

**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)	Docket No. 12-0560
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 pursuant to Section 8-503 of)	
The Public Utilities Act to construct an)	
Electric Transmission Line.)	

**ILLINOIS AGRICULTURAL ASSOCIATION’S CONSOLIDATED REPLY BRIEF
ON EXCEPTIONS TO THE ILLINOIS COMMERCE
COMMISSION’S PROPOSED ORDER DATED AUGUST 11, 2014**

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**ILLINOIS AGRICULTURAL ASSOCIATION'S
CONSOLIDATED REPLY BRIEF ON EXCEPTIONS**

NOW COMES the ILLINOIS AGRICULTURAL ASSOCIATION a/k/a the Illinois Farm Bureau (the “Farm Bureau”), by and through its attorneys, Brown, Hay & Stephens, LLP, and as and for its Consolidated Reply Brief on Exceptions, hereby states as follows:

I. THE PROPOSED ORDER IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The Initial Briefs, Reply Briefs, and Briefs on Exceptions contain numerous arguments of the parties related to the failure of Rock Island Clean Line, LLC (“Rock Island”) to meet its burden, and that Rock Island is not entitled to the relief it is requesting in its Verified Petition. In order for the Commission to grant the certificates requested in Rock Island’s Verified Petition, the Final Order must be supported by substantial evidence presented by Rock Island. See *Citizens United for Responsible Energy Development, Inc. v. Illinois Commerce Commission*, 285 Ill. App. 3d 82, 89, 673 N.E.2d 1159, 1165, 220 Ill. Dec. 738 (5th Dist. 1996). Rock Island has not presented substantial evidence that it is entitled to the certificates provided in Sections 8-406 or 8-503.

Among other arguments made in the various briefs, the Farm Bureau encourages the Commission to rely upon the opinions of the Illinois Commerce Commission Staff (“Staff”) propounded throughout the administrative process, including:

The Staff believes that the evidence supports a finding that the Commission would promote an effectively competitive electricity market, but that the preponderance of the evidence in favor of such a finding is not a strong preponderance and is subject to “considerable uncertainty.”

The Staff has opined that the evidentiary record shows that the Project does not satisfy the requirements of Section 8-406(a)-(b). If there is no basis to issue a CPCN, then there is less of a reason to take the extraordinary step of ordering the Project’s construction under Section 8-503. Given all the contingencies, conditions, and government and regulatory approval still needed, RICL is petitioning the Commission for authority that cannot be utilized. The request for an order pursuant to Section 8-503 is premature and should therefore be denied.

(Staff’s Reply Brief, pp. 17-18).

As substantial evidence does not exist substantiating the approval of Rock Island’s Verified Petition, and the Verified Petition is not endorsed by Staff, the Commission should reject the Administrative Law Judge’s (“ALJ”) Proposed Order and deny Rock Island’s Verified Petition.

II. SECTION 8-406 RELIEF IS ALSO PREMATURE

Several of the Briefs on Exceptions on file note the prematurity of the Proposed Order granting Section 8-406 relief to Rock Island. Conversely, Rock Island argues that relief under both Section 8-406 and Section 8-503 is not premature and disagrees with the ALJ’s conclusion that Section 8-503 relief is premature. The Farm Bureau contends that Section 8-406 relief should be denied, but is, at best, premature in the same vein that Section 8-503 relief is premature.

The ALJ concludes in the Proposed Order that Section 8-503 relief is premature, presumably agreeing with the following position of ComEd and Staff:

Section 8-503 relief is premature, in that Rock Island is seeking authority that cannot be utilized given the contingencies, conditions, and regulatory approvals still needed.

(Proposed Order, p. 209)

“Contingencies” would include things such as customer need for the Project, anchor tenant interest, wind farm development in western Iowa, and adequate financing being secured by Rock Island. “Conditions” would include those conditions noted in the Proposed Order, and “regulatory approvals” would include approval from the Iowa Utilities Board and finalization of the interconnection agreements with PJM and/or MISO. The fact that the previously mentioned items have not been completed or otherwise come to fruition apparently caused the ALJ to find that Section 8-503 relief is premature.

An examination of the ALJ’s conclusion related to the prematurity of Section 8-503 makes one wonder how it is possible that the ALJ could come to the opposite conclusion related to Section 8-406 relief. The Proposed Order contains numerous, unprecedented conditions which the ALJ proposes to impose upon Rock Island, apparently after the entry of a Final Order by the Commission, but before Rock Island utilizes and exercises its rights under its certificates. The intervenors in this docket have accurately characterized these contingencies as preconditions to statutory approval. Better put, these conditions are items which must be established by Rock Island as present and satisfactory in order to meet the statutory burden for Section 8-406 relief. To not characterize these conditions as preconditions, such as the financing condition, would force the Commission to invent its own process not detailed in the controlling statute and would be a step outside of its bounds, despite the well-established principle that administrative bodies only have that jurisdiction conferred by the legislature, and may not expand such jurisdiction. Interestingly, the ALJ has concluded in his Proposed Order that these contingencies are

preconditions to a Section 8-503 order, but are post-Commission order business development activities which can be performed by Rock Island at their leisure for the purposes of Section 8-406. The ALJ's conflicting conclusions make little sense and the Commission should find that Section 8-406 relief is premature.

To be clear, Rock Island has no idea if customers want or need the Project, has no idea if generators will ever exist to supply the Project, has no idea if the Iowa Utilities Board will approve its project in Iowa, and it makes no commitment that it will proceed forward with the Project at any time. The role of the Commission is to not play angel investor to a speculative, inexperienced, out-of-state shell business venture, when there is no established need for the Project, the electricity market is sufficiently competitive, Illinois consumers receive reliable and efficient electricity at competitive rates, and there is no guaranty that it will not seek cost allocation. As identified by ComEd witness Steven Naumann, while Rock Island has identified that it “has ‘no current plans’ to request ... the Project to be cost allocated, [Rock Island] does not rule out making such a request in the future if cost allocation rules change in the future.” Direct Testimony of Steven T. Naumann, ComEd Ex. 1.0, p. 37. The Proposed Order seeks to protect against this risk by stating that “[p]rior 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...” (Proposed Order, p. 114), but this condition is arguably outside of the Commission's jurisdiction and ignores the teetering house of cards built by Rock Island with its risky business scheme. With the framework established by the Proposed Order, Rock Island will be permitted to stick Illinois residents with the high costs of its one-of-a-kind speculative venture, despite the merchant transmission, privately funded façade it has presented in this proceeding.

The Farm Bureau is not suggesting that the Commission should stifle entrepreneurship, but it should understand that putting its stamp of approval on a speculative project such as this could set a dangerous precedent and is not in the best interest of Illinois residents. If this Project fails and cost allocation is passed on to Illinois residents, they will have one company and one commission to thank. The Proposed Order is not supported by substantial evidence and should be rejected.

III. FARM BUREAU'S RESPONSE TO ROCK ISLAND'S PROPOSED EXCEPTIONS TO THE SECTION 8-503 PROPOSED ORDER

In its Brief on Exceptions, Rock Island has proposed exceptions that reverse the original ruling of the ALJ on Section 8-503. In short, Rock Island desires a ruling that it has met the statutory criteria of Section 8-503 and that it be directed to construct the Project. As referenced above, the ALJ found this request to be premature.

As noted in the Farm Bureau's Initial Brief, Rock Island is seeking a legal compulsion from the Commission which it is unable to comply with. Rock Island does not have any facilities, financing, adequate management, customers, or supply sources - it cannot comply with its legal compulsion to build the line in Illinois. Rock Island's attempt to acquire a Section 8-503 order is a thinly veiled effort to obtain a better negotiating position for easements with landowners, and it should not be tolerated by the Commission. Rock Island's proposed exceptions are not supported by substantial evidence and should be rejected by the Commission.

IV. THE PROJECT IS NOT NECESSARY AS REQUIRED BY THE FIRST PRONG OF SECTION 8-406.

In its Brief on Exceptions, Rock Island contends that the ALJ erred in ruling that the Project is not necessary under the first prong of Section 8-406(b), which 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...” 220 ILCS 5/8-406(b)(1). (Emphasis added). Importantly, it should be first noted that Rock Island does not have any customers; therefore, the proposed construction is not necessary. Second, the Commission should recognize that Rock Island bears the burden of proof with respect to proving that the Project is necessary, and it has not done so.

The language of the first prong of Section 8-406(b) is very clear that Rock Island must prove that the Project is necessary to provide (a) adequate, (b) reliable, and (c) efficient service to customers. When looking at the language of the statute, it is important to note that the word “and” is used before efficient, and not the word “or.” Statutory language should be read literally on its face, as identified by voluminous case law previously cited in this docket, and as a result, Rock Island should be held to the standard to prove that the Project is required to provide adequate, reliable, and efficient service. As cited by the intervenors in this case, Rock Island has not met its burden.

In addition, the admission of Rock Island’s own witnesses demonstrates that it has not met the first prong of Section 8-406. The Proposed Order provides that Rock Island witness Wayne Galli admitted that the Project was not necessary to provide adequate, reliable, and efficient service. (December 12, 2013 Hearing Transcript, pp. 749-750). In addition, Rock Island witness Karl McDermott stated that the electricity market in Illinois “is competitive,” and that approval of the Project is not required to make the electricity market competitive in Illinois. (December 5, 2013 Hearing Transcript, p. 162). This opinion is also shared by Staff witness Richard Zuraski. (Direct Testimony of Richard J. Zuraski, ICC Staff Exhibit 3.0, p. 5). Further, Rock Island has presented no evidence as to whether Illinois will be adversely affected from a reliability standpoint if the Project is not built.

Finally, as identified in the Farm Bureau’s Initial Brief, Rock Island has admitted it has no idea whether the Project is necessary. Rock Island witness David Berry stated 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.” (Additional Supplemental Direct Testimony of David Berry, Rock Island Exhibit 10.13, p. 4). Rock Island has simply not met its burden for the first prong of Section 8-406(b), and therefore its arguments in its Reply Brief on Exceptions should be disregarded as not supported by the substantial evidence, and the ALJ’s ruling in his Proposed Order in this regard should be upheld.

V. ROCK ISLAND’S ARGUMENT THAT THE PROPOSED ORDER SHOULD NOT REQUIRE ROCK ISLAND TO FILE A PETITION TO DEMONSTRATE THAT IT HAS SATISFIED THE FINANCING CONDITION SHOULD BE REJECTED

The Farm Bureau continues to maintain that Rock Island is a shell company that has not met the financing requirements of Section 8-406(b)(3). In addition, Rock Island’s attempt to prevent interested voices from being heard by removing the petition requirement from the Proposed Order should be rejected by the Commission. As noted by the Staff and other intervenors, the financing requirement is put in place to protect, among others, the proposed customers of the Project. The Proposed Order’s condition simply should not be watered-down, especially given the ALJ’s conclusion that the financing requirement issue is complicated given the many uncertainties associated with the merchant nature of the proposed transmission line project. Rock Island’s proposed exception to remove the petition requirement and outsource the Commission’s oversight of its financing capability to a group of bankers and private investors should be rejected by the Commission.

WHEREFORE, the ILLINOIS AGRICULTURAL ASSOCIATION a/k/a the Illinois Farm Bureau, respectfully requests that the Commission grant the relief requested herein, enter a Final Order consistent with the exceptions detailed in its original Brief on Exceptions, and grant such other and further relief as the Commission deems just and proper.

**ILLINOIS AGRICULTURAL ASSOCIATION
a/k/a the Illinois Farm Bureau**

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