged cost savings, suffice to show a public use that justifies the expropriation of private property for the benefit of a private transmission development company. That a project – whether transmission or any other -- might bring future benefits does not prove that it is needed by the public or that it would afford any material public

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convenience. The Agency's unquestioning acceptance of the proposition that the alleged benefits of the project, in and of themselves, demonstrate the project's public purpose merely assumes the conclusion that the Agency wishes to reach. A merchant transmission line project requires the taking of privately owned land for the purpose of conferring a private benefit on a particular private party, which violates landowners' substantive due process rights.

Very truly yours,

LAW OFFICES OF PAUL G. NEILAN, P.C.

By: /s/ *Paul G. Neilan*

Attachments:

Exhibit A – Ill. C.C. Docket No. 22-0499, Hearing Transcript, R193 – R213.

1 can't speculate what another tariff may say.

2 Q. Okay. So as you sit here today, is your
3 testimony that you don't know whether a
4 transmission service provider has a right or power
5 to direct any sales of electricity by a shipper?

6 A. I'm not aware of any that do.

7 Q. So your answer is, then, that you -- is
8 that a yes or a no? I want to know if you know --
9 you do not know of any right or power that a
10 transmission service provider has to in any way
11 control or direct the activities of the shippers on
12 its line?

13 A. I do not know of any, yeah.

14 Q. And for the sake of argument, we're
15 assuming that they're complete third parties, arm's
16 length; there's no relationship at all between the
17 owner of the line and the shipper?

18 A. Correct.

19 Q. Okay. All right. Let's extend that out
20 a little bit. As the transmission service
21 provider, either GBX or any of its interest holders
22 or lessees, you would not be in a position -- GBX

1 or whoever is providing the transmission service
2 would not be in a position to tell the shipper what
3 price it should accept for the electricity it ships
4 on the line?

5 A. No, we would not be in a position.

6 Q. Thank you. Would you agree with me that
7 the transmission service charge that is imposed or
8 would be imposed by GBX, or whoever is providing
9 the transmission service, would have to reflect the
10 difference in the locational marginal price at the
11 source in west Kansas and the LMP and AEP at the
12 Sullivan substation?

13 A. No, I wouldn't assume.

14 Q. You wouldn't agree with that?

15 A. No.

16 Q. Okay. Let's put the case this way.

17 Let's assume that the LMP at the source in Ford
18 County, wherever that interconnection is, that hub,
19 one cent a kilowatt-hour. And then let's assume
20 that the LMP at the Sullivan substation is two
21 cents a kilowatt-hour.

22 So in order for you to provide a

1 transmission service, you would not be able to
2 charge more than one cent a kilowatt-hour; is that
3 correct?

4 A. No, I don't think that's accurate.

5 Q. You don't think that's accurate?

6 A. No.

7 Q. Okay. Could you explain to me how, as a
8 transmission service provider -- and this is a
9 willing, you know, customer who doesn't have to
10 ship on your line. Okay? Because you're a
11 merchant transmission provider.

12 Okay. So the price for electricity
13 in Ford County, Kansas, is one cent a
14 kilowatt-hour. We're agreed on that as the case
15 that we're looking at. And the locational marginal
16 price at the Sullivan substation is two cents a
17 kilowatt-hour. And if I understand you correctly,
18 are you saying that you can charge for transmission
19 services more than one cent a kilowatt-hour?

20 A. Is your question can the transmission
21 charge more than the price difference?

22 Q. Yes. You have one cent in Kansas, and

1 you have two cents kilowatt-hour in Indiana. And
2 the difference between them is one cent a
3 kilowatt-hour. So would that not be reflected as
4 essentially a limit on what the transmission
5 service provider -- in this case GBX -- could
6 charge?

7 MR. STREICKER: Paul, you're talking about a
8 commercial limit, not a legal limit?

9 MR. NEILAN: I'm talking about a commercial
10 limit. I'm not talking about a physical limit and
11 congestion constraint.

