STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ROCK ISLAND CLEAN LINE LLC	:	
	:	
Petition for an Order granting Rock Island Clean Line LLC a	:	
Certificate of Public Convenience and Necessity pursuant to	:	
Section 8-406 of the Public Utilities Act as a Transmission	:	No. 12-0560
Public Utility and to construct, operate and maintain an	:	
electric transmission line and authorizing and directing Rock	:	
Island pursuant to Section 8-503 of the Public Utilities Act	:	
to construct an electric transmission line.	:	

REPLY BRIEF ON EXCEPTIONS OF COMMONWEALTH EDISON COMPANY

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REPLY BRIEF ON EXCEPTIONS OF
COMMONWEALTH EDISON COMPANY

Commonwealth Edison Company ("ComEd") respectfully submits this Reply Brief on Exceptions ("RBOE") under Section 10-111 of the Public Utilities Act (the "PUA"), 220 ILCS 5/10-111, Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the "Commission" or "ICC"), 83 Ill. Admin. Code § 200.830, and the schedule established by the Administrative Law Judge ("ALJ").

I. INTRODUCTION

Rock Island Clean Line LLC ("RI") and some Intervenors (Local Union Nos. 51, 9, 145, and 196 of the International Brotherhood of Electrical Workers, AFL-CIO("IBEW"), Wind on the Wires ("WOW"), and the Environmental Law and Policy Center and Natural Resources Defense Council (collectively, "Environmental Intervenors" or "ELPC") argue in their Briefs on Exceptions ("BOEs") that the Proposed Order ("PO") should have found that RI met the PUA criteria under Section 8-406(b)(1) for a project "necessary to provide adequate, reliable, and efficient service" of and Section 8-503. They do not explain how a project can be essential for reliable, efficient service when it has no customers and when the applicant continues to refuse to commit to build it. Some, including RI, go further and object even to the PO's requirement that

future financing be reviewed by the Commission before it can be used to satisfy the statutory financing condition. Those arguments must be rejected.

The overriding deficiency in those arguments is their failure to acknowledge or address the litany of unknowns, uncertainties, and contingencies surrounding RI's proposal, and RI's complete failure to establish *current compliance* with the all of the applicable statutory criteria. Rather than establish compliance, these BOEs advocate work arounds that avoid the clearly stated criteria and fail to establish compliance. As explained in more detail below, these arguments must be rejected.

ComEd does not respond here to each and every argument presented in the BOEs, especially where those briefs simply repeat arguments from the parties' Initial and Reply Briefs to which ComEd has already responded. Thus, the absence of a response to a particular argument in this RBOE should not be interpreted to mean ComEd agrees with that argument unless otherwise stated. Similarly, ComEd opposes RI's attempts to add reasoning and analysis that was neither adopted by the ALJ nor included in the PO. *See* RI BOE at 20-22, 24-25, and 29-32. ComEd has already identified the deficiencies with RI's positions in its Initial Brief, Reply Brief, and BOE, and will not repeat those arguments here. The omission of such reasoning and analysis was not an oversight; rather, it reflects in general, the PO's non-acceptance of those positions and arguments and they should not be added to the PO.

II. ATTACKS ON THE PROPOSED ORDER'S DENIAL OF SECTION 8-503 RELIEF LACK MERIT

The PO appropriately concludes that authorizing or directing the construction of the Project under Section 8-503 (220 ILCS 5/8-503) of the PUA would be premature in light of the considerable uncertainty surrounding the proposed construction by RI. Under Section 8-503, the Commission must find that the proposed construction is "necessary" and "ought reasonably to be

made" or "should be erected," a requirement not contained in Section 8-406 and not satisfied here. 220 ILCS 5/8-503; 220 ILCS 5/8-406(b). Despite the substantial evidence in the record supporting the PO's denial of a Section 8-503 order at this time, RI, IBEW, WOW, and the Environmental Intervenors continue to insist that RI met the criteria for issuance of an order under Section 8-503 and that RI's request for Section 8-503 authority is not premature. RI BOE at 4-5; WOW BOE at 5-7; IBEW BOE at 4-8; ELPC BOE at 2-4. These claims lack merit.

