

Nos. 121302, 121304, 121305 & 121308 Consolidated

IN THE
SUPREME COURT OF ILLINOIS

ILLINOIS LANDOWNERS)	On Appeal from the
ALLIANCE, NFP, <i>et al.</i> ,)	Appellate Court of Illinois
)	Third District, Case Nos.
Respondents-Appellees,)	3-15-0099, 3-15-0103 &
)	3-15-0104 (Cons.)
v.)	
)	There Heard on Review of
ILLINOIS COMMERCE)	the Order of the Illinois
COMMISSION, <i>et al.</i> ,)	Commerce Commission,
)	ICC Docket No. 12-0560
Petitioners-Appellants.)	

**RESPONSE OF RESPONDENT-APPELLEE
ILLINOIS LANDOWNERS ALLIANCE, NFP TO MOTION OF
COMMONWEALTH EDISON COMPANY TO DISMISS APPEAL AND
VACATE LEAVE TO APPEAL AS IMPROVIDENTLY GRANTED**

Pursuant to Supreme Court Rule 361(b)(2), Illinois Landowners Alliance, NFP (“ILA”), responds to Commonwealth Edison Company’s Motion to Dismiss Appeal and Vacate Leave to Appeal as Improvidently Granted (“Motion”) as follows:

1. On May 2, 2017, Commonwealth Edison Company (“ComEd”) filed its Motion. ComEd asserts that, due to a recent change in facts which significantly reduces the megawatt (“MW”) capacity of Rock Island Clean Line LLC’s (“Rock Island”) electric transmission line project (“Project”), this Court should dismiss the instant appeal and vacate the leave to appeal as improvidently granted. Motion at 5, ¶10.

2. ComEd points out in the Motion that if Rock Island wants to build a transmission line with a 1,600 MW capacity rather than the 3,500 MW capacity Project it presented to the

Illinois Commerce Commission (“Commission”), the Commission would need to issue a new or amended certificate of public convenience and necessity (“CPCN”). *Id.*

3. Section 8-406(f) of the Public Utilities Act (“PUA”) (220 ILCS 5/8-406(f)) expressly provides for CPCN alterations or modifications but only upon Commission approval (“Such certificates may be altered or modified by the Commission, upon its own motion or upon application by the person or corporation affected”). This express statutory requirement for regulatory approval for CPCN modifications reinforces the conclusion that Rock Island may not legally proceed to build its project as so modified without the Commission issuing a new or amended CPCN.

4. Directly applicable legal precedent further demonstrates an amended CPCN to account for the substantial change in its Project is not available to Rock Island; and instead, Rock Island must apply for a new CPCN. In a recent Order, the Commission considered whether an Illinois public utility that had made an alteration in a transmission line project following issuance of a CPCN was entitled to seek an amendment or must apply for a new CPCN. *Ameren Transmission Co. of Illinois*, ICC Docket No. 14-0522 (ICC 2014).

In that proceeding, the utility was seeking eminent domain authority under PUA §8-509 (220 ILC 5/8-509) for certain land parcels for which the utility needed rights-of-way for its transmission line. The utility had made a deviation in the route for the line, however, to avoid a portion of the route less than one-third mile long crossing certain conservation district land, which was exempt from condemnation under State statute. 70 ILCS 410/1 *et seq.* (Conservation District Act). The deviation involved moving the route approximately two-thirds of a mile south and one-third mile east from the route the Commission had approved when it issued the CPCN.

To put the route deviation into context, the total project for which the Commission issued the CPCN included 375 miles of transmission line, and spanned the State from the Mississippi River near Quincy to the Indiana border. The utility argued that if the Commission believed an amendment to its CPCN was needed, PUA §8-406(f), along with §10-113, provided such amendment authority; and, further, that the record supported the Commission amending the CPCN as part of the instant proceeding. The Commission denied the utility's request for an amendment, stating:

While the Commission has authority to amend or modify its decisions, its 'power to alter or modify certificates under section 8-406 is restricted to alterations and modifications of a minor nature that do not affect the substantial rights of the persons or corporation holding the certificate or the rights of any other person or utility.' *Quantum Pipeline Co. v. ICC*, 304 Ill. App. 3d 310, 318 (Ill. App. Ct. 3d Dist. 1999) (citing *Black Hawk Motor Transit Co. v. ICC*, 76 N.E.2d 478, 486 (1947)).

Ameren Transmission Co. of Illinois, ICC Docket No. 14-0522, at 8 (ICC 2014).

The significant reduction in MW capacity of Rock Island's Project dwarfs the route variation in the *Ameren* proceeding. Consequently, if Rock Island wishes to continue to pursue its Project based on the reduction in capacity, it must apply to the Commission for a new CPCN.

5. The ILA agrees with ComEd that this Court should also allow the Appellate Court's mandate to issue. The Appellate Court decision should not be vacated. The changes in transmission capacity Rock Island made all appear to have been undertaken following the date of the August 2016 Appellate Court opinion. The Appellate Court, therefore, based its opinion on a set of facts that, presumably, was the same set of facts as reflected in the record before the Commission.

Furthermore, the cause of the dismissal will have been Rock Island's doing. Rock Island therefore should not be heard to complain (if it does) about any unfairness of allowing to stand an

adverse appellate court decision for which Rock Island has lost its right to appeal to this Court. See *U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship*, 513 U.S. 18 (1994); see also *Ringsby Truck Lines, Inc. v. W. Conference of Teamsters*, 686 F.2d 720 (9th Cir. 1982). This Court should exercise its powers, including those which Rule 366(a)(5) confers, to order the Appellate Court decision and opinion to stand, and not be vacated.

For the foregoing reasons and the other reasons contained in ComEd's Motion, the ILA agrees with ComEd that this Court should dismiss the consolidated appeals, vacate the leave to appeal as improvidently granted, and allow the Appellate Court's mandate to issue.

Dated: May 8, 2017

Respectfully submitted,

Illinois Landowners Alliance, NFP

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