12 BY MR. NEILAN:

13 Q. I am talking about a person who has
14 electricity, wants to voluntarily do a deal, and
15 wants to ship his electricity from Ford County,
16 Kansas, as GBX proposes, to the Sullivan substation
17 in Indiana, which is what you're proposing in this
18 case, is it not?

19 A. Yes.

20 Q. Okay. And I have stated, as the case,
21 that the locational marginal price at the Kansas
22 hub is one cent a kilowatt-hour, and at the

1 Sullivan substation the locational marginal price
2 is two cents a kilowatt-hour. So is it your
3 testimony today that GBX, as the transmission
4 service provider, could charge more than one cent a
5 kilowatt-hour for its service?

6 A. Yes.

7 Q. You could?

8 A. Yes.

9 Q. And with that -- and to borrow a phrase
10 from some other GBX witnesses -- all else equal.
11 So you're telling the shipper that, to ship on the
12 GBX line, he has to lose money?

13 A. No, that's not right.

14 Q. Okay. So let's do the math. You're
15 going to charge, let's call it, 1.1 cents. You can
16 charge more than the differential between the LMPs
17 at either end of the line; that's your testimony?

18 A. Yes. The value of the line goes beyond
19 the energy price differential.

20 Q. Okay. Let's stick to the question
21 that's asked. The differential and locational
22 marginal price between the two ends of the line is

1 one cent. You're with me on that?

2 A. Yes.

3 Q. Okay. And if you charge -- it costs the
4 generator in Kansas one cent a kilowatt-hour to
5 generate the power he wants to ship; we're agreed
6 on that, for the hypothetical?

7 A. It costs the generator?

8 Q. Yes. The generator's cost of
9 generation, it costs them one cent a kilowatt-hour
10 to generate the electricity.

11 A. That's different than the locational
12 marginal price.

13 Q. Okay. All right. The locational
14 marginal price, we'll assume it's -- just put it at
15 one cent per kilowatt-hour. They sell it for one
16 cent a kilowatt-hour in Kansas. Okay? And they
17 want to ship it to Indiana, okay, where the LMP is
18 two cents a kilowatt-hour.

19 If I were a customer and you were
20 going to tell me that you could charge 1.1 or 1.2
21 cents for me to ship that electricity, why would I
22 ship it on the GBX line?

1 MR. STREICKER: Paul, your hypothetical still
2 assumes the shipper doesn't have to use the line.

3 BY MR. NEILAN:

4 Q. Doesn't have to use the line. That's
5 been the case since the beginning.

6 A. Because the reason being the value they
7 can realize from bringing that energy to the
8 Sullivan substation is higher than just the
9 difference in the marginal price.

10 Q. Value -- okay. You said the value is
11 greater. I guess the only value in my case so far
12 is the one-cent differential between two cents at
13 the Sullivan substation and one cent in Ford
14 County, Kansas.

15 A. Right. But you are ignoring a portion
16 of the value they can generate with that
17 electricity beyond the marginal price.

18 Q. I'm just talking about the electricity,
19 but could you explain what you mean.

20 A. Well, the fact that it's renewable
21 electricity means that there is additional value
22 beyond just the base electricity price. They have

1 the ability to sell the renewable attributes of
2 that electricity at a greater price at the Sullivan
3 substation than they do in Kansas.

4 Q. Is it your position that those renewable
5 energy attributes would be built into the
6 electricity price, or would they be sold separately
7 under what's commonly referred to as a renewable
8 energy certificate?

9 A. Correct. The electricity price does not
10 reflect renewable attributes.

11 Q. Okay. So in my example, I have
12 separated the electricity price and the renewable
13 energy certificate. And let's say that -- let's
14 say I'm the owner of a wind farm, and I've
15 generated 1 megawatt-hour. So I've got one
16 renewable energy certificate, and I can sell that
17 to some third party. So that's now out of the
18 equation. Are you with me?