RI's concept of a $2 billion ± 600 kV Direct Current line and associated converter stations (the "Project") running from O'Brien County, Iowa to Grundy County, Illinois has no load customers, no generator subscribers, no financing, and cannot be shown to be the least cost alternative. RI will not even commit to build the Project, acknowledging it to be a speculative venture that may never leave the drawing board, even if certified. The PO properly considered the evidence and concluded "that under the circumstances, it would be premature to grant Section 8-503 relief to RI in this proceeding." PO at 209. The PO expressly agreed with Staff that "[g]iven all the contingencies, conditions, and government and regulatory approval still needed, [Rock Island] is petitioning the Commission for authority that cannot be utilized." *Id*. at 207, 209. Under these facts, the PO correctly found that RI failed to make the showings required for an order under Section 8-503 of the PUA. The BOEs, moreover, do not raise any new matters of fact or law, were properly rejected by the ALJ in the PO, and should be rejected by the Commission in its final order.

A. Iowa Regulatory Proceedings

RI's BOE attempts to portray the PO as ruling that RI must obtain authority to build the Project in Iowa from the Iowa Utilities Board before it can obtain Section 8-503 authority in Illinois. RI BOE at 5 (Arguing there is no requirement that RI "must obtain the other state's approval first."). RI mischaracterizes the PO. The PO mentions the uncompleted Iowa

regulatory proceedings primarily in response to RI's claim that Section 8-503 authority is needed because it is one of the major regulatory approvals needed to satisfy potential lenders and investors. PO at 209. In response to this claim, the PO accurately responds that RI has not explained how a Section 8-503 authorization is somehow more urgent to reassure lenders compared with the proceeding in Iowa. *Id.* While the PO accurately notes that regulatory approvals are one of many unknowns, uncertainties, and contingencies of the Project, it does not suggest that a grant of Section 8-503 authority would be premature based solely on RI not obtaining regulatory approval in Iowa. Rather, the PO specifically notes that it "is by no means suggesting that RI would have to satisfy every condition, contingency or uncertainty before Section 8-503 authorization may be granted …." *Id*.

RI's attempt to criticize the PO for considering the status of the Iowa proceedings also rings hollow. RI made clear that the Illinois portion of the line will not be constructed if the Iowa portion is not constructed. Skelly, Tr. 269:12-23.[1] Moreover, RI also made clear that if regulatory approval was not granted in Iowa and RI determined "the project wasn't worth investing in any further, then [RI] would abandon it." *Id*. at 286:14-16. It is clear from RI itself that the outcome of the regulatory proceedings in Iowa has significant implications for the Project's construction. Moreover, as demonstrated throughout the record, the lagging regulatory proceedings in Iowa, which are not scheduled to be concluded until 2015, are only one of many factors contributing to the speculative and uncertain nature of the Project.

B. RI's BOE Fails to Recognize the Substantial Uncertainties Surrounding the Project

As with so much of its case, RI's Section 8-503 argument totally ignores the fact that a Section 8-503 order can only be issued based on a record that shows RI *currently* meets the

[1] Citations to the transcripts are to corrected transcripts, where applicable.

statutory requirements. RI has failed to demonstrate it currently meets those criteria – and the PO makes no finding that it does – due to the Project's countless unknowns, uncertainties, and contingencies. *See* ComEd BOE at 13-17. At best, the Project has the "potential" to meet applicable requirements in the future; but does not meet those requirements now due to its many fundamental uncertainties, including the following:

- **RI will not commit to construct the Project, even if certified.** Skelly, Tr. 269:12 – 274:6. RI has no customers now. Yet, unless it attracts advance subscribers for at least 60% of Project's capacity that will agree to shoulder the majority of the Project's $1.8 billion plus cost, even RI says it will likely let the Project die. And, RI will not commit to build the Project even if those customers do materialize. Berry Add'l Sup. Dir., RI Ex. 10.13, 4:106-10; Berry Reb., RI Ex. 10.14 REV, 28:681-89; Berry, Tr. 1049:24 – 1050:5; Naumann Dir., ComEd Ex. 1.0 2nd REV., 10:193-96 & fn. 8.
- **No entity has committed to become a customer of RI or the Project.** No generator has subscribed or agreed to subscribe. No generator anywhere, wind or otherwise, has committed to use the Project and there is no proof that any entity will ever demand or contract for service using the Project. Galli, Tr. 753:1-3; Berry, Tr. 1061:2-19. While RI emphasizes that the Project will transmit energy that will ultimately serve load, the consumption of such energy does not qualify Illinois load as RI's transmission customer.
- **The presumed wind generators do not exist and there is no proof that they ever will.** Loomis, Tr. 559:6-16. Yet, the Project is promoted and justified as if it will deliver 100% wind energy. McDermott, Tr. 122:17-21. Even if power were flowing on the line, the nature and source of that is unknown, and FERC will not permit RI to favor wind

generators. *Id.* at 125:24 – 126:24; *Rock Island Clean Line LLC*, 139 FERC ¶ 61,142, at P 31 (2012).

RI never comes to grips with these evidentiary deficiencies. RI's attempt to bootstrap the PO's use of conditions to bridge the evidentiary gap with respect to Section 8-406(b)[2] into an argument that the PO errs in denying Section 8-503 authority is contrary to the evidence and must be rejected.

C. RI's Arguments Are Improperly Premised on the Erroneous Proposition that Satisfaction of Section 8-406(b) Automatically Satisfies Section 8-503

RI criticizes the PO for stating that RI believes Sections 8-503 and 8-406(b) of the PUA to be functionally identical and believes that a finding that the Section 8-406(b) criteria have been met would automatically mean the Commission is required to grant the relief sought under Section 8-503. RI BOE at 6. However, after making this point, in the very next paragraph RI states that the criterion of Section 8-503 and Section 8-406(b)(1) "to promote the development of an effectively competitive electricity market" are "the same" (*id.* at 7), and then proceeds to argue that it has met that criterion because it submitted the same testimony in support of that criterion under both Section 8-503 and Section 8-406(b). While RI attempts to portray its argument as a matter of evidence, it cannot escape the fact that its argument is premised on the assumption correctly rejected by the PO that the criteria for relief under Section 8-406(b) are no different than the criteria under Section 8-503.

In addition to unfairly criticizing the PO's treatment of its own argument, RI's interpretation of the law remains flawed. As the PO correctly noted, a finding that the Section 8-406(b) criteria have been met does not automatically mean the Commission is required to grant

[2] ComEd maintains, as explained in its BOE, that the use of conditions to bridge the gap in RI's proof is improper. ComEd BOE at 12-19.

relief sought under Section 8-503. PO at 209. Their language is not identical, and Section 8-503 imposes distinct additional requirements that result in firmer obligations. Unlike Section 8-406, Section 8-503 requires a finding that the proposed construction is "necessary and ought reasonably to be made" or "necessary and should be erected ...," and requires the Commission's order to authorize or direct that that the proposed construction "be made" or "be constructed." 220 ILCS 5/8-503; 220 ILCS 5/8-406(b). Moreover, were they not distinct, there would be no need for Section 8-503. A construction that renders Section 8-503 superfluous is improper.

The relationship between Sections 8-406, 8-503, and 8-509 of the PUA is clear. Relief under Section 8-509 cannot be granted unless an applicant has been ordered or authorized to construct an alteration, addition, extension or improvement under Section 8-503. 220 ILCS 5/8-509. While the language of Section 8-503 does not expressly condition relief under that section on relief under Section 8-406, such relief is in fact necessary (although nothing prohibits that relief being sought simultaneously) because Section 8-406 provides that "[n]o public utility shall begin the construction of any new plant, equipment, property or facility … unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction." 220 ILCS 5/8-406(b).[3] Thus, the PUA establishes a scheme whereby:

1. a CPCN under Section 8-406 is the minimum requirement that must be met under the explicit provisions of Section 8-406 before a utility may "begin the construction of any new plant, equipment, property or facility" not falling with Section 8-406's exceptions, and thus constitutes the minimum required authorization for engaging in such construction;

[3] Of course, a CPCN may also be obtained under the expedited procedure set forth in Section 8-406.1 of the PUA. 220 ILCS 5/8-406.1. Section 8-509 relief may be granted to any utility authorized under Section 8-406.1 to construct new facilities (220 ILCS 5/8-509), which corresponds to the provision in Section 8-406.1 that relief under that section "shall include an order pursuant to Section 8-503 of" the PUA (220 ILCS 5/8-406.1(i)).

