

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. :

**VERIFIED APPLICATION FOR REHEARING OF
COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company (“ComEd”), under 220 ILCS 5/10-113(a), 83 Ill. Admin. Code § 200.880, and other applicable law, submits this Verified Application for Rehearing (the “Application”) of the Illinois Commerce Commission’s (“ICC” or “Commission”) final Order (the “Order”) in this proceeding.

I. INTRODUCTION AND SUMMARY

ComEd believes that far too many uncertainties surround the Rock Island Clean Line LLC (“RI”) project (“Project”) for the Order to have determined, on the record as it stands, that RI is an Illinois utility and that the Project can now be certified. However, ComEd is not only concerned about the Order’s compliance with the law, but also that the Order does not fully protect customers and other parties from significant risks and costs of the Project, despite the Commission’s efforts and intent. Accordingly, ComEd renews its legal arguments that the CPCN should not have been granted at this time,¹ but also proposes in the alternative that the

¹ Those arguments include those stated herein and those made in ComEd’s Initial Brief at 14-20, 33-35, Reply Brief at 5-13, 24-27, Brief on Exceptions at 2-12, 18-19, Reply Brief on Exceptions at 15-18, and in the

Commission grant rehearing to consider other means of protecting parties and customers short of rejecting the CPCN. Especially because proceedings in Iowa lag significantly behind Illinois, there is every reason to do so even if the Commission adheres to its views on the basic legal questions.

II. UNCERTAIN FINANCING

Section 8-406(b)(3) of the Public Utilities Act (“PUA”) recognizes the importance of transmission financing to customers and the market. It authorizes the Commission to award a CPCN only upon evidence showing that the applicant “*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). ComEd maintains that this requires the applicant to prove its present capability to finance its proposed project (through at least a commitment) in a manner that will not harm customers of the applicant. Yet, despite its unprecedented \$2 billion plus price tag, it is undisputed that RI lacks any financing to build the Project.²

The Order, however, approves the CPCN based on imposing the condition that, before RI can begin to construct the line, RI submit to Staff a financing plan without significant adverse consequences. ComEd suggests that the Commission grant rehearing to reconsider two aspects of this condition.

First, by only requiring RI to submit its proposed financing to Staff, the Order affords customers and other market participants no opportunity to examine and submit evidence on RI’s proposed financing. Even if a future submission sufficed, the statute at least requires that the Commission find that the project can be financed without “adverse financial consequences for

Rebuttal testimony of ComEd Witness Naumann, Naumann Reb., ComEd Ex. 4.0 REV at 26:506 – 29:568, which ComEd incorporates by reference. See 83 Ill. Admin. Code § 200.880(b).

² Berry, Tr. 1057:12 – 1061:1; ComEd Cross Ex. 2.

the utility or its customers” and it requires that finding to be supported by evidence. 220 ILCS 5/8-406(b). Yet, the Order requires only that RICL submit “a compliance filing, to be ... reviewed by the [Commission’s] Director of the Financial Analysis Division and the Director of Public Safety & Reliability Division.” Order at 154. No proceeding will be held; no evidence will be received; no due process will be afforded to parties; and no Commission finding will be made. On rehearing, the Commission should modify the Order to require RI to file any proposed financing for Commission review in an open docket.

Second, a proposal submitted to Staff does not itself protect customers. In the event of a default or termination, the customers can still be left with a half completed project and an insolvent RI. On rehearing, the Commission should consider not only whether to review future financing, but to also require an enforceable financial guarantee where, as here, the applicant itself has no material financial resources.

III. UNCERTAIN PUBLIC SERVICE AND USE

An Illinois utility must undertake an obligation and commitment to serve the Illinois public, to hold itself out as providing, or at least offering, service to the public generally and to afford “all persons ... an equal right to use the utility [services] ... upon the same terms.” Order at 26 (citing *Palmyra Tel. Co. v. Modesto Tel. Co.*, 336 Ill. 158 (1929); *State Pub. Utils. Comm’n v. Bethany Mut. Tel. Ass’n*, 270 Ill. 183 (1915)). ComEd does not believe that this standard has been met. Not a single entity – whether a generator, marketer, or load-serving entity – has agreed to use the line or become an RI customer and RI has not held itself out as ready to serve all qualified Illinois customers. See *Mississippi River Fuel Corp. v. Illinois Commerce Commission*, 1 Ill. 2d 509 (1953).

Indeed, RI emphasizes that the Project's future is so uncertain that RI will not even commit to try to finance, build, and operate it.³

The Order finds, however, that RI's public-service and public-use obligations are met by reason of its federal Open Access Transmission Tariff ("OATT") obligations and its commitment that, if the line is built, RI will offer to contract for 25 percent of its capacity using an "open season" process. Order at 27-28. ComEd submits that, before making a final determination on RI's public utility status, the Commission also consider requiring RI to make a subsequent filing, after its "open season" process, with evidence showing the degree to which it will be serving Illinois customers and confirming its undertaking to serve all qualified Illinois customers equally and on the same terms. This filing would allow the Commission and the parties to have actual evidence of whether, and to what extent, RI would serve Illinois customers before a final decision was rendered.⁴

IV. UNCERTAIN PROJECT COSTS

Throughout this proceeding RI has claimed that Illinois customers will not pay the Project's costs. Because this fact is critical not just to protect customers, but also underlies RI's economic case, the Order includes a condition stating that RI must seek Commission approval "prior to recovering any Project costs from Illinois retail ratepayers through PJM or MISO

³ 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., 10:193-6 and fn. 8.

⁴ Such a condition should not be burdensome for RI as the Federal Energy Regulatory Commission ("FERC") required RI to make a filing at FERC within 30 days of the open season, which "must include, at the very least, the terms of the open season (including notice of the open season and the method for evaluating bids), the identity of the parties that purchased capacity, and the amount, term, and price of the capacity." *Rock Island Clean Line, LLC*, 139 FERC ¶ 61,142, at P 30 (2012).

regional cost allocation[.]” Order at 120-21.⁵ While ComEd agrees fully with the Commission’s intent, this condition cannot be relied upon to protect customers, for several reasons.

- FERC has exclusive authority over transmission rates under federal law.⁶ It is far from clear that FERC or a federal court would find that Illinois can require an applicant to waive the ability to petition FERC to approve any specific type of transmission rate, or could enforce such a waiver against a FERC finding that it was “just and reasonable” to pass costs on to customers.
- Even if the Commission could void the CPCN if RI (or a successor) made such a request to FERC, it is not clear what effect that “remedy” would have on customers’ rates. By then, the costs would be incurred and the line would be transmitting power in interstate commerce.
- The Order’s condition does not apply to other parties (e.g., generators, shippers) who could ask FERC to modify the rate to shift costs to customers, even if RI never did. Similarly, the Order does not limit the authority of FERC itself, which could *sua sponte* revise RI’s rates, either in a RI-specific or a more broadly based investigation proceeding.⁷ FERC has the power to “determine the just and reasonable rate ... to be thereafter observed” (16 U.S.C § 824e (2012)) in response to such a complaint or upon its own motion, not just a filing by RI.

⁵ The importance of this condition was emphasized during the Commissioners’ discussion of the Order. Transcript of Regular Open Meeting of Nov. 25, 2014, at 9.

⁶ See 16 U.S.C. § 824(b) (2012).

⁷ For example, FERC has initiated such an investigation in *Midwest Independent Transmission System Operator, Inc.*, 139 FERC ¶ 61,127 (2012) (initiating investigation addressing the formula transmission rate protocols of all transmission owning members of Midwest Independent Transmission System Operator, Inc.).

At a minimum, given the critical importance of shielding Illinois customers from Project costs, the viability of this condition as a means of protecting customers – and potential alternatives including financial security – warrants deeper examination on rehearing.

V. CONCLUSION

For the reasons stated and incorporated herein, the Commission should grant rehearing.

Dated: December 26, 2014

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: 

One of its Attorneys

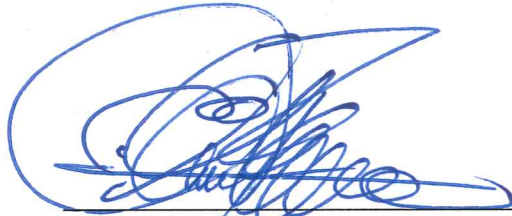
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VERIFICATION

I, E. Glenn Rippie, an attorney for Commonwealth Edison Company, being sworn on oath, hereby state that the facts stated in the foregoing Verified Application for Rehearing of Commonwealth Edison Company are true and accurate to the best of my knowledge, information, and behalf.



E. Glenn Rippie

Subscribed and sworn to
before me this 23rd day
of December, 2014.

My commission expires: May 15, 2017

Jayne L. Frew
Notary Public