19 A. Well, it wouldn't be out of the
20 equation.

21 Q. Okay. As far as the brown
22 electricity -- the electrons are concerned, we've

1 generated -- I'm a wind farm in Kansas. Let's
2 assume I'm a wind farm in Kansas, and generate
3 1 megawatt-hour of electricity. Are you with me?

4 A. I'm with you.

5 Q. Okay. After I generate 1 megawatt-hour
6 of electricity, I earn one renewable energy
7 certificate, which signifies all of the beneficial
8 attributes, environmental, et cetera, pollution
9 control, et cetera, that are attributable to
10 renewable generation for 1 megawatt-hour. And
11 that's typically -- you agree with me that's
12 typically known as a renewable energy certificate;
13 is that correct?

14 A. That's correct.

15 Q. And do you agree with me that the
16 renewable energy certificate can be sold and often
17 is sold separately from the electricity that is
18 associated with the REC generation, the certificate
19 generation?

20 A. It can be. I wouldn't necessarily say
21 it often is.

22 Q. Okay. So let's assume, for sake of my

1 argument, that it is separated, and let's assume
2 that I'm the Kansas wind farm owner and I've got
3 that one megawatt-hour renewable energy certificate
4 and I sell it to Mr. McNamara here. And I gain a
5 dollar for that. Now I want to still sell my
6 electricity because that's left over. Are you with
7 me?

8 A. Yes.

9 Q. Okay. So we've got a one-cent LMP in
10 Ford County, Kansas, and we've got a two-cent LMP
11 at the Sullivan substation in Indiana. And is it
12 your testimony today that you could charge for
13 transmission services more than one cent a
14 kilowatt-hour?

15 A. Yes.

16 Q. And you would still have a customer?

17 A. Yes.

18 Q. Okay. Can you explain to me how you
19 would still have a customer if that person is a
20 voluntary customer, has other alternatives, and
21 would lose money by shipping on GBX?

22 A. They would not lose money. That was

1 never part of my testimony.

2 Q. Okay. Well, no, I'm talking about my
3 question, not your testimony. I'm trying to
4 extract from your testimony some consequences that
5 follow from it but are not stated in your
6 testimony.

7 So if I'm a shipper, okay, of
8 electricity and I can get one cent in Kansas LMP
9 and two cents at the Sullivan substation. Okay?
10 If I spend more than one cent a kilowatt-hour to
11 get my electricity -- just the electrons. I'm not
12 talking about the renewable energy certificate.
13 That's already sold to Mr. McNamara.

14 So if I want to ship that electricity
15 from a place where I can get one cent for it in
16 Ford County, Kansas, to the Sullivan County
17 substation where the locational marginal price is
18 two cents, is your testimony today that you could
19 charge me more than one cent for transmission
20 services and I would still buy them from you?

21 MR. STREICKER: Objection; it calls for
22 speculation.

1 MR. NEILAN: This is not speculation. This
2 goes directly to the benefits -- these witnesses
3 have been testifying about the benefits that
4 this --

5 MR. STREICKER: You're asking him to put
6 himself in the minds --

7 MR. NEILAN: -- line brings to Illinois. And
8 the economics of this project have to work. Right
9 now they've shown precious little in the way of how
10 this project economically will work. And he hasn't
11 even answered the question about how the economics
12 work between the two ends of the line. All right?
13 And that's what this question goes to. There is a
14 foundation in this evidence. We are entitled to
15 ask this question.

16 THE COURT: You're giving a scenario where
17 they could lose money.

18 MR. NEILAN: Yes. Exactly. Exactly.

19 THE COURT: Okay. And that's what you're
20 asking --

21 MR. NEILAN: That's exactly what I'm going
22 after.

1 THE COURT: Okay. I mean, if you want to
2 leave it like that --

3 MR. NEILAN: He's not admitting that they're
4 going to lose money. He's dodging the question.
5 He has not answered the question.