2. relief under Section 8-503 is a second level requirement that is necessary if the Commission makes the required findings to enter an order authorizing or directing that the proposed construction be made or be erected at the location, in the manner and within the time specified by the Commission, and is an explicit predicate to obtaining relief under Section 8-509 to involuntarily condemn land rights for the proposed construction; and

3. relief under Section 8-509 is a third level requirement that is necessary for involuntarily condemning land rights for placement of a transmission line or other facilities.

The clear legislative intent is for applicants to make heightened or additional showings for relief under Sections 8-503 and 8-509.

Sections 8-406 and 8-503 do have some similar language as noted by RI, but they also have some very different language. Consistent with its second level status described above, Section 8-503 adds to the Section 8-406 requirements by requiring a finding that the improvements or additions to be constructed "are *necessary and ought reasonably to be made* or … or are *necessary and should be erected* …" to promote the development of an effectively competitive electricity market or to secure adequate service or facilities. 220 ILCS 5/8-503. This language makes clear that a heightened or additional showing of need or obligation is required for Section 8-503 relief – which showing is not required under Section 8-406. Moreover, Section 8-503 vests the Commission with authority to control the timing – as well as the place and manner – of construction of the improvements, providing "the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected *at the location, in the manner and within the time* specified in said order." *Id*. (emphasis added).

RI ignores these differences in Section 8-503 when it criticizes the PO for what it wrongly characterizes as an inconsistent result. While ComEd disagrees with the liberal use of conditions to find that RI meets the criteria for Section 8-406 relief (ComEd BOE at 1-19), the

PO's conclusions under Section 8-503 are fully consistent with the unique criteria applicable under Section 8-503. The many unknowns, uncertainties, and contingencies that plague the Project fully justify and provide substantial evidence in support of the PO's finding that RI fails to meet the requirements for Section 8-503 relief at this time. Further, the PO's ruling that RI's request for Section 8-503 relief is premature is supported by and consistent with the explicit grant of authority to the Commission with respect to the timing of construction under Section 8-503. Having been given the explicit authority to determine that construction should not begin at the time it grants Section 5-803 relief, the Commission is also authorized to take the lesser included action of determining RI's request is premature under the facts presented.

D. RI Depends on Flawed Analyses

Putting aside RI's flawed interpretation of the PUA, RI has not presented evidence demonstrating that the Project will promote the development of an effectively competitive electricity market. RI depends on and points to analyses conducted by Dr. Karl McDermott and Mr. Gary Moland to support its contention that the Project promotes competition. RI BOE at 21. ComEd explained RI's analyses were flawed in its prior briefs, and incorporates those arguments by reference rather than burden the record by repeating those arguments here. ComEd Init. Br. at 23; ComEd Rep. Br. at 20. However, to quickly summarize, in addition to being subject to the unknowns and uncertainties discussed above, Dr. McDermott's analyses are based on unsupported and flawed assumptions regarding generation type, deliverability, costs, and benefits. They also incorrectly assume that the addition of 3,500 MW of new generation will have no impact on existing or planned generation, i.e., will not cause existing generation to retire or other planned generation not to go forward. McDermott Dir., Rock Island Ex. 4.0 at 21:431-

434; Naumann Reb., ComEd Ex. 4.0 Rev 35:694-97. These flaws render their conclusions meaningless and unreliable.[4]

E. RI Failed to Satisfy the Criteria of Section 8-503 and Must Return to The Commission to Provide Sufficient Evidence Supporting a Grant of Section 8-503 Authority

The PO properly rejected RI's argument that having two separate proceedings would be inconvenient and inefficient. PO at 209. RI continues to argue that it "makes no sense to require an applicant to file two separate proceedings and litigate two separate proceedings that will require the same or very similar evidence and determinations, in order to obtain a CPCN and § 8-503 authorization." RI BOE at 9. To the contrary, given RI's failure to establish that it meets the relevant statutory criteria at this time, there is nothing unfair or illogical about requiring RI to come back and make the required showings when, and if, it is able. RI's argument is also a red herring that creates an unrealistic and sacrificial straw man to make its point. If the unproven assumptions in RI's current case are rendered certain by subsequent developments, then it will be neither burdensome nor difficult to present those updated facts to the Commission.

The PO reasonably concluded from the gaps in the current evidence that RI must come before the Commission to fill those gaps in a separate proceeding, if RI continues to desire Section 8-503 relief. RI was unable to satisfy the applicable criteria in the current proceeding. Moreover, as even RI concedes, RI must come before the Commission again in order to obtain eminent domain authority. RI Init. Br. at 164, fn. 147. At that time, RI can also seek Section 8-503 authority. RI's claim that "[a]bsolutely no purpose – other than imposing unnecessary delay and expense to the Project – would be served by requiring Rock Island to file a new proceeding

[4] For these same reasons, if the Commission finds that the Project will promote the development of an effectively competitive electricity market, any attempts by RI to include the flawed analyses of Dr. McDermott and Mr. Moland as a basis for such finding should be rejected. *See* RI BOE at 21.

at a future date and re-litigate the basis for receiving §8-503 authority" is incorrect and troubling. RI BOE at 10. RI has had no difficulty boldly dismissing the many unknowns, uncertainties, and contingencies surrounding this Project, but protests vociferously to those portions of the PO that contemplate any form of future verification or proof that such unknowns or contingencies are in fact eliminated or resolved. RI's protests belie its apparent strategy of seeking approval before its compliance with applicable criteria can be demonstrated or verified, and then opposing any process that would actually establish or confirm such criteria have been met.

F. RI's New Attempt to Manufacture a Commitment to Build the Project is Disingenuous as it Conflicts with its Testimony and other Record Evidence

That RI has consistently and clearly declined to commit to proceed with the Project – even if it is granted its requested relief – is established by clear, convincing, and uncontestable testimony by RI itself:

- When asked if he could assure the Commission that RI would construct the Project if the Commission entered an order authorizing and directing the construction of the Project, RI witness Mr. Berry testified "[t]oday I cannot unconditionally guarantee that we'd construct the project." Berry, Tr. 1049:24 – 1050:5.

- Mr. Berry testified: "The bottom line is that permanent installation of facilities cannot and will not commence unless and until the need for the Project is actually established through the market test of transmission customers contracting for sufficient service on the transmission line to support and justify financings that raise sufficient capital to cover the total Project cost." Berry Add. Sup. Dir., RI Ex. 10.13, 4:106-10.

- Mr. Berry also testified: "Rock Island will not be able to proceed with the construction of the Project in the absence of sufficient transmission capacity contracts to support the financing necessary to construct the Project. Sufficient transmission service contracts with creditworthy counterparties will be a required condition of project lenders. If Rock Island cannot obtain the necessary transmission capacity contracts, it will not be able to proceed with the Project, and Rock Island and its shareholders will lose their investment in development of the Project." Berry Reb., RI Ex. 10.14 REV, 28:681-89

- RI's CEO Mr. Skelly testified that "even if the Commission were to grant all the relief requested by Rock Island, Rock Island could not commit to the Commission to build the line" given the other tasks that RI needs to undertake and accomplish. *See* Skelly, Tr. 273:3-15.

- Mr. Skelly further testified that if the Commission granted it a CPCN but the Project was not certificated by the Iowa Utilities Board, "[i]f we felt like there was -- the project wasn't worth investing in any further, then we would abandon it." Skelly, Tr. 286:7-17.

While the Commission has certified other transmission-only utilities, RI's own expert – and a former Commissioner – testified he was "not aware of any case in Illinois where the [Commission] issued a Certificate of Public Convenience under Section 8-406 of the Public Utilities Act where the applicant had not unconditionally committed to build a transmission line if it obtained the certificate." McDermott, Tr. 140:5-17. Recognizing this stark deficiency in its case, RI now attempts to manufacture the commitment it explicitly declined to make by pointing to its actions to develop the Project to date. *See* RI BOE at 11-12. With all due respect, RI is desperately grasping at straws in a belated attempt to manufacture a "commitment" to overcome critical deficiencies that undermine its case.

While RI can argue that it has an acceptable business plan, it has not demonstrated that it has or will have the required customers, investors, and financing to implement that plan. Moreover, notwithstanding its actions to date, RI has clearly refused to commit to proceed with the Project even if it is granted a CPCN – highlighting the tentative, unknown, and uncertain nature of this conditional merchant project. Further, the actions of RI to date are not the issue – those actions are not in dispute and were clearly known and recognized by the ALJ in drafting the PO. The problems that clearly and properly concerned the ALJ – as reflected throughout the PO – are the many unknowns and uncertainties that will continue to surround the Project going forward. While the investment in developing the Project to date is considerable, it pales in comparison to the $2 billion it would take to actually build the Project. RI's management team evidenced reasonable business judgment in declining to affirm that RI's development investment to date means it will definitely proceed with the Project. The contrary assertions in its BOE contradict the record and lack credibility.

III. RI'S ASSERTION THAT THE PROJECT IS NECESSARY TO PROVIDE ADEQUATE, RELIABLE AND EFFICIENT SERVICE DISREGARDS CRITICAL EVIDENCE AND LACKS MERIT

RI attempts to undermine the PO's determination, as supported by the record, that the Project is not necessary under Section 8-406(b)(1) to provide adequate, reliable and efficient service, although the PO carefully weighed the evidence provided by RI, Staff, ComEd and other Intervenors. RI BOE at 13; PO at 111. A full discussion of the testimony and reasons why RI failed to establish that the Project is necessary to provide adequate, reliable, and efficient service to customers is contained in ComEd's Initial and Reply Briefs. ComEd Init. Br. at 30-32; ComEd Rep. Br. at 21-23; PO at 88-92. In short, the record is clear and unmistakable that RI has established no need whatsoever with respect to the provision of adequate, reliable, and efficient service to customers. Generic statements that transmission reinforcement is desirable do not amount to establishment of need. The Project is not required to overcome any overloaded circuit, instance of instability, low voltage, or other system condition. Naumann Dir., ComEd Ex. 1.0 2nd REV, 6:118-23, 47:901-903.

RI seeks to trivialize the PO's thorough consideration of the evidence, stating that the PO "bases its conclusion on only two *bits* from the record." RI BOE at 13 (emphasis added). The first "bit" is the fact that RI has not provided any independent studies from transmission system operators in Illinois, or as an alternative to an independent study, any load flow studies or similar analysis to provide evidence that the Project was necessary.

RI argues that its expert witness, Mr. Leonard Januzik, conducted Loss of Load Expectation ("LOLE") and transfer capability studies to analyze the impacts on the reliability and adequacy of electric service in Illinois if the Project were constructed. RI BOE at 15-16.

The fact remains that RI loss of load risk testimony, apart from its serious flaws,[5] neither claims there is any elevated risk of loss of load without the Project and the additional generation, nor explains why the existing Regional Transmission Expansion Process process would not be the appropriate means to identify the best and least cost means of remedying any such deficiency, if one were to actually exist. Nor does RI present any study or other evidence showing that the Project is the least cost means of providing additional reliability or security. Naumann Dir., ComEd Ex. 1.0 2nd REV, 39:744-49. RI's witnesses do not even address that subject, and RI's economic witness, Dr. McDermott, confirmed that he studied no other transmission line. McDermott, Tr. 120:18-22.

RI's transfer capability studies are also flawed and unsubstantiated. ComEd provided several un-refuted reasons that RI's transfer capability studies have no real meaning as a measure of import capability into the Northern Illinois sub-region in the testimony of its expert witness, Mr. Steven T. Naumann. *See* Naumann Dir., ComEd Ex. 1.0 2nd REV, 43:832 – 46:890. In short, RI has not presented the Commission with anything that it has not already seen, and has failed to prove that the Project is necessary through its flawed studies.

The second "bit" that RI claims the PO incorrectly bases its decision on is the testimony of one of RI's expert witnesses, Dr. Wayne Galli. In fact, the PO was more than justified in relying on the clear and unambiguous testimony of RI's own planning "expert," Dr. Galli. When asked if the Project was necessary to make the Illinois system more reliable, he truthfully

[5] *See* Naumann Dir., ComEd Ex. 1.0 2nd REV, 41:787 – 43:831; Naumann Reb., ComEd Ex. 4.0 REV, 35:685 – 36:697.

responded that he was not testifying that it was necessary. Galli, Tr. at 749-750.[6] It gets no clearer.

RI's BOE, nonetheless, attempts to run away from Dr. Galli's testimony by converting the lack of any need into a dispute about discussions in case law that the "necessity" criterion in Section 8-406 does not need to be read as "absolute" necessity. *See* RI BOE at 14. ComEd does not dispute that – as used in Section 8-406 – the terms "necessary" and "necessity" do not have to be absolute. However, it is equally clear that a project cannot show a public necessity when there is no electrical need demonstrated at all. The PO was not remiss in its determination that RI has not proven that the Project is necessary to provide adequate, reliable, and efficient service.

IV. THE PROPOSED ORDER'S MODIFIED FINANCING CONDITION IS APPROPRIATE AND SHOULD NOT BE REVISED

Section 8-406(b)(3) expressly requires an applicant to prove, as a pre-condition for certification, that it "is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers." 220 ILCS 5/8-406(b)(3). As stated in ComEd's Initial Brief, this language – and the Commission's application of same – requires separate showings (i) that the utility is capable of financing the proposed construction and (ii) doing so without adverse financial consequences for the utility or its customers. ComEd

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[6] Dr. Galli testified as follows:

Q. And in your testimony you're not testifying that the electric system in Illinois is not reliable, correct?

A. That is correct.

Q. You're not testifying that the proposed addition of the Rock Island Clean Line is required to make the Illinois system more reliable, correct?

A. That is correct.

Q. And it remains to be correct that Rock Island has not provided independent studies from PJM or MISO demonstrating need for this project in this proceeding, is that correct?

A. That is correct.

Galli, Tr. 749:20 – 750:8.

Init. Br. at 33-4, citing analysis of separate showings in *N. Moraine Wastewater Reclamation Dist. v. Ill. Commerce Comm'n & Rockwell Utils.*, 392 Ill. App. 3d 542, 551 (2d Dist. 2009). Thus, the "capable of financing" requirement is a pre-condition to issuing a CPCN and, by its plain present-tense language, sets out a requirement that the applicant must meet at the time a CPCN is approved. 220 ILCS 5/8-406(b)(3); *see* ComEd IB at 33-34. RI's testimony does not establish that it has the required financial capability to construct the Project. In fact, ComEd believes the PO errs in utilizing conditions to bridge this evidentiary gap. ComEd BOE at 12-19. Indeed, RI's own testimony expressly proves that it has but a small fraction of the required financing – either in hand or even under commitment. Berry, Tr. 1057:12-19; 1060:13 – 1061:1.

While the PO (wrongly) holds that this criterion can be satisfied by evidence that may exist and be shown to the Commission only in the future, RI takes exception to even that deferred burden, complaining that the PO should not have required a verification proceeding to ensure that the financing condition it relies on is satisfied. RI BOE at 25-29. In RI's view, apparently, the Commission should never get to review its actual financing. The PO reasonably required that as part of the condition, RI also file a petition with the Commission requesting verification of RI's compliance with the condition. PO at 146.[7] Otherwise, the Commission will never have an opportunity to review that evidence, even in the future.

The PO's process for establishing verification of satisfaction of the financing condition is reasonable and proper and will not cause any undue delay. The PO simply requires RI to come

[7] In ComEd's BOE, ComEd suggested further modifications to the financing condition that would make it clear that RI was not to undertake any activities to exercise the CPCN until all of the conditions used to ensure compliance with the criteria for a CPCN have been met. ComEd BOE at 20. Otherwise, even assuming that after-the-fact conditions could satisfy Section 8-406(b), which they cannot, RI would be authorized to exercise power under the CPCN prior to satisfying all of the conditions for certification. ComEd opposes RI's attempt to revise the PO's condition relating to completion of the PJM interconnection process to the extent such revision would allow RI to implement the CPCN prior to meeting all conditions necessary to demonstrate RI's compliance with Section 8-406(b). *See* PO at 112; RI BOE at 22-23.

back before the Commission to submit proof of its compliance with the financing condition. If the Commission does not accept ComEd's exception calling for a denial of a Section 8-406 CPCN based on RI's failure to currently meet the applicable criteria, then the Commission must maintain the process set forth in the PO to ensure that this condition is satisfied.[8]

Moreover, the Staff-proposed financing condition agreed to by RI provided that "Rock Island will not install transmission facilities for the Rock Island Clean Line Project on easement property until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost." RI Ex. 10.13 at 2. That condition already obligates RI to "submit [certain] documents to the Director of the Financial Analysis Division and the Director of the Public Safety & Reliability Division at such time as Rock Island is prepared to begin to install transmission facilities." *Id.* at 3.

RI, however, now asserts that the requirement to file a petition concerning its financial capability is burdensome and unnecessary, and will only result in increased delay of construction of the Project. RI BOE at 26. RI's resistance to coming before the Commission to simply prove that RI did what it said it will do is neither reasonable nor proper. If RI legitimately meets this condition, there is no reasonable basis to expect any problem or unreasonable delay resulting from the requirement that RI file a petition with the Commission to verify compliance. The only situation in which ComEd could foresee a "delay" is if the Commission found that RI did not meet the condition. That possibility does not provide a basis to eliminate this process; rather, it provides a compelling reason to include the process as reasonably developed by the ALJ.

[8] In that situation, the Commission should also adopt the modification of the conditions suggested in ComEd's BOE to ensure that RI will not undertake any activities to exercise the CPCN until all of the conditions used to ensure compliance with the criteria for a CPCN have been met. ComEd BOE at 20.

In sum, RI's attempt to turn this into a question of Staff's abilities to review the financial documentation misses the mark. RI BOE at 28. In the event the Commission decides to grant a CPCN based on application of a financial condition, ensuring compliance with that condition in an open and transparent manner in front of the Commission is reasonable and proper. It is not clear today how RI will comply with this condition, and allowing all parties to have input will aid rather than hinder a Commission determination on whether compliance has been demonstrated.

V. RESPONSE TO INTERVENOR ARGUMENTS

IBEW, WOW, and the Environmental Intervenors echo RI's attempts to attack the PO's well-reasoned and record-based denial of relief under Section 8-503 and Section 8-406(b)(1), as well as the PO's determination to include a verification process for the financing condition. *See generally*, IBEW, WOW, and Environmental Intervenors BOEs. These arguments suffer from the same deficiencies described above for RI, and should similarly be rejected.

Intervenors have brought no new arguments to the table, and offer no compelling reason to depart from the PO's decisions in this regard. Their insistence that the Commission provide a blueprint as to what evidence RI must provide in a future proceeding simply ignores the deficiencies established in the current record. The burdens that RI must meet are spelled out in the statute, and they should be met, by evidence. Given that the main issue is the many unknowns and uncertainties regarding the Project, it is clear that the main demonstration RI must make in any future proceeding is a significant reduction or elimination of the many unknowns and uncertainties surrounding the Project.

For all these reasons, these Intervenor arguments should be rejected.

VI. CONCLUSION

Based on the record and the arguments made herein, Commonwealth Edison Company respectfully requests that the Commission issue a final order consistent with Commonwealth Edison Company's Brief on Exceptions, its separate Exceptions to the Proposed Order, and this Reply Brief on Exceptions.

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Respectfully submitted,

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