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 Public Utility and to Construct, Operate and Maintain an Electric Transmission Line and Authorizing and Directing Rock Island Clean Line Pursuant to Section 8-503 of the Public Utilities Act to Construct an Electric Transmission Line.	**)**	**Docket No. 12-0560**

APPLICATION FOR REHEARING OF ILLINOIS LANDOWNERS ALLIANCE

Illinois Landowners Alliance

By its Attorneys
Shay Phillips, Ltd.
456 Fulton St., Ste. 255
Peoria, Illinois 61602
309.494.6155 (p)
309.494.6156 (f)
William M. Shay
wshay@skplawyers.com
Jonathan LA Phillips
jphillips@skplawyers.com

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The Illinois Landowners Alliance ("ILA"), through its attorneys, Shay Phillips, Ltd., pursuant to Section 200.880 of the Rules of Practice, 83 Ill. Admin. Code 200.880, files its Application for Rehearing of the Order entered by the Illinois Commerce Commission ("Commission") on October 22, 2014 ("Order") in this proceeding.

I. INTRODUCTION

The Illinois Landowners Alliance, NFP (the "ILA") is a not-for-profit corporation created by individuals with ownership or other interests in farm ground and other land stretching nearly across the State of Illinois. Membership in the organization totals around 300 individuals, including those directly impacted by the project that Rock Island Clean Line ("Rock Island") proposes to build ("Project" or "Rock Island Project"), those having homes or property near the proposed transmission line, or those in the vicinity of the Project who oppose it. ILA members own or lease over 100,000 acres of land in the vicinity of the Project. The ILA members believe that the Illinois Commerce Commission

("Commission) overlooked many material and relevant factors, and misapplied applicable law, in granting Rock Island public utility status and approving the Project. Several landowner members of ILA offered testimony in this proceeding. Their names, brief biographies and interests in land that would be impacted by the Project appear in ILA's Initial Brief. ILA IB at 2-4. ILA also sponsored the testimony of expert witness Dr. Jeffery Gray, whose background and qualifications also were summarized in ILA's Initial Brief. ILA IB at 5.

II. ISSUES FOR WHICH ILA SEEKS REHEARING

A. The Motions To Dismiss Filed By ILA And IAA Should Have Been Granted

B. Commission Consultation With The Illinois Department of Resources Was Required

C. Rock Island Is Ineligible For A Certificate Of Public Convenience And Necessity ("CPCN") To Transact Business In Illinois

D. Rock Island Has Not Met The Statutory Requirements For, And Should Not Have Been Granted, A CPCN To Transact Business Or Construct The Project

1. Neither Rock Island's Transaction of Business in Illinois Nor The Project Is Not Necessary

2. The Project Is Not Least Cost

3. Rock Island Failed To Show It Is Capable Of Managing And Supervising The Construction Process

4. Rock Island Failed To Show It Is Capable Of Financing The Proposed Construction

5. The Order Improperly Relies Upon The Financing Condition As A Cure For Rock Island's And The Project's Deficiencies

Both the ILA and the Illinois Agricultural Association ("IAA") filed Motions to Dismiss Rock Island's Petition ("Motion to Dismiss") on the basis that, because Rock Island is not a public utility under Illinois law, it is not eligible for the grant of a CPCN under Section 8-406 of the Act. Following responses from Rock Island, ComEd, IBEW and Wind on the Wires, and replies filed by the ILA and IAA, the ALJ issued a Ruling on March 18, 2013, in which he denied the Motions as to Rock Island's request for relief under Section 8-406. The Commission confirmed the denial in the Order. Order at 8.

The ILA takes exception to the denial of its Motion to Dismiss. First, it is clear that Rock Island is not a "Public Utility" under Section 3-105 of the Act.[1] Secondly, in Section 8-406, governing the eligibility for and grant of a CPCN, Subsection 8-406(a) states, "No public utility … shall transact any business …." Similarly, Subsection 8-406(b) states, "No public utility shall begin the construction …." Rock Island has identified no other statutory provision by which it may attain public utility status in Illinois. Under the language of Section 8-406, the Commission may consider requests for a CPCN to conduct business or to

[1] Staff witness Rashid does not believe Rock Island to be a public utility. Tr. at 703:1-5.

construct only if the request is submitted by a public utility. Either or both of Subsections 8-406(a) and (b) could easily have been worded instead to state, "No person shall" or "No entity shall;" but they did not. Given that the Legislature chose the particular words that it did, which have remained intact for many years, rather than one of the above-quoted alternatives, the Legislature can only have intended that initiation of requests under Section 8-406 of the Act are restricted to entities that are public utilities at the time of the request. Rock Island is an entity, but it is not a public utility. As a result, the Commission may not entertain its Petition for a CPCN under Section 8-406.

IV. COMMISSION CONSULTATION WITH THE ILLINOIS DEPARTMENT OF RESOURCES WAS REQUIRED

The ILA takes exception to the Commission's findings that the Commission did not have to consult with the IDNR, and that the ILA should have sought a writ of mandamus in connection with its contention that consultation was required. The ILA sought review both of (1) the ruling of the Administrative Law Judge ("ALJ") issued on March 18, 2013, in which he determined that a ruling on the merits of the ILA's Amended Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources, filed on January 9, 2013, was premature; and (2) the ALJ's ruling issued on December 4, 2013, in which he denied the ILA's Renewed Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources, filed on July 12, 2013. The ILA takes exception to the Commission's concurrence in the December 4 ruling. Order at 222.

The ILA filed its first Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources ("IDNR") on January 7, 2013. The ILA filed an Amended Motion on January 9, 2013. The Motion contended that, because the Commission is being asked to authorize the Rock Island Project[2] and because the Project could result in the destruction or modification of any registered natural area[3], and could affect protected or endangered species,[4] the Illinois Natural Areas Preservation Act and the Illinois Endangered Species Act require that the Commission, as a state agency, directly consult with the IDNR concerning the Project, and that the consultation should occur early in the process. Rock Island and the Staff opposed the Motion. In a ruling issued on March 18, 2013, the ALJ determined that a ruling on the Motion's merits was premature in that it appeared the Staff would be addressing the relevant issues in its discovery in the case, as well as in its direct testimony. The ALJ offered that if the ILA believes that Staff's testimony does not adequately address the concerns raised in the Motion, then the ILA could seek further relief at that time.

The Staff witnesses filed their direct testimony in this proceeding on June 25, 2013. Shortly thereafter, on July 12, 2013, the ILA renewed its request for IDNR consultation by filing its Renewed Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources. In its Renewed Motion, the ILA pointed out that the Staff had not addressed the concerns raised in the earlier Motion, and a determination was needed on the merits of the substantive issues raised. The ALJ issued a ruling on September 17, 2013, in

[2] Illinois Public Utilities Act, 220 ILCS 5/8-503
[3] Illinois Natural Areas Preservation Act, 525 ILCS 30/17
[4] Illinois Endangered Species Act, 520 ILCS 10/11

which he stated that it was not clear whether the ILA was asking the Commission Staff to take the requested action, or the Commission itself other than through the Staff, or whether the ILA was seeking some other relief. In his ruling the ALJ gave the ILA an opportunity to respond.