6 MR. STREICKER: Because it calls for
7 speculation.

8 MR. NEILAN: It does not call -- okay. One
9 cent minus two cents equals one -- two cents minus
10 one cent equals one cent, correct? That's not
11 speculation. All right? If you have only one cent
12 and you subtract more than one cent, you get a
13 negative number. That is not speculation.

14 MR. STREICKER: Your first hypothetical,
15 afterwards, you had to unbundle the REC.

16 MR. NEILAN: Exactly. Because your client
17 blended them together and said there was value in
18 the electricity itself, which, in fact, is not
19 true, that RECs are always sold separately.

20 MR. STREICKER: Judge, I stand on my objection
21 that that question calls for him to speculate as to
22 an answer; put himself in the mind of a shipper

1 that could have multiple other reasons for choosing
2 to ship.

3 BY MR. NEILAN:

4 Q. This line is stated to bring -- it's
5 going to be such a great thing because all of these
6 renewable energy generators, solar and wind, in
7 Ford County, Kansas, are just going to be raring to
8 go to get onto this line. And it's going to be
9 economical.

10 Is that your -- that's your
11 testimony, right? You said it's economical for
12 them to use the line?

13 A. There are multiple reasons why, beyond
14 the energy price difference, that it's economical,
15 including a difference in renewable energy credit
16 prices that is being ignored in that hypothetical
17 that you're talking about, as well as purely access
18 to the electrical grid, which they may not have
19 access to in the scenario that you're outlining.

20 Q. So it's your position, then, that the
21 renewable energy attributes and the energy itself
22 on the GBX line must be sold together; is that a

1 condition of your transmission service?

2 A. No.

3 MR. STREICKER: Objection; you're
4 mischaracterizing the testimony.

5 MR. NEILAN: I'm only asking about the
6 electricity, the electrons. That's all I'm asking
7 about.

8 MR. STREICKER: And that's been answered.

9 MR. NEILAN: It has not been answered. He has
10 not admitted that that customer is going to lose
11 money.

12 MR. STREICKER: He doesn't have to admit it to
13 answer.

14 MR. NEILAN: Okay.

15 MR. STREICKER: And, again, that calls for
16 speculation. I don't know what this customer's
17 motives are.

18 MR. NEILAN: Okay. Because what I'm going
19 after is that he can't charge more than the
20 differential between the LMPs of either end of the
21 line. And he hasn't admitted that. He won't admit
22 it, and he can't give a sensible answer because --

1 MR. STREICKER: Judge, this is argument
2 amongst the attorneys.

3 MR. NEILAN: -- he can't agree that the
4 shipper is going to lose money.

5 THE COURT: I mean, I guess, under your
6 scenario, he can answer the question. But in
7 actuality, it could be different, I think, is what
8 he's trying to say.

9 MR. NEILAN: My question is specifically on
10 the brown energy. The electricity that comes
11 off -- the GBX line can't tell the difference
12 between renewable energy and coal-fired generation.
13 That electron is going to cross. That's the only
14 thing I'm talking about.

15 MR. STREICKER: And your question was could
16 you charge a cent --

17 MR. NEILAN: More than a cent.

18 MR. STREICKER: And he's answered -- he
19 answered that.

20 MR. NEILAN: No, he didn't answer it. He said
21 he could charge more because of the different
22 value, and he's --

1 MR. STREICKER: That's the answer.

2 MR. NEILAN: No, he's adding back -- he didn't
3 answer the question because he's adding back the
4 value that I took out when we separated the
5 renewable energy certificate and those attributes
6 from the power itself, as you know is done in the
7 market.

8 MR. STREICKER: I think he also said there was
9 other considerations. If you want to ask the
10 question again in a straightforward manner --

11 MR. NEILAN: Okay.

12 MR. STREICKER: -- that doesn't call for
13 speculation --

14 BY MR. NEILAN:

15 Q. Let's try it this way. Let's skip the
16 renewable energy part. I'm a coal-fired generator
17 in Ford County, Kansas. Are you with me so far?

