

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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Rock Island Clean Line LLC :
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Petition for an Order granting Rock Island :
Clean Line LLC a Certificate of Public : Docket No. 12-0560
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 :

INITIAL BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

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**INITIAL BRIEF OF THE STAFF
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Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the instant proceeding.

I. Introduction

On October 10, 2012, Rock Island Clean Line LLC ("Rock Island," "RICL" or the "Company") filed a Verified Petition ("Petition") and testimony in support of a Certificate of Public Convenience and Necessity as a Transmission Public Utility and to Construct, Operate and Maintain an Electric Transmission Line and Authorizing and Directing Rock Island Clean Line to Construct a Transmission Line under Sections 8-406 and 8-503 of

the Illinois Public Utilities Act ("Act"). 220 ILCS 5/8-406; 220 ILCS 5/8-503. Petition at 1. Specifically, Rock Island petitioned the Commission for an order: (1) granting Rock Island a certificate of public convenience and necessity ("CPCN") pursuant to Section 8-406 of the Illinois Public Utilities Act ("Act"), 220 ILCS 5/8-406, to operate as a transmission public utility in the state of Illinois (2) granting it a CPCN pursuant to Section 8-406 to construct, operate and maintain an electric transmission line, (3) authorizing and directing Rock Island, pursuant to Section 8-503, 220 ILCS 5/8-503, to construct the electric transmission line, and (4) granting Rock Island certain relief in connection with its operations as a public utility. Petition at 1.

Rock Island seeks to construct, operate and maintain a transmission line ("Project" or "Rock Island Project") which will be a nominal +600 kilovolt ("kV"), high voltage, direct current ("HVDC") transmission line and associated facilities that it states will be capable of delivering 3,500 megawatts ("MW") of power from renewable energy projects located in northwestern Iowa and nearby areas in Nebraska, South Dakota and Minnesota (the "Resource Area") to load and population centers east of the Mississippi River. Petition at 2. According to the Company, the Rock Island Project will originate at a converter station in O'Brien County, Iowa, traverse Iowa, cross the Mississippi River near Princeton, Iowa, enter Illinois south of Cordova, Illinois, traverse Illinois for approximately 121 miles, and interconnect with the extra high voltage (765 kV) transmission system of the PJM Interconnection, LLC ("PJM") at the Collins substation in Grundy County. The HVDC transmission line will terminate at a converter station to be located in Channahon, Illinois, and a single circuit 345 kV alternating current ("AC")

line and a double circuit 345 kV AC line will be constructed from the converter station to the point of interconnection at the Collins substation. Petition at 2-3.

The following parties intervened in the docket: Commonwealth Edison Company ("ComEd"), Locals 51, 9, 145, and 196, International Brotherhood of Electrical Workers, AFL-CIO ("IBEW"), the Illinois Agricultural Association a/k/a Illinois Farm Bureau ("IAA" or "Farm Bureau"), Joseph H. Cantlin, Timothy B. Cantlin, James D. James Dynegy Midwest Generation, LLC and Dynegy Kendall Energy, LLC (collectively, "Dynegy"), James Bedeker, Sally Bedeker and First Midwest Bank Trust #6243, Wind on the Wires ("WOW"), Midwest Generation, LLC, Illinois Landowners ("ILA"), Ameren Transmission Company of Illinois, the Environmental Law & Policy Center ("ELPC"), the Building Owners and Managers Association of Chicago ("BOMA"), Friesland Farms LLC, Larry Gerdes and Steven Gerdes ("Gerdes Parties"), and the Illinois Department of Agriculture ("IDOA").¹

At a status hearing conducted on January 8, 2013, a schedule was set for dates to file motions directed to the Petition, and responses and replies thereto. (Tr., 29.) Additionally, the ILA filed a Motion to Compel Staff to Consult with the Illinois Department of Natural Resources and a Motion for a Public Forum. The ILA and Farm Bureau filed Motions to Dismiss. Those Motions to Dismiss were denied. (ALJ Ruling, Mar. 18, 2013, 3, *see* Sec. II. below.) At a status hearing conducted on March 18, 2013, a full schedule for testimony and the evidentiary hearing was set. (Tr., 74.)

At an evidentiary hearing held on December 5, 6, 11, 12 and 13th, witnesses testified and evidence was admitted into the record. On December 13, 2013, the ALJ entered a briefing schedule. (Tr., 1151.) This Initial Brief follows.

¹ The IDOA withdrew from the docket on August 30, 2013.

II. Review of ALJ Rulings on Motions**A. ILA and IAA Motions to Dismiss (Ruling dated March 18, 2013)****B. ILA Renewed Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources (Ruling Dated December 4, 2013)**

On January 9, 2013, ILA filed its Amended Motion to Compel, asserting that the Commission, as an agency of the State of Illinois, is required to comply with the mandates of the Endangered Species Act and the Natural Areas Preservation Act. (Motion, ¶7) The ILA alleged that the Commission should “officially consult with the Illinois Department of Natural Resources (“IDNR”) immediately” because the RICL’s proposed transmission route proceeds through three areas designated as Illinois Natural Area Inventory Sites. (*Id.*, ¶8; Petition, App. D, 1, 18, 21, 22.) The Illinois Natural Areas Preservation Act does not specify the process of consultation envisioned by the Act, which suggests deference to the agency in manner of implementation. (525 ILCS 30/7.) Neither Sections 8-406 nor 8-503 of the PUA require the Commission to consult with any other State agency when determining whether to grant a certificate of public convenience and necessity, including IDNR.

Nevertheless, in Section 8-406 proceedings, Commission Staff routinely recognize the protection of nature preserves, buffer areas and registered areas to avoid recommending any action that would adversely affect them. In particular, Commission Staff routinely inquires of the utility applicant during discovery regarding whether the utility has completed the Endangered Species Consultation Process with the IDNR as well as required under Chapter 17 of the Illinois Administrative Code 1075, 520 ILCS 10/11 – Illinois Endangered Species Act and 525 ILCS 30/17 – Illinois Natural Areas

Preservation Act, and Staff did ask these questions of RICL in this proceeding. As the ILA noted in its Motion, RICL noted endangered species which may be affected by the construction of its proposed route, as indicated in RICL's direct testimony. (Motion, ¶5) RICL states that it conducted several roundtable meetings with several State and federal agencies, including IDNR, and several nongovernmental organizations with interest in conservation issues, such as The Conservation Foundation, Environmental Law and Policy Center of the Midwest, Sierra Club, Natural Resource Defense Council, Citizens Utility Board, Friends of the Fox, and The Nature Conservancy Illinois Chapter. (RICL Ex. 8.2, 7-9, 15.)

From this representation, it appears to Staff that IDNR has actual notice of RICL's petition. Certainly, the IDNR could have intervened in this proceeding if it wished to under the Commission's broad authority to allow intervention of interested parties. (83 Ill. Adm. Code Section 200.200) The IDNR may also submit any information or evidence into the docket for consideration on the issue. Finally, the enforcement mechanism in the Illinois Natural Areas Preservation act is a writ of mandamus to compel (rather than a Motion to Compel as ILA filed) which is an extraordinary remedy requiring equitable powers. A writ of mandamus is both extraordinary in nature and procedurally premature. First, the Commission is a creature of statute and only possesses those rights which have been granted to it from the General Assembly. Business and Professional People for the Public Interest v. Illinois Commerce Comm'n, 136 Ill. 2d 192, 201, 243 (1990). The Commission does not possess equitable powers. See Final Order at 4, River Bend Industrial Center, LLC v. MidAmerican Energy Company, Docket No. 02-0735 (May 21, 2003) ("[t]his

Commission does not have the equitable powers of the judiciary.”) In a Ruling on March 18, 2013, the ALJ stated that the ILA’s Motion to Compel was procedurally premature. (ALJ Ruling, March 18, 2013, 2.)

The ILA filed a Renewed Motion to Compel (“Renewed Motion”) on July 13, 2013. In its Renewed Motion, ILA argued that the clear, unambiguous language of the statute requires the Commission to consult with IDNR and that a consultation between RICL and IDNR is insufficient pursuant to case law. (Renewed Motion, ¶¶10, 14, *citing* McHenry County Defenders, Inc. v. City of Harvard, 384 Ill.App.3d 265 (2nd Dist. 2008)) The ILA incorrectly interprets the McHenry County case, and other case law does not support its Motion. The law requires the Commission to consult with IDNR when it “authorizes, funds or carries out” the project. Clearly, the Commission is not “funding” or “carrying out” the proposed project, and the Commission is not “authorizing” RICL’s proposed project, according to case law.

In analyzing the term “authorized,” particularly as used in section 17 of the Illinois Natural Areas Preservation Act, the Illinois Appellate Court noted that the language of a statute should be given its plain and ordinary meaning. Pierce Downer’s Heritage Alliance v. Village of Downers Grove, 302 Ill.App.3d 286, 297 (2nd Dist. 1998). The court determined that because of the legislature’s use of the word “planning” in the preface of Section 17, the broad dictionary definition of “authorize” was insufficient. Id. The word “planning” requires that the public agency or municipality had a role in forming the scheme of the program – actively participating in the action with a direct role in: (1) planning, (2) designing, (3) funding, (4) constructing or (5) carrying out the action. Id. The court further determined that “[a] municipality’s role in enforcing its zoning

ordinances or in granting approval to a proposed amendment to a planned development on private property does not rise to this requisite level of active participation.” Id.

In McHenry County, the court concluded that because a city altered its zoning plans in light of a landowner’s petitions, its involvement in preliminary and final plans of the project, and additional negotiations with the landowner prior to approval of his petitions, its actions were sufficient to conclude that the city authorized the project. (McHenry County Defenders Inc., et al., 384 Ill. App. 3d at 275 (2nd Dist. 2008)) First, the city had a “2015 Plan” that was a comprehensive tool for growth, the plan called for the property at issue to remain agricultural. Second, the city’s own engineers and experts hired by it reviewed preliminary mining plans. At a later time, the city’s outside experts reviewed the final plans submitted by the landowner. (Id., 276.) Therefore, the city’s review of preliminary and final plans, negotiations of an annexation agreement under which the landowner was subject to various restrictions, and the rezoning of the property to allow for the operation of the project was substantial evidence to conclude that the city did “authorize” the project. Id. The court stated that this type of participation that influenced the planning of the project at early stages met Pierce Downer’s definition of authorization. (Id., 277.)

The Commission’s review of a petition under Sections 8-406 and 8-503 of the Act do not rise to the level of “authorize” required by both Pierce Downer’s and McHenry County. The Commission has no involvement in the planning, designing, funding, constructing or carrying out RICL’s proposed transmission line. Further, the Commission had no involvement similar to that of the city in McHenry County, where its own staff and experts reviewed plans at various stages of the project and gave

approvals throughout. The Commission clearly does not “authorize” RICL’s project as described in the Endangered Species Act and the Illinois Natural Areas Preservation Act, and thus cannot be compelled to consult with IDNR.

On December 4, 2013, the Administrative Law Judge issued an Order (“December 4th Ruling”) denying ILA’s Renewed Motion. The ALJ agreed with Staff and ruled that ILA’s Renewed Motion was procedurally improper because the structured consultation process policy under the Illinois Endangered Species Act and Illinois Natural Areas Preservation Act are enforceable only by writs of mandamus. (ALJ Ruling, December 4, 2013, 2.) To the extent that the Commission may decide to revisit the issues raised in ILA’s Renewed Motion, Staff maintains its positions set forth above and as more fully detailed in its Responses filed on e-docket in this proceeding on July 26, 2013, October 10, 2013, and October 29, 2013. Accordingly, there is no basis whatsoever for the ALJ or Commission to reconsider the ILA’s argument here for purposes of the Proposed Order, having already rejected ILA’s argument twice.

Finally, Staff points out that ILA did not take an interlocutory appeal from this ruling, or seek reconsideration by the Hearing Examiner during the required time frame. ILA did not make an offer of proof on the matters ruled upon. Nor has it shown good cause for any failure to do so within the 21 days required under Section 520 of the Commission rules, which states in part:

Any ruling by a Hearing Examiner, including rulings of the Chief Hearing Examiner under Sections 200.510 and 200.870, may be reviewed by the Commission, but failure to seek immediate review shall not operate as a waiver of any objection to such ruling. *Unless good cause is shown or unless otherwise ordered by the Hearing Examiner or the Commission*, the party or Staff seeking review of the ruling shall file a petition for interlocutory review within 21 days after the date of the action that is the subject of the petition.

83 Ill. Admin. Code §200.520(a)(emphasis added).

The ALJ has correctly ruled in Staff's favor twice on this issue and should not rule differently in the Proposed Order.

III. Public Utilities Act §8-406(a) – Request for Certificate as a Public Utility

Rock Island essentially concedes in its testimony that no need for the proposed Project has actually been established. Specifically, Rock Island witness Berry states 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." (RICL Ex. 10.13, 3-4 (emphasis added). Under Section 8-406 of the Act, a public utility must demonstrate, among other things, that the project is necessary before it will be granted a CPCN. 220 ILCS 5/8-406. The question has arisen as to whether Rock Island is a public utility to which the Act would apply.

It is well established that no public utility shall begin the construction of any new plant, equipment, property or facility in Illinois unless and until it has obtained from the Commission a certificate that public convenience and necessity require such construction. 220 ILCS 5/8-406; Re: Utilities, Inc., ICC Order, Docket No. 01-0050 (August 8, 2001), at 8. Under Section 3-105 of the Public Utilities Act, 220 ILCS 5/3-105, "Public Utility" means and includes, among other things:

... every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers and appointed by any court whatsoever 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 or in connection with, or owns or controls any franchise, license, or permit or right to engage in: a. the production,

storage, *transmission*, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communication purposes. . .

Id. (emphasis added).

As an initial matter, while Rock Island has not adequately shown that it currently owns, controls, operates or manages any plant, equipment or property to be used in transmission of electricity, it would be illogical to suggest that an entity cannot apply for a certificate to construct public utility facilities and transact public utility business unless it already owns public utility plant, equipment or property. Illinois courts have indicated that a literal reading of a statute will not be followed where it would lead to consequences that the legislature could not have contemplated or intended. In re Marriage of Eltrevoog, 92 Ill. 2d 66, 70 (1982). To restrict entities seeking to engage in utility business in Illinois in such a manner would reach the undesired and absurd result of erecting barriers of entry from participation in the industry or imposing requirements on existing public utilities in Illinois from which non-certificated entities would effectively be exempt. Therefore, a more logical assessment of the provision is that the Commission may assess whether a petitioner's proposal would meet the CPCN criteria of the statute if and when approved. Such provides the Commission with the flexibility of assessing an application and any public need for particular projects on a case by case basis.

The next inquiry is the issue of whether the Company has shown that the plant, equipment or property at issue is for public use. Courts have interpreted Section 3-105 to require that all persons must have an equal right to use the utility, and it must be in common and upon the same terms. Palmyra Tel. Co. v. Modesto Tel. Co., (336 Ill. 158

(1929). Whether a given business is a public utility depends upon the public character of the business or service rendered which makes its regulation a matter of public consequence and concern because it affects the whole community. Illinois Highway Transp. Co. v. Hantel, 323 Ill. App. 364 (1944). In interpreting Section 3-105, the courts have been clear that the service must be made available to all persons on the same terms and conditions, not confined to privileged persons, such as one group or type of customer as is the case here. A “public utility” implies a public use of an article, product, or service, carrying with it the duty of the producer or manufacturer, or one attempting to furnish the service, “to serve the public and treat all persons alike, without discrimination. . .” Highland Dairy Farms Co. v. Helvetia Milk Condensing Co., 308 Ill. 294, 300, (1923). The term “public utility” as used historically, implied a public use carrying with it the duty to serve the public “and treat all persons alike, and it precluded the idea of service which was private in its nature and was not to be obtained by the public.” See Springfield Gas & Electric Co. v. City of Springfield, 126 N.E. 739 (1920), aff’d, 257 U.S. 66 (assessing PUA of 1913, Section 10, since repealed and now replaced with Section 3-105).

To constitute a “public use,” under Section 3-105, “all persons must have an equal right to use the utility, and it must be in common, upon the same terms, however few the number who avail themselves of it. Palmyra Tel. Co. v. Modesto Tel. Co., (336 Ill. 158 (1929); State Public Utilities Commission v. Bethany Mut. Tel. Ass’n, 270 Ill. 183 (1915). The courts have been very clear on this point. In order that the property owned by a person should be affected by a public use, “all persons must have an equal right to the service, and it is the right of public use rather than the extent to which an

instrumentality is in effective use that determines whether or not it is a public utility. South Suburban Motor Coach Co. v. Levin, 269 Ill. App. 323 (1933). While it is not essential to a public use that its benefits should be received by the whole public, or within a large part of it, they must not be confined to specified privileged persons, but must be extended to all persons in common upon the same terms, it being immaterial how few avail themselves of the rights so extended. State Public Utilities Commission ex rel. Macon County Telephone Co. v. Bethany Mut. Telephone Ass'n, 110 N.E. 334 (1915).

Petitioner asserts that its proposed project is for public use. Petition at 4. The petition and the facts themselves, however, are far from clear on this point. Rock Island states that it will use an anchor tenant model to sell up to 75% of the transmission capacity on the project with capacity not secured by anchor tenants being sold to customers through an “open season” process or processes that would constitute at least 25% of capacity. Petition at 10-11. Petitioner admits that its “target customer base” for transmission services will be comprised primarily of wind energy producers and purchasers of electricity generated from renewable resources. Petition at 11. Specifically, Petitioner “expects that its customers will consist principally of (i) wind energy producers located [in states west of Illinois (primarily in Iowa)], and (ii) buyers of electricity – particularly buyers seeking to purchase electricity generated from renewable resources – located at the eastern end of the Rock Island Project.”² Petition at 10.

² According to Rock Island, it is only indirectly that customers and users of the project will be retail consumers of electricity in Illinois and other parts of PJM and the Midwest (now Midcontinent) Independent Transmission System Operator, Inc. Petition at 10.

In this capacity, Rock Island would be acting as a provider of open access transmission services. The Federal Energy Regulatory Commission ("FERC"), is the federal regulator of, among other things, the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce.³ FERC requires that the transmission provider offer and provide transmission service to all eligible customers on a non-discriminatory basis. Rock Island Clean Line LLC, Order Conditionally Authorizing Proposal and Granting Waivers in Part, issued on May 22, 2012, 139 FERC ¶ 61,142, at P 16 (2012) (*hereinafter*, "FERC Order"). This means that Rock Island would not be allowed to give a preference to wind generators, but would be required to offer its service to all customers in a non-discriminatory manner subject to a regional transmission organization ("RTO") open access transmission tariff ("OATT"). The requirement of non-discriminatory open access could arguably overcome the public use hurdle since all customers would have an equal right to use the utility on the same terms, as required for public use under Section 3-105 of the Act.

In the FERC Order, FERC conditionally approved negotiated rates for Rock Island. FERC further explained that pursuant to their OATTs, federally-defined public utilities have an obligation to expand their transmission capacity upon request at cost-based rates and that the cost of public utility capacity expansion provides downward pressure on the negotiated rates that Rock Island will charge. (*Id.*, P 17.) Regarding capacity expansion, Rock Island's position was clear. It said, ". . .it would be unable to resize the Project were the solicitation process to reveal market interest in excess of its planned transmission capacity. . .". (*Id.*, P 22.) Because of Rock Island's status as a merchant transmission provider, rather than a public utility under the FPA, FERC did not

³ Federal Power Act, 16 USCS § 824(a).

rule definitively on this question of capacity expansion. Rather, FERC said that if Rock Island's open season results in oversubscription, it would "require that Rock Island in its open season report justify in greater detail its reasons for not expanding the Project and for allocating capacity among open season participants." (FERC Order, P 33.) Thus, even though FERC directed Rock Island to file, upon completion of the Project, a rate schedule for service under the OATT for the RTO to which it transfers operational control (FERC Order, Ordering P (C)), it was not necessarily required to expand its service capacity to accommodate all eligible customers.

In its Final Policy Statement on the allocation of capacity on new merchant transmission projects, however, FERC clarified its policies and said that it reaffirmed that "all merchant transmission developers and non-incumbent cost-based, participant-funded transmission projects become public utilities at the time their projects are energized. . . .Public utility transmission providers are subject to the Commission's OATT transmission requirements, including the obligation to expand their transmission systems, if necessary, to provide transmission service." Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects, Priority Rights to New Participant-Funded Transmission, 142 FERC ¶ 61,038, P 22 (2013). It is unclear whether this FERC policy statement would trump the specific findings of the FERC Order addressing the Rock Island project at issue. If so, it would arguably alleviate "public use" concerns. Petitioner did not, however, provide any evidence of an intention to, willingness or capability to expand its capacity if it should become oversubscribed. (FERC Order, P 22.) There is no evidence in this proceeding that Rock Island would be able and willing to do so now.

As stated above, to constitute a “public use,” under Section 3-105, “all persons must have an equal right to use the utility, and it must be in common, upon the same terms, however few the number who avail themselves of it.” In this proceeding, three-fourths of the capacity of the proposed project is intended to be pre-subscribed for private contracts to a limited number of pre-selected customers. Only twenty five percent is assured of being available through open auction. While FERC indicates in a policy statement that merchant transmission projects will be considered public utilities required to file an OATT, the Company has not provided any evidence here that it would be willing and able to expand the capacity of the project at issue to provide service to eligible customers if and when it becomes oversubscribed. Indeed, as stated above, when the Petitioner was before FERC seeking negotiated rate authority for the same project, it explained that it would not be able to expand the project’s capacity, stating “it is not financially or practically feasible to materially increase the size of this Project.” (FERC Order, P 22.)⁴ Petitioner has not provided any evidence here that that assessment has changed.

Further, while Rock Island states that it is not seeking authority pursuant to Section 8-509 of the Act, 220 ILCS 5/8-503, to acquire land and land rights through eminent domain, should this Commission find Rock Island to be a public utility, it is entirely possible that Rock Island could seek such authority going forward. Indeed, while the Company said that it would not pursue that option unless it is unsuccessful in obtaining all land and rights-of-way needed after making reasonable efforts to acquire

⁴ Rock Island asserted that it would be unable to resize the Project were the solicitation process to reveal market interest in excess of its planned transmission capacity because it would result in delays and additional costs. It said that resizing the Project would require it to resubmit its interconnection request with PJM as well as incur new engineering costs, modify the Project’s converter stations, and conduct new studies. (FERC Order, P 22.)

the land rights through negotiations and voluntary transactions, it did not rule out that option. (RICL Ex. 1.0, 5.) The Commission might well find it difficult to reconcile condemnation authority for a private merchant project built to serve particularly targeted out-of-state customers through private contracts with Section 3-105 of the Act.

Staff has concerns with any finding that Rock Island would be an Illinois “public utility,” entitled to rights inherent in that status, including the right, when authorized following proper application to the Commission, to be granted by the Commission the right to exercise the power of eminent domain. Without having clearly shown that it is offering its facilities for “public use,” Rock Island should not be granted a status that would permit it to pursue approvals for the taking of private property. The Commission should consider with care the grant of a potential right of infringement on private property rights to an entity which would be doing so primarily for its own admittedly private purposes and not for “public use.”

IV. Public Utilities Act §8-406(b) – Request for Certificate for the Rock Island Project

A. Statutory Prerequisites for Public Convenience and Necessity

Section 8-406(b) of the PUA states:

(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)(emphasis added).

This section of Staff's brief focuses solely on the first numbered condition expressed in Section 8-406(b). Specifically, for a proposed construction project to "promote the public convenience and necessity," the first numbered condition of Section 8-406(b) requires:

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.

The use and placement of the word "or" in this provision implies that, to obtain Commission approval, the proponents of a proposed construction project must demonstrate that the project *either*:

- (A) 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
- (B) 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.

RICL claims that its construction project satisfies both of these requirements,

(A) and (B), rather than merely one or the other. The testimony most relevant to each of the two requirements shall be reviewed separately, discussing overlaps where appropriate. First, however, the Commission should consider how to interpret these requirements, beginning with the concept of “necessity.”

Illinois courts have established that “necessity” as used in the PUA does not necessarily mean “indispensably requisite,” but rather that the service proposed to be provided should be “needful and useful to the public.” See, e.g., Eagle Bus Lines, Inc. v. ICC, 3 Ill. 2d 66, 78, (1954); Gernand v. ICC, 286 Ill. App. 3d 934, 945, (4th Dist. 1977); King v. ICC, 39 Ill. App. 3d 648, 653, (4th Dist. 1976) (where a service is needful and useful to the public, it is necessary). Further, Illinois courts have held that the relevant convenience and necessity is that of the public and not of any individual or number of individuals. See, e.g., Illinois Hwy. Transp. Co. v. ICC, 404 Ill. 610, 619, (1950); Gulf Transp. Co. v. ICC, 402 Ill. 11, 18, (1949); Lakehead Pipeline Co. v. ICC, 296 Ill. App. 3d 942, 954, (3d Dist. 1998). The “necessity” standard was further explained by the Supreme Court in Wabash, Chester & Western R.R. Co. v. ICC:

When the statute requires a certificate of public convenience and necessity as a prerequisite to the construction or extension of any public utility, the word “necessity” is not used in its lexicographical sense of “indispensably required.” If it were, no certificate of public convenience and necessity could ever be granted . . . [A]ny improvement which is highly important to the public convenience and desirable for the public welfare may be regarded as necessary. If it is of sufficient importance to warrant the expense of making it, it is a public necessity A strong or urgent reason why a thing should be done creates a necessity for doing it. * * * The word connotes different degrees of necessity. It sometimes means indispensable; at others, needful, requisite or conducive. It is relative rather than absolute. No definition can be given that would fit all statutes. . . . The Commerce Commission has a right to, and should, look to the future as well as to the present situation. Public utilities are expected to provide for the public necessities not only today but to anticipate for all future developments reasonably to be foreseen. The necessity to be provided for is not only the existing urgent need but the need to be expected in the future, so far as it may be anticipated from the

development of the community, the growth of industry, the increase in wealth and population and all the elements to be expected in the progress of a community.

Wabash, Chester & Western R.R. Co. v. ICC, 309 Ill. 412, 418-19, (1923).

Thus, Illinois courts have held that what constitutes public convenience and necessity is within the Commission's discretion to determine in each case, thereby permitting consideration of a broad range of factors as applicable to the particular case. Commonwealth Edison Co. v. ICC, 295 Ill. App. 3d 311, 317, (2d Dist. 1998); New Landing Util., Inc. v. ICC, 58