The ILA timely filed its response on October 1, 2013, styled as Illinois Landowners Alliance Response to Administrative Law Judge's Ruling of September 17, 2013. In its Response, the ILA suggested that the Commission Staff was the appropriate division of the Commission to carry out the Commission's statutory duty to consult with the IDNR, and the ILA further described the process for doing so. In a response filed on October 15, 2013, Rock Island continued to maintain the referenced environmental statutes did not give rise to a duty to consult with the IDNR on the part of the Commission; but that if a consultation by the Commission with the IDNR was to occur, Rock Island had no position on whether the Commission Staff or the Commission itself should conduct it.

In a response also filed on October 15, 2013, the Staff maintained its position that neither Section 8-406 nor Section 8-503 of the Act requires the Commission to consult with any other state agency, including the IDNR, when considering whether to grant a CPCN. The Staff also took the position that the ILA's approach in moving the Commission to consult was the wrong procedural vehicle; that the ILA should have filed a writ of mandamus to attempt to force the Commission to undertake the consultation action the ILA was seeking. The Staff additionally argued, again, that, contrary to the ILA's contention, neither of the

referenced environmental statutes requires the Commission to consult with the IDNR because the Commission was not sufficiently involved with the Rock Island Project to trigger the consultation requirement. The Staff then cited its own role in considering the environmental impacts of the Rock Island Project as another reason that the Commission should have to undertake the consultation that the ILA was seeking. Lastly, the Staff questioned how it could fulfill the role as the ILA had suggested given its authority and responsibilities in a proceeding like this.

Following further replies and responses, and the ILA's motion to strike a portion of the Staff's response to the ILA's response to the September 17 ALJ ruling, and the Staff's response, the ALJ issued a ruling on December 4, 2014. In his ruling, in which he denied the ILA's Renewed Motion to Compel, the ALJ did not rule on the merits of the request for consultation, instead agreeing with the Staff that mandamus is the appropriate procedural vehicle.

In responding to the Staff's contention that mandamus was the proper procedural step, the ILA contended that it should not be forced to file a new action in circuit court for a writ of mandamus. The Commission itself (as distinguished from the Commission trial staff in this proceeding) has not made known its position on whether it should consult with the IDNR in electric transmission line CPCN cases like this one. The ILA was attempting to ask the Commission for such a determination of whether it has such a duty. While the Staff certainly has made known its position, i.e., that no such consultation is required, by its own admission the "Staff does not represent the agency itself in

this proceeding." Staff Response to ILA's Response Filed October 1, 2013 (Oct. 15, 2013), at p. 9.

As the ILA has pointed out, mandamus is a procedure utilized when an official refuses or otherwise fails to carry out a clear duty. ILA acknowledges that whether the Commission has a duty to consult with the IDNR is not admitted but is instead contested, and the issue of whether such duty exists has to the ILA's knowledge never before been addressed. What the ILA was seeking at the relevant point in the proceeding, given that it appears that the issue was brought to the Commission's attention for the first time in this proceeding, was simply whether the Commission (not the Staff) believes it has such a duty to consult. If on the one hand the Commission agrees that it does, then we are left with determining how to have that duty carried out in this proceeding, and what effect the duty may have had on this proceeding at that juncture. If, on the other hand, the Commission disagrees with the ILA and believes it does not have a duty to consult with the IDNR, and communicates that position to the ILA and other parties in the proceeding, then the ILA would have to determine whether it wishes to challenge that determination, and the procedure for such a challenge. But at the stage of the proceeding in which the issue arose, in which the Commission had not made known whether it believes it has the duty to consult that the ILA contends it has, it would have been wholly wasteful, inappropriate, and contrary to existing legal precedent for the ILA to have to initiate a wholly separate legal proceeding, in another tribunal, simply to obtain an answer in the first instance from the Commission. Principles of exhaustion of administrative

remedies and ripeness may well have thwarted a mandamus or other separate legal action without first knowing the Commission's position on the issue, thus leaving the ILA procedurally "between a rock and a hard place."

The ILA's positions, then, were, and remain, that (1) the Commission's process for considering the Rock Island Petition was defective and invalid because the Commission failed to consult with the IDNR, as required by statute; and (2) mandamus was not the appropriate, or likely even permissible, procedure for a determination of the issue of whether the Commission, which even upon issuance of its Order, has not yet made its view known, of whether it has a duty to consult with the INDR as the ILA has contended.

It is noteworthy that Staff did not consult with the IDNR at any point in these proceedings. The Staff relied solely upon representations made by Rock Island. Tr. at 700:20–24. When Rock Island consulted with the IDNR, no one other than Rock Island and IDNR staff was present. Tr. at 396:23–34, 397:1–2. In relying upon the information proffered by Rock Island, an interested party, Rock Island set aside the IDNR's concerns about forest fragmentation. Tr. at 398:3–10. Accordingly, it is evident that the Commission's failure to abide by its statutory obligation to consult with the IDNR, early in the process, was not a mere formality; but, rather, such failure to consult likely had real consequences.[5]

Beyond its position as restated and further explained above, the ILA stands on, adopts, and incorporates by reference, its (i) Amended Motion to

[5] Because the more objective consultation by the Commission with the IDNR did not occur, we have no way of knowing what the results would have been, but we certainly cannot reasonably conclude that the results would have been the same as those resulting from Rock Island's communications and interactions with the IDNR.

Compel the Commission to Consult with the Illinois Department of Natural Resources, filed on January 9, 2013; (ii) Illinois Landowners Alliance Reply to Staff & Rock Island Regarding ILA's Motion to Compel Consultation, filed on January 29, 2013; (iii) Renewed Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources, filed on July 12, 2013; (iv) Illinois Landowners Alliance Reply to Staff & Rock Island Regarding ILA's Renewed Motion to Compel Consultation filed on July 31, 2013; (v) Illinois Landowners Alliance Response to Administrative Law Judge's Ruling of September 17, 2013, filed on October 1, 2013; (vi) Motion to Strike Portions of Staff's Response to ILA's Response to ALJ's Ruling of September 17, 2013, filed on October 16, 2013; and (vii) ILA Response to Staff's Response to Motion to Strike Portions of Staff's Response to ILA's Response to ALJ's Ruling of September 17, 2013, filed on November 5, 2013.

V. ROCK ISLAND IS INELIGIBLE FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ("CPCN") TO TRANSACT BUSINESS IN ILLINOIS

In order to be granted Illinois utility regulatory authority to construct the Project, Rock Island must show that it is entitled to a CPCN to transact business in Illinois pursuant to Public Utilities Act ("PUA") Section 8-406(a), and that the public convenience and necessity require the Project's construction pursuant to PUA Section 8-406(b). These statutory provisions state:

> Sec. 8-406. Certificate of public convenience and necessity.
>
> (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, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, 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.

220 ILCS 5/8-406(a)

> (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. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

220 ILCS 5/8-406(b)

The definition of "public utility" is contained in Section 3-105 of the PUA. This section provides in relevant part, "'Public Utility' means and includes … every … limited liability company … that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for … the … transmission … of … electricity."

Rock Island is not eligible to receive a CPCN to transact public utility business in Illinois. For reasons similar to those for which the ILA's Motion to Dismiss should have been granted, Rock's Island's request for a CPCN should have been rejected, as Rock Island is not an Illinois public utility. Because Rock Island is not a public utility, it is not eligible for, and the Commission lacks statutory authority to grant it, a CPCN under Section 8-406.