18 A. I don't believe there are any of those
19 there.

20 Q. We're going to be here until Friday.

21 THE COURT: It's a hypothetical.
22

1 BY MR. NEILAN:

2 Q. Allow me to pose a hypothetical,
3 Mr. Sane, if I may. Would you please indulge me?

4 A. Sure.

5 Q. Thank you very much.

6 If you would be so kind as to
7 contemplate a coal-fired generator in Ford County,
8 Kansas. Would you be so kind as to do that for me?

9 A. Okay.

10 Q. And would you be so kind as to assume
11 that the LMP that that coal-fired generator can get
12 at whatever hub is in Ford County, Kansas, is one
13 cent per kilowatt-hour.

14 A. Okay.

15 Q. Okay. And would you be so kind as to
16 assume with me that the locational marginal price
17 in Sullivan County at the Sullivan substation, the
18 termination point of your line, is two cents per
19 kilowatt-hour; the LMP is two cents per
20 kilowatt-hour. Would you assume that with me?

21 A. Okay.

22 Q. Thank you. If the coal generator has an

1 option to either sell that electricity in Ford
2 County, Kansas, at one cent -- that's one
3 alternative -- or it could try to move the
4 electricity into PJM at the Sullivan substation and
5 get two cents, so you would agree with me that the
6 two cents a kilowatt-hour is a better deal than the
7 one cent a kilowatt hour; is that correct?

8 A. It's a higher energy price, yes.

9 Q. So you would take the higher price,
10 correct?

11 A. Depending on the cost to get it there.

12 Q. If you were -- okay. The cost -- we're
13 going to get to the cost in a second. Okay?

14 So if I can make more than one cent a
15 kilowatt-hour by using the GBX line, if I were a
16 rational profit maximizer, I would do that. Would
17 you not do that?

18 A. In this scenario? Yes.

19 MR. NEILAN: There's some kind of feedback.

20 MS. ROLANDO: I think we have someone who has
21 just logged on that is not muted. I've tried to
22 mute him.

1 THE COURT: I think I just got him.

2 BY MR. NEILAN:

3 Q. So now we've got this spurling brown
4 energy -- there's no REC, there's no other value
5 associated with it in Kansas -- and the coal
6 generator comes to GBX, and GBX says, you know,
7 I'll charge you 1.2 cents a kilowatt-hour to take
8 your electricity from Ford County, Kansas, to
9 Sullivan County, Indiana. Can you assume that with
10 me?

11 A. Okay.

12 Q. Thank you. And if I'm a coal generator,
13 if you were to -- and I know you may object to
14 this, but just assume that you're the coal
15 generator -- would you take that deal?

16 A. No.

17 Q. You would not take that deal?

18 A. No.

19 Q. Why would you not take that deal?

20 A. Because the cost of the transmission is
21 greater than the difference in price that I can
22 achieve.

1 Q. Great. Thank you very much.

2 MR. NEILAN: I don't know if this -- is this
3 exhibits?

4 MS. ROLANDO: Yes. I brought six copies, I
5 believe, and I gave one to the judge.

6 MR. NEILAN: Permission to approach?

7 THE COURT: I have one. Did we ever figure
8 out if it's confidential or not?

9 MR. STREICKER: I have to take a look at it,
10 Judge.

11 THE COURT: Okay.

12 MR. STREICKER: Judge, we do not object to
13 questions about this exhibit in the open session.

14 THE COURT: Okay. So it's not --

15 MR. STREICKER: Well, this page, this
16 particular page. I think if we expanded it wider,
17 perhaps we would have a confidentiality concern.
18 But not if it's just this one page.

19 MR. NEILAN: It's just the one page.

20 THE COURT: Okay. All right. Then that's
21 fine. This is going to be a cross exhibit?

22 MR. NEILAN: We put it in as Cross Exhibit