VI. ROCK ISLAND HAS NOT MET THE STATUTORY REQUIREMENTS FOR, AND SHOULD NOT HAVE BEEN GRANTED, A CPCN TO TRANSACT BUSINESS OR CONSTRUCT THE PROJECT

A. Neither Rock Island's Transaction Of Business In Illinois Nor The Project Is Necessary

Even if Rock Island is found to be eligible to apply for a CPCN (which ILA disputes), the public convenience and necessity do not require Rock Island to conduct the business it proposes to conduct. The law in this State pertaining to the grant of a CPCN has been long-established. The Commission may issue a CPCN only if it finds that the proposed service is necessary for public convenience and necessity. *New Landing Utility v. Illinois Commerce Comm'n*, 58 Ill.App.3d 868, 374 N.E.2d 6 (2d Dist. 1977). The Commission must specifically find that public convenience and necessity require the proposed service. *Eagle Bus Lines v. Illinois Commerce Comm'n*, 3 Ill.2d 66, 119 N.E.2d 915 (1954). The convenience of and advantages to the promoters of a service are not alone sufficient to justify the grant of a CPCN. *Wabash, C & W Ry. Co. v. Commerce Comm'n ex rel. Jefferson Southwestern R.R. Co.*, 309 Ill. 412, 141 N.E. 212 (1923). Even if here the proposed business would meet the public

convenience and necessity standard if it were to be conducted, the Project is so speculative that it cannot be said to meet the public convenience and necessity standard and does not merit a CPCN.

Rock Island has not met its burden to show that the Project qualifies for a CPCN because neither Rock Island nor PJM has shown that the Project is needed for reliability; and the alleged benefits from the Project being used to transport wind energy from the Resource Area (generally, NW Iowa) to the PJM market region are too speculative to support a CPCN. It is premature for the Commission to consider granting a CPCN to Rock Island because too many risks, unknowns and uncertainties exist surrounding an interconnection with the Commonwealth Edison ("ComEd") facilities at the Collins substation.

The ILA expressed its concern regarding this particular factor. ILA witnesses testified that they understand that reliable electric supply is critical to the State, and to landowners in this State. Tr. 585:16-22. The ILA made it clear that it does not believe Rock Island has shown that this project is needed to supply Illinois with reliable electric power. ILA Ex. 1.0REV at 3:23–25. Staff witness, Mr. Rashid agreed. Tr. at 712:9–11.

The focus of ILA expert witness Dr. Gray's testimony was that Rock Island, and the Project, do not meet the requirements under Section 8-406(b) for a CPCN. With the advent of regional transmission organizations ("RTOs"), including the Midcontinent Independent System Operator, Inc. ("MISO") and PJM Interconnection, L.L.C. ("PJM"), and policies and orders of the Federal Energy Regulatory Commission ("FERC"), the role of transmission-owning public utilities

and state regulatory commissions has changed as those roles pertain to electric transmission planning, markets, and operations. As Dr. Gray testified, MISO has a process for determining the need for high-voltage transmission projects within MISO's multi-state operations; and its process produces an annual MISO Transmission Expansion Plan ("MTEP"). PJM has a similar process for the area of its multi-state operations, producing its Regional Transmission Expansion Plan ("RTEP"). ILA Ex. 7.0 at 3–4:62–71.

Dr. Gray explained in further detail that MISO administers wholesale electricity markets and coordinates transmission planning within a multi-state region that includes most of Illinois. The MTEP process includes a broad array of interested stakeholders that provide input into a comprehensive process that identifies essential transmission projects, which go before the MISO Board of Directors for approval. The objective of this process is to:

1. Ensure the reliability of the transmission system over the planning horizon;

2. Provide market efficiency and other economic benefits;

3. Facilitate public policy objectives, such as renewable portfolio standards ("RPS"); and

4. Address other issues and objectives that the stakeholder process helps identify.

The development of the MTEP includes several steps, with multiple stages of review and refinement as the process proceeds. ILA Ex. 7.0 at 4:72–88.

As Dr. Gray testified, MISO's MTEP process identifies and evaluates transmission projects designed to provide value in excess of cost under many future policy and economic conditions. Such projects, which will provide regional

public policy, economic, and/or reliability benefits spread across MISO's footprint, become designated as Multi Value Projects ("MVPs"). As an example, Dr. Gray described MISO's 2011 MTEP, in which MISO's Board identified 17 high-voltage transmission projects, which became integrated into MISO's subsequent 2012 MTEP planning model. According to the 2012 MTEP, these 17 MVPs promise the delivery of 41,000,000 MWh of renewable energy each year. ILA Ex. 7.0 at 5:89–101, ILA Ex. 7.1 at ll. 81-95.

Dr. Gray further explained that the area where Rock Island expects wind generation to be developed to connect to the Project, the Resource Area, is located in the MISO footprint. The Project would operate as an unusually long lead line connecting such generators to the PJM alternating current transmission system operated by PJM. ILA Ex. 7.1 at ll. 96–102. Consequently, the Project would not contribute to the high voltage transmission expansion of the MISO transmission network. ILA Ex. 7.1 at ll. 102–104. As a result, the range of benefits provided by transmission projects selected as MISO MVPs would not apply to or be provided by the Rock Island Project. ILA Ex. 7.1 at ll. 109–113.

Dr. Gray noted that, even though the Project was not a product of the MISO MTEP process, Rock Island had expected that the Project would be reflected in the MISO MTEP for 2012[6] but that it was not; that a MISO planning appendix had identified it as conceptual. ILA Ex. 7.0 at 5-6:102-109.

[6] Projects such as that proposed by Rock Island that, in contrast to most projects, are not vetted by an RTO such as MISO and not identified as needed by the MTEP process are nevertheless reflected in an MTEP data base so that the Project's impact can be considered as the MTEP process identifies other transmission projects. *See* RI Ex. 2.0, ll. 231–236. *See also* RI Ex. 2.11 (Revised), ll. 843–853 for corresponding treatment by PJM.

This Commission is familiar with the MISO MTEP process, and resulting MVPs, having recently addressed the subject in the context of another major electric transmission project. As evident from its Order[7] in Docket 12-0598, the Ameren Transmission Company of Illinois ("ATXI") Illinois Rivers Project, the Commission determined the ways many of the factors and considerations pertaining to a MISO-undertaken planning process and resulting project feed into and relate to the utility's presentation of the project when it seeks a CPCN. The Commission, and parties, benefitted greatly by the ATXI project having been vetted through a thorough process, with review by highly qualified, technical experts at MISO and elsewhere who understand the regional grid and could consider the project in the context of the overall MISO region. Even though the ATXI project arose out of the MISO MTEP process, this Commission nevertheless rightfully reviewed it from a technical and operational perspective, rather than merely rubber-stamp it because it had been vetted in the MISO MTEP as an MVP. A key point here is that the Commission's review occurred only after MISO had performed its role with respect to the ATXI Project, and not before. This is in contrast to the Rock Island Project, for which Rock Island is urging the Commission to place its trust in MISO, and PJM, to do their jobs prospectively, without any subsequent review by this Commission, and other interested Illinois stakeholders who would not have been as involved in the RTO processes. The Commission must conduct its own review that is sufficient to satisfy itself that Rock Island and its Project meet the statutory requirements

[7] ICC 12-0598, Order (August 20, 2013), *reh'g granted in part & denied in part & appealed*

under PUA Section 8-406; the Commission may not abdicate its statutory responsibility to MISO, to PJM, or to Rock Island.

In contrast to the Rock Island Project, the ATXI Project that became the subject of a request for a CPCN in ICC 12-0598 was developed through a multi-year MISO planning process beginning with a Regional Generation Outlet Study in 2008,[8] the start of a long, detailed analysis of the transmission system that led to the implementation of the ATXI Project along with other MVPs. These MVPs, including ATXI's Project, were developed utilizing reliability and economic analyses applying several future scenarios to determine the robustness of the designed portfolio under different potential energy policies.[9] The Commission found that "a 345 kV transmission line is necessary to address transmission and reliability needs in an efficient and equitable manner and will benefit the development of a competitive electricity market," and that the record (including the testimony of a witness from MISO) "provides no grounds for the Commission

[8] A goal of the study was to develop a transmission plan that would enable MISO states to meet RPS obligations at the lowest delivered wholesale energy cost.

[9] The Order went on to describe other relevant factors in the record. The MVP studies included identification of potential transmission expansions consistent with the region's needs, and that would benefit reliability for Ameren customers; the Illinois MVPs were designed to improve reliability while providing the other MVP portfolio benefits. The Order recited the ways in which the ATXI Project would satisfy the criterion of an efficient and effectively competitive electricity market, helping to ensure deliverability, and avoid curtailment, of existing and planned wind development. Another benefit the Order cited was to provide additional connectivity across the grid, reducing congestion and enabling access to a broader array of resources by loads. The Project would save $12.4 to $40.9 billion in production costs (present valued) to the aggregate MISO footprint, as well as additional benefits from reductions in operating and planning reserve requirements, transmission losses, renewable resource capital costs, and transmission investment deferrals. The Project, when integrated into the transmission system, also would help resolve a number of reliability concerns, including Categories B and C violations of the North American Reliability Corporation ("NERC"), local voltage support in several areas, and reducing exposure to dropping load for certain outage conditions when demand is high. The Order also recited the evidence showing that the Project was the least cost means of satisfying reliability concerns, after alternative designs had been considered. *See* ICC 12-0598, Order (August 20, 2013), at 10-14.

to generally find that the Illinois Rivers Project is not the best approach to meet the needs" involved. The Commission concluded that "the record supports a finding that the type of project represented by the Illinois Rivers Project is necessary and appropriate under Section 8-406.1(f)(1)."[10]

Dr. Gray also described the corresponding structure and processes for PJM. PJM administers wholesale electricity markets and coordinates transmission planning for the PJM region, which, while including the ComEd service territory, mainly encompasses eastern states. The PJM RTEP process is similar to MISO's MTEP process, considering the effects of system trends such as long-term electricity load growth, generator retirements, patterns of generation development, demand response, and energy efficiency. ILA Ex. 7.0 at 6:110–119. PJM has not evaluated, and will not evaluate, through its RTEP process whether the Rock Island Project is needed. ILA Ex. 7.2, at 1, fn 3.

Just as the Rock Island Project was not included in the MISO MTEP, Dr. Gray pointed out that it also was not included in PJM's RTEP for 2012[11], despite Rock Island's expectations that it would be included (even though not a project resulting from the PJM RTEP process); and it was not apparent to Rock Island why it was excluded. ILA Ex. 7.0 at 6–7:120–129. Dr. Gray observed that PJM

[10] PUA Sections 8-406(b)(1) and 8-406.1(f)(1) are substantially similar:
8-406(b)(1): "that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives;"
8-406.1(f)(1): "That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives."

[11] See footnote 6 *supra* for description of inclusion of a non-vetted transmission line project in an RTO plan.

likely declined to include the Rock Island Project in its RTEP, which other industry stakeholders rely upon, because it was at such an early, still conceptual, stage, without any subscribers (customers), which Rock Island readily acknowledges[12]. Indeed, even Rock Island's witness Rudolph Wynter of National Grid (a recent major new investor in Rock Island's parent company[13]) understood and admitted that the Rock Island Project is "at the initial stage of its development." RI Ex. 12.0 at 9:202; *see also* 9:206, 209, Tr. at 372:3–24, and 373:1–3.

The fact that Rock Island has no customers, either presently or any contractually bound or even specifically identified prospects (*See* Tr. at 1061:2–19) caused Dr. Gray to suggest that the Project cannot be judged as satisfying the first prong of PUA Section 8-406(b)(1), which first prong states, "that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers." See ILA Ex. 7.0 at 8:154–162. [14] Rock Island took issue with Dr. Gray's direct testimony on this point, arguing that because the Project was designed as a merchant project, it necessarily is not meant to have customers at this stage. RI Ex. 10.14, ll. 531–572. Dr. Gray, in his rebuttal

[12] Rock Island witness David Berry testified that "none of the Project's capacity has been contracted at this time. No potential customers have obtained any rights to buy service in the future." RI Ex. 10.13 at 5:160–161. Mr. Berry acknowledged that customers remained lacking as of the last day of the hearings in this proceeding, December 13, 2013. See Tr. at 1117:13–24, 1118:1–3 ("There are [n]o such contracts.")

[13] *See, e.g.*, ComEd Cross Ex. 5.

[14] Rock Island witness Januzik's attempts to categorize the Project as one that would improve reliability (*see* RI Ex. 6.0), were discredited by ComEd witness Steve Naumann. *See, e.g.*, ComEd Ex. 1.0, ll. 818–876; ComEd Ex. 4.0, ll. 684–710. On the contrary, Mr. Naumann provided evidence of the Rock Island Project's significant threats to reliability. ComEd Ex. 1.0, ll. 416–595; ComEd Ex. 4.0, ll. 115–354.

testimony, responding to Rock Island's argument by stating that Rock Island's argument highlights a significant weakness in Rock Island's business model, by which Rock Island is circumventing the regional planning processes normally utilized for new interstate electric transmission projects. As Dr. Gray correctly noted, regardless of Rock Island's business model, under which customers and capacity contracts are deferred until sometime later in the Project's development life, the PUA Section 8-406 requirements still apply and must be satisfied in order for a CPCN to be granted. ILA Ex. 7.2, ll. 30–43. Moreover, as Dr. Gray pointed out, the need to be shown is "customer" need, not needs of the public in general. ILA Ex. 7.2, ll. 44–50.

Staff engineering witness Yassir Rashid also testified, in both his direct and his rebuttal testimonies, that the Project is not one that is needed for electric service reliability. Staff Ex. 1.0, ll. 180–184; Staff Ex. 4.0R, ll. 15-61. ComEd witness Steve Naumann, a veteran transmission expert and authority in the electric utility industry, went further beyond stating that the Project is not needed for reliability, and pointing out the many ways the Project could instead harm system reliability. *See* fn 14 *supra*.

Dr. Gray then examined whether Rock Island and the Project satisfied the alternative, second prong of Section 8-406(b)(1), which states, "or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives." He concluded that, as he

understands the intent and meaning of this provision, the Rock Island Project also fails the second prong of the Section 8-406(b)(1) test.

It should be noted at this point that Section 8-406(b)(1) is but one of three threshold requirements that the utility[15] has the burden of proving ("only if the utility demonstrates"); the requirements are not alternatives but instead all must be satisfied, all constituting elements of the public convenience and necessity which the utility project must promote. To explain further, by the use of "or" it is evident that the two standards contained in Section 8-406(b)(1) are alternative standards, such that (b)(1) may be satisfied by a showing of reliability-related need or the promotion of electricity market competition. Once one of those alternative showings has been met, however, the remaining two requirements for a CPCN under Section 8-406 must also be met. The first additional requirement (Section 8-406(b)(2)) pertains to the utility's capability to manage and supervise the construction; and the other requirement (Section 8-406(b)(3)) pertains to the utility's capability to finance the construction without significant adverse financial consequences.

Because Rock Island was unable to meet its burden to demonstrate, under Section 8-406(b)(1), that the Project is necessary "to provide adequate, reliable, and efficient service to its customers,"[16] then it was incumbent upon Rock Island, alternatively, to demonstrate that it's Project meets the second prong of the Section 8-406(b)(1) test, that the proposed construction will promote

[15] Rock Island is not a utility, yet another reason it cannot meet the requirements of Section 8-406.

[16] Another basis for Rock Island's inability to satisfy this first prong of Section 8-406(b)(1) is that it has no customers.

the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives."

In Dr. Gray's view, Rock Island failed to satisfy this second prong requirement for the following reasons:

1. The significant negative land-use impacts and externalities that Rock Island and the Project would impose on the Illinois public for the primary benefit of the eastern PJM states[17] to meet their RPS goals.

2. In the absence of actual subscribers, or customers, Rock Island's assumed traits and characteristics about generators that could potentially connect to the Project cannot be substantiated.

3. Rock Island has reserved the right to seek to switch the project from merchant status[18] and have allocated to Illinois electricity consumers, future transmission costs, of unknown amounts.

4. Rock Island is unwilling adequately to protect the Illinois public from the risks of failure of the Project.

ILA Ex. 7.0, ll. 191–204.

5. Rock Island's modeling of temporary reductions in locational marginal prices does not demonstrate that the Project will promote the development of an effectively competitive electricity market in Illinois.

ILA Ex. 7.2, ll. 127 – 131.

Dr. Gray expanded on each of the foregoing reasons. He referred to the testimonies of the other ILA witnesses as to the first reason, land-use impacts. ILA Ex. 7.0, ll. 205–212.

To expand upon his second reason, he first noted Rock Island witness Berry's use of eight hypothetical wind farms, with assumed locations and

[17] Eastern PJM states are all or parts of Delaware, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. ILA Ex. 7.0, ll. 112–115.

[18] ComEd witness Steve Naumann asserted during the hearings that the presence of this switch to cost allocation factor disqualifies the Project as a merchant project. Tr. at 965:25, 966:1–10.

operating capacity factors; from which he derived hypothetical production data and provided to Rock Island witness Moland to use in his PROMOD simulation results. Rock Island witness Dr. McDermott then took those PROMOD results to develop his economic analysis. Dr. McDermott's analysis may have been sterling, but a well-constructed house built on a foundation of sand will have no value. As Dr. Gray testified, because (i) we do not know the operating or other characteristics of any wind farms that may materialize; and (ii) the FERC refused to grant Rock Island's request to prohibit non-renewable energy generators from connecting to and using the Project, any analysis based on Mr. Berry's hypotheticals lacks validity. ILA Ex. 7.0, ll. 229–238.

As to the third reason above, Dr. Gray noted Rock Island witness (President) Michael Skelly, in his direct testimony, left open the possibility of seeking cost recovery for the Project through the regional cost allocation process. Such a change in the way the Project is financed would result in Project costs being allocated to load-serving entities, such as ComEd, and their customers. As Dr. Gray pointed out, a transmission project designed as a cost recovery or cost allocation project would normally go through the RTO planning process (MISO MTEP or PJM RTEP) and be subjected to a broad group of stakeholders and enhanced scrutiny. A post-development cost-allocation request would lack the discipline, openness and scrutiny it should. ILA Ex. 7.0, ll. 239–259.

The subject of the possible re-classification of the Project to one whereby Rock Island[19] is able to recover Project costs through tariffed rates rather than through negotiated contracts with willing subscribers was the subject of much further testimony during this proceeding, with Rock Island offering to place certain conditions on its ability to seek cost-recovery treatment. Rock Island's final word on the matter was presented through the surrebuttal testimony of Rock Island witness Berry wherein he, speaking for Rock Island, further modified the condition under which Rock Island could re-structure the Project as a cost-recovery project rather than one by which revenues would depend upon voluntary Rock Island - subscriber negotiations.

> Prior to recovering any Project costs from Illinois retail ratepayers through PJM or MISO regional cost allocation, Rock Island will obtain the permission of the Illinois Commerce Commission in a new proceeding initiated by Rock Island. For the purposes of the prior sentence, any system upgrades set forth in an interconnection agreement with PJM or MISO and the costs of which are allocated to Rock Island will be considered "Project costs." For the avoidance of doubt, the phrase "recovering any Project costs from Illinois retail ratepayers through PJM or MISO regional cost allocation" includes the recovery of costs though PJM and MISO transmission service charges that are paid by retail electric suppliers in respect of their electric load served in Illinois. (italics removed)

RI Ex. 10.26, ll. 486–497.

Staff witness Richard Zuraski, who still had concerns in his rebuttal testimony about the possibility of cost allocation treatment for the Project (Staff Ex. 6.0, ll. 116–119), acknowledged during cross-examination that Rock Island was attempting to retain the right, once having been granted the CPCN it is seeking, to come back to the Commission and seek recovery of Project costs from Illinois ratepayers through transmission service charges that would be

[19] Or whatever entity may own the Project at the time.

imposed on Illinois retail electric suppliers. Tr. at 687:7–14. Rock Island's assurance that, if it decides to switch the Project to a rate-recovery model, it would come back to the Commission for permission to have is Project costs imposed on Illinois retail ratepayers through regional cost allocation, may have had some surface appeal but the assurance was superficial. Many unknown factors surrounding such a process remain – "the devil's in the details". Mr. Zuraski acknowledged that certain questions remain unanswered by Mr. Berry, Rock Island's spokesperson on the matter. Mr. Berry failed to indicate, for example, (i) what section of the PUA might govern such a proceeding; (ii) what showing Rock Island would be required to make; (iii) what standard the Commission would apply in making a decision; or (iv) what time period within which the Commission would need to make its decision. Tr. at 687:15–24, 688:1–7. Mr. Zuraski, who has undergraduate and graduate degrees in Economics, stated that he could not think of a reason Rock Island[20] would seek a change to cost allocation unless it was under financial distress, meaning it was not making an adequate rate of return on investment, or possibly was losing money. Tr. at 689:8–14. The Order's handling of this issue *infra* leaves Illinois utility ratepayers short and at significant risk of having a portion of the Project's costs involuntarily imposed upon them.

Dr. Gray additionally expanded upon his fourth reason that the Project failed the second prong test of PUA Section 8-406(b)(1), Rock Island's stated refusal adequately to protect the Illinois public from the risks of failure of the Project. Dr. Gray analogized the Project in this regard to a wind energy project,

[20] Or a successor owner

which typically has a decommissioning plan including an escrow fund or other financial security to help cover decommissioning costs and land reclamation costs in the event the project fails and is no longer used. ILA Ex. 7.0, ll. 275–280. As Rock Island pointed out, it is uncommon for electric transmission line developers to have to post financial security to protect against the possible decommissioning of the project. The Rock Island Project, however, is not comparable to other transmission projects in that, (a) it is not designed to have regulated rate recovery protection, and (b) it will be housed in a single purpose legal entity. In these two important aspects, then this Project more closely resembles a wind energy project as far as risk of abandonment without deconstruction/decommissioning is concerned, and financial security is therefore a reasonable requirement to impose on the Project owner.

Dr. Gray's fifth reason as to why Rock Island has not met its burden under the second prong test of PUA Section 8-406(b)(1) was that the modeling of temporary reductions in locational marginal pricing fails to establish that the Project will promote electricity market competition in Illinois. Dr. Gray noted that many changes have taken place in the Illinois electricity market to enhance competition in the six years since the competition prong of Section 8-406(b)(1) was added. *See* RI Ex. 10.14, ll. 577–578. Dr. Gray pointed out that short-term price reductions do not necessarily have a material impact on the pricing variability that exists in electricity wholesale markets. Rock Island's modeled temporary price reductions do not, in Dr. Gray's view, equate to the transparency, low entry and exit barriers, low transaction costs, low externalities,

and the absence of market power that are characteristic of effectively competitive electricity markets. ILA Ex. 7.2, ll. 112–141.

Additionally, the Building Owners and Managers Association ("BOMA") supported the Rock Island Project only insofar as it "is market-based and does not increase costs to BOMA/Chicago members." BOMA Ex. 1.0 at 3:46–51. BOMA also conditions its support to the extent it increases reliability. *Id.*, ll. 63–65. In fact, a decrease in reliability is a factor mitigating against BOMA's support for the project. Tr. at 550:11–20. With this said, BOMA had no opinion as to the technical aspects of the project. BOMA Ex. 1.0 at 6:129.

B. The Project Is Not Least Cost

Rock Island failed to demonstrate that its Project is the least cost means of achieving the Competition prong objectives under PUA Section 8-406. The Commission may and should take notice in this regard that both ATXI (Docket 14-0514) and MidAmerican Energy Company (Docket 14-0494) have recently filed Petitions for projects in Illinois that are designed to bring into this region more power generated from renewable resources. Additionally, the flaws in Rock Island's routing, as described *infra*, provide an additional basis for demonstrating that the Project is not least cost.

C. Rock Island Failed To Show It Is Capable Of Managing And Supervising The Construction Process

The ILA takes exception to the portion of the Order finding that Rock Island has demonstrated its capability to manage and supervise the construction of the Project. Order at 132-133. The Order acknowledges that "many positions are unfilled," and then accepts Rock Island's explanation as to why. Regardless

of the financial prudence of building and showing to the Commission an adequate staff capable of managing and supervising the construction, the fact remains that Rock Island is not presently capable of doing so. As a result, excuse or no excuse, it has failed to meet the statutory requirement.

The Order also disregards Staff's position on this issue. Staff's position, as evidenced in its prepared testimony and testimony during the hearings, was that based upon Rock Island's complete lack of experience with this kind of project, Rock Island did not demonstrate that it is able to manage the construction of the propose line. Tr. at 703:24, 704:1–4. Staff witness Rashid has never seen a Commission CPCN proceeding for a transmission project involving an applicant that has never built a transmission line. Tr. at 713:8–10.

D. Rock Island Failed To Show It Is Capable Of Financing The Proposed Construction

In addressing this issue in its Order, the Commission began its Conclusion by stating, "One of the requirements in Section 8-406(b) is that the utility demonstrate that it is 'capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.'" Order at 152. The Commission stated it agrees with Staff that the second (underscored) half of the clause may not be ignored. *Id*. One logical result of this finding is that any new entrant, such as Rock Island, that has no customers will automatically satisfy this requirement, in that there are no customers to be harmed. Because such an interpretation leads to an absurd result, it may not be adopted. While the Commission may not have adopted such logic, it does appear that the Commission's position, and conclusion, is that, unless any adverse financial

consequences to customers would occur, then this financing capability requirement will not be found to knock out the petitioner. This interpretation is faulty in that it is illogical and results from a misreading of the statute. The logical, and correct, interpretation is that the utility must show, first, it is capable of financing the proposed construction and, second, that it can do so without harm to customers. It makes no sense to interpret the statutory provision to mean that, even (i) if the utility comes up short it demonstrating its capability of financing the construction, but (ii) that it is not shown that the utility's lack of demonstrated capability will not harm its customers, then (iii) the utility has met its burden and established financial capability.

Here, the record shows clearly that Rock Island has no present capability to finance the Project. It has very aggressive plans to do so, plans which ILA contends are unrealistic. ComEd expert witness Ellen Lapson offered testimony demonstrating that Rock Island is unable to show the requisite financial capability to satisfy its statutory burden. ComEd Ex. 2.0; ComEd Ex. 5.0. ILA witness Paul Marshall indicated that the organization has concerns with Rock Island's financials, and whether or not the line would actually be built. Tr. at 588:21–24, 589:1–2. In fact, the record shows that in Dr. Marshall's experience as a banker and farm manager, a hypothetical company with a similar profile as Rock Island, *i.e.*, approximately one percent equity, one percent or less collateral, no contractually committed source of equity, no contractually committed customers, and no contractually committed revenue stream (Tr. at 597:1–13), would be unlikely to be financed. Tr. at 600:9–13 (break in transcript due to objections).

It became more apparent during the cross-examination of Rock Island witnesses just how precarious Rock Island's financial condition is, both from the standpoint of its own continued survival during the development of the many projects currently in the portfolio of Rock Island's parent Clean Line Energy Partners, and the seemingly insurmountable hurdles Rock Island must clear in order to accomplish the project financing it requires in order to construct its Project.

Clean Line Energy Partners ("Clean Line") has five separate transmission projects in early stages of development, with projected project costs as noted:

1. Plains and Eastern Clean Line – 700 miles, 3 states, $2 billion
2. Rock Island Clean Line - 500 miles, 2 states (incl. Illinois), $2 billion
3. Centennial West Clean Line – 900 miles, 3 states, $2.5 billion
4. Grain Belt Express – 750 miles, 4 states (incl. Illinois), $2 billion
5. Western Spirit Clean Line – 200 miles, 1 state, $350-$400 million

RI Petition; RI Ex. 1.1REV; Tr. at 269:192-196.

As can be seen from the above, Clean Line is facing the daunting task of raising financing not just for the Rock Island Project, but over $8 billion for all of its projects. *See* Tr. at 1107:1–20. At the hearings, certain confidential cross-examination exhibits were introduced showing development expenses incurred by Clean Line to date, and projected additional development expenses through 2015. *See, e.g.*, ILA Group Cross Ex. 1 CONFIDENTIAL. Beyond, the 2015 projected year, as Mr. Skelly testified, Clean Line will need to continue to spend additional monies on development. Tr. at 211:21–24, 212:1–5 ("It's a certainty"). Clean Line's Board of Directors determines how available development capital is allocated among its subsidiaries and projects. TR. at 215:19–24, 216:1–7; ComEd Cross Ex. 10 PUBLIC. Consequently, Rock Island does not control its

own capital sourcing or spending, as those decisions are made at the parent company level; it is fair to say that Rock Island has to compete with other Clean Line project entities for capital.

The record shows that Clean Line has $15 million left in committed development capital, that coming from National Grid. ComEd Cross Ex. 4 PUBLIC; Tr. at 1110:4–17. Based on its capital available both on-hand and committed, at present rates of development spending, Mr. Berry testified at hearing that Clean Line will need to find additional capital during 2014 in order to continue to fund its projects. Tr. at 1111:16–24 ("Based on these projections, and assuming the board allocates capital consistently with these projections, we would need to raise additional capital from our investors or other sources sometime in 2014."). It is clear from the record that Clean Line will be required to continue raising development funding through 2015 and beyond. ILA IB at 32.[21]

Even assuming Clean Line is able to continue to attract needed development capital, Rock Island, the Petitioner in this proceeding, depends on capital allocations from Clean Line's Board of Directors, and competes with the other four Clean Line projects for such capital.[22] It is apparent that Clean Line and its project entities, including Rock Island, are in a significantly precarious financial condition. Based on the facts in the record, as referenced above, not

[21] With the record having been closed for many months, we do not know how successful Rock Island has been in procuring additional development capital, and how precarious its financial situation is.

[22] Mr. Berry stated at the hearings, "Based on these projections, and assuming the board allocates capital consistently with these projections, we would need to raise additional capital from our investors or other sources sometime in 2014." Tr. at 1111:20-24. As the ILA argued in its Initial Brief, "[Consequently,] Rock Island does not control its own capital sourcing or spending, as those decisions are made at the parent company level; it is fair to say that Rock Island has to compete with other Clean Line project entities for capital." ILA IB at 32.

only has Rock Island not shown it is capable of financing its Project, it cannot even be reasonably concluded that Rock Island is capable of financing its continuing development activities before it reaches the construction financing stage. Even the near term financial hurdles to allow Clean Line and Rock Island survive their pre-project financing development phase appear to be daunting.

Mr. Berry explained how Clean Line plans to finance the actual construction of its projects ($8 billion plus) once they reach a financeable stage. *See* Tr. at 1087–1101. He stated that, for the Rock Island Project, in order to obtain binding debt financing (60-80% of total cost; Tr. at 1089:5–12) commitments for the construction, investors would require signed capacity contracts with anchor tenants assuring a revenue stream that Rock Island would pledge to secure repayment. *See* Tr. at 1093:11–21. The capacity contracts would be signed, according to Mr. Berry, before any generators had constructed any generation in the Resource Area. The generator customers of Rock Island, which become the shippers, will be expected to make binding minimum revenue commitments to Rock Island, both before the Project starts construction and before the generating project starts construction, but the revenue commitments would not be contingent on either (transmission line or generating facility) being built. Mr. Berry says that is a risk that the shipper will take. Tr. at 1096:12–24, 1097:1–24, 1098:1–19. In order to finance the Rock Island Project in this manner, Rock Island would need signed capacity commitments, with corresponding revenue assurances, from generators representing about 4,000 MW of capacity. At an estimated cost of $1.5 million/MW, generators in

aggregate would be committing to the development of generation in the Resource Area at a total cost of $6 billion. Tr. at 1098:22–24, 1099:1–24, at 1100:1–24, at 1101:1–3.

The scenario that Mr. Berry described, which was not explained in detail in Rock Island's direct, rebuttal, or surrebuttal testimony, appears to constitute an incredibly risky undertaking for the generator-subscribers. Rock Island's direct case describing this set of extremely large amounts of financings was deficient. Applying the import of Mr. Berry's explanation, the generators will need to find ways to finance their $6 billion of new generation, thereby injecting yet another significant contingency and element of risk. In summary, therefore, Rock Island faces the dual financial challenge of finding sufficient development capital to continue on its quest, and then, assuming it is able to do that, to find financing providers and subscribing generators at levels sufficient to permit the actual construction of the Project. No other conclusion may reasonably be reached but that Rock Island has not satisfied its burden of demonstrating under PUA 8-406(b)(3) that it is capable of financing the proposed construction.

E. The Order Improperly Relies Upon The Financing Condition As A Cure For Rock Island's And The Project's Deficiencies

The record fails to support a finding that Rock Island has satisfied its burden with respect to any of the three statutory requirements imposed by Section 8-406(b) – (i) the so-called "competition prong" in Section 8-406(b)(1); (ii) the management capability requirement in Section 8-406(b)(2); and the financing capability requirement in Section 8-406(b)(3). As the Order describes, the Staff finance witness recommended imposing a financing condition on Rock Island,

which Rock Island accepted, and which begins, “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.” Order at 153. The remaining terms of the financing condition are then recited. The Commission relies on this financing condition to conclude that Rock Island has demonstrated, as required under Section 8-406(b)(3), its capability to finance the Project. Order at 153-154. Reliance on the financing condition, however, is not restricted to the financing capability requirement. The Order also expressly places reliance on the financing condition in order to justify the conclusions that the Project meets the public convenience and necessity standard by satisfying the competition prong of Section 8-406(b)(1) (Order at 119-121), and that Rock Island is capable of managing and supervising the construction under Section 8-406(b)(2) (Order at 132-133). Consequently, by relying on the financing condition to support its findings and conclusions as to three of the central statutory requirements and burdens that Rock Island must satisfy, the Commission has elevated the financing condition to a status, and supporting basis for a grant of a CPCN, certainly beyond what the Staff intended and beyond what is reasonable and appropriate. In effect, the Commission has abdicated a portion of its review and approval duties to presently unknown potential Project financiers.

F. A Risk Exists That The Project Will Be Converted Into One With Regulated Rate Recovery And The Order Does Not Impose Sufficient Control By The Commission

The Order recites another condition to the Commission's approval of the Project, one which it intends to alleviate a major concern Staff witness Zuraski and other parties expressed, i.e., that Rock Island may seek at some future date to convert the Project from merchant status to one by which Rock Island could recover its costs from ratepayers through regulatory approval. This condition, which Rock Island proposed when the issue arose during the proceeding, provides:

> Prior to recovering any Project costs from Illinois retail ratepayers through PJM or MISO regional cost allocation, Rock Island will obtain the permission of the Illinois Commerce Commission in a new proceeding initiated by Rock Island. For the purposes of the prior sentence, any system upgrades set forth in an interconnection agreement with PJM or MISO and the costs of which are allocated to Rock Island will be considered "Project costs." For the avoidance of doubt, the phrase "recovering any Project costs from Illinois retail ratepayers through PJM or MISO regional cost allocation" includes the recovery of costs though PJM and MISO transmission service charges that are paid by retail electric suppliers in respect of their electric load served in Illinois.

Order at 120.

The foregoing condition presumes that Rock Island and this Commission will control triggering and implementing the Project's conversion from merchant to rate recovery status. Such presumption is, as ComEd pointed out, dangerous and uncertain, at least in part due to the interplay of federal and state regulation over cost recovery and allocation. *See* Naumann Reb., ComEd Ex. 4.0REV, 26:503 – 28:554; ComEd IB at 8. Perhaps in recognition of this uncertainty, during the Commissions deliberations in the course of issuing its Order, Chairman Scott announced one of the edits to the Proposed Order: "The edits make clear that if Rock Island is short of funds for the project and goes to FERC

to recover the remainder of the cost of construction from ratepayers, that their certificate is no longer valid and that they will need to come back to the Commission for additional authority on that basis." Tr. at 9:8-14 (Nov. 25, 2014). A removal or retraction of the CPCN is a tool that would appear to protect the Commission (and the Illinois public) in its desire to prevent a re-structuring of the Project from a merchant to a rate-based, cost recovery, project without the Commission's approval. The Chairman's stated edit, however, does not appear to have made its way into the Order. The relevant portion of the Order states:

> Thus, in accordance with this commitment, the Commission finds that prior to recovering any Project costs from Illinois retail ratepayers through PJM or MISO regional cost allocation, Rock Island shall seek and obtain the permission of this Commission in a proceeding initiated or sought by Rock Island. Absent such approval, Rock Island shall not be entitled or permitted to recover any such costs from Illinois retail ratepayers through PJM or MISO regional cost allocation.

Order at 121.

A removal of Rock Island's CPCN, as the stated edit provided, would appear to give the Commission a more powerful tool and greater assuredness that the FERC could not impose regulated cost allocation and recovery over the State of Illinois' objection. As the Project proponent, it should have been incumbent upon Rock Island to provide more information about, and comfort to, the parties and the Commission that the Commission can legally, actually control the conversion of the Project from merchant to rate-regulated.

G. A Risk Exists That The Project Will Be Sold To Another, Unidentified Entity After Regulatory Approvals And Before Financing And Construction

As described *infra*, in ILA's Reply Brief (ILA RB at 6-9), and in ILA's Initial Brief on Exceptions (ILA IBOE at 8-10), Rock Island's stated financing of the Project, in combination with the financing (similarly, on a project financing basis) of the wind energy projects in N.W. Iowa, make it appear unlikely that the Project is financeable via project financing. Under such circumstances, Rock Island's alternative to getting the Project financed would be to sell it to another entity that has sufficient financial resources and capability to finance the Project. If that were to occur, then Rock Island would have turned out to be merely the development entity for the ultimate Project financier and owner, one which the Commission does not know and which it may or may not approve.[23]

VII. ROCK ISLAND'S ROUTING IS BASED ON A FLAWED STUDY AND IS INADEQUATE

In its Initial Brief (ILA IB at 36-50), the ILA describes the flaws in Rock Island's routing study, including the lack of adequate qualifications and experience of the personnel responsible for the study, the study's results, and its implementation; inadequate responses to many expressed landowner concerns over the route; project design; and adverse construction impacts. The ILA reiterates and incorporates by reference its points and arguments in its Initial Brief. ILA's witnesses and its many other members have expressed repeatedly their uniform opposition to the Project, routing and treatment of landowners and their concerns. The Order's granting of a CPCN to Rock Island will permit Rock Island to force its way onto landowner property to "make land surveys and land

[23] One such potential acquirer is National Grid. *See* Cross of Skelly, Tr. at 243:14-24, 244:1-24, 245:1-13 (Dec. 5, 2013); IAA IB at 14.

use studies" (220 ILCS 5/8-510), a significant and unwarranted intrusion upon affected landowners for a project that is so speculative and tenuous.

VIII. CONCLUSION

The ILA does not argue that merchant projects, including electric transmission lines, may never qualify for a CPCN. The ILA only contends that the Rock Island Project does not qualify for, and should not be granted, a CPCN. If Rock Island was (1) an established transmission company with demonstrated experience in designing, routing, developing (including connecting and integrating the project with the larger interconnected, networked transmission grid), project financing, constructing and operating transmission line projects; and (2) the generation facilities to which Rock Island proposes to connect either exist or are under contract to be built; then Rock Island appropriately may be considered for a CPCN to transact business and the Project may appropriately may be considered for a CPCN in order to be constructed.

Rock Island, and its parent, Clean Line Energy Partners, simply do not possess enough attributes to meet the statutory standards under the PUA. Rock Island touted the presence and relationship of National Grid to Rock Island and the Project. National Grid (indirectly through a subsidiary) is an investor, not in Rock Island but in Clean Line, and has no legal or organizational responsibility or role with respect to the Project. National Grid is not seeking a CPCN, and this Commission will have little to no regulatory oversight over National Grid.

The ILA does not take issue with the Commission's apparent desire to adapt to the changing market, including companies desiring to provide what

traditionally have been regulated utility services and functions in a more competitive way. ILA does not contend that electric transmission providers proposing new transmission facilities as merchant projects are inherently antithetical to sound public policy, and possibly the statutory requirements under the PUA. What the ILA does contend, however, is that Rock Island, and this Project, are not in the category of entities and projects for which the Commission may, or should, grant a CPCN. Rock Island, among other shortcomings, has no customers, no contracted-for generation (wind or otherwise) to which its proposed Project would connect, no financial strength, no projects previously developed in this or any other state, no approved plans for interconnecting its Project with the grid (including applicable operating considerations and restrictions), uncertain Project costs, and is lacking the staffing needed to develop the Project. With all of these shortcomings, combined with the absence of a determination by any RTO that the Project is needed, the Commission should not grant Rock Island a CPCN to conduct business or to construct the Project.

The Commission has only that jurisdiction conferred upon it by the legislature – which is indicated by the plain language of the PUA. *Ill.-Ind. Cable Television Ass'n v. Ill. Commerce Comm'n*, 55 Ill 2d. 205, 207 (1973), *citing, Lambdin v. Commerce Comm'n*. 352 Ill. 104, 106 (1933). The Commission cannot extend its jurisdiction because it deems the same to be fair or appropriate, as that is solely up to the legislature to do. *Id.* Rock Island cannot force this Commission to overstep its statutory authority.

This is not a situation in which no harm exists if Rock Island, having been granted a CPCN, does not develop the Project. If Rock Island is ultimately unable or unwilling to proceed to construct the Project, it could have real and deleterious consequences, based on what has recently surfaced in two other public utility transmission project proposals. In two companion proceedings, in Dockets 14-0514 and 14-0494, Ameren Transmission Company of Illinois and MidAmerican Energy Company, respectively, have requested CPCNs for separate but connected transmission lines, with MISO having approved them. Commission Staff witness Greg Rockrohr has expressed his doubts over whether either project is needed in view of the Rock Island Project. Docket 14-0514, Staff Ex. 1.0N at 9:198-10:218 (filed Dec. 15, 2014) ; Docket 14-0494, Staff Ex. 1.0N at 9:191-10:212 (filed Dec. 11, 2014). This development in two other proceedings clearly demonstrate that the Commission should grant CPCNs only to utilities and for projects which are not speculative and which have much more certainty of being completed than Rock Island its proposed Project.

WHEREFORE, for the foregoing reasons, the Illinois Landowners Alliance respectfully requests that the Commission grant its request for rehearing and reverse its grant of a CPCN to Rock Island.

Dated: December 26, 2014

Respectfully submitted,
Illinois Landowners Alliance, NFP
By its Counsel

One of its Attorneys
Shay Phillips, Ltd.
456 Fulton Street, Suite 255
Peoria, IL 61602
309-494-6155
William M. Shay
wmshay@skplawyers.com
Jonathan LA Phillips
jphillips@skplaywers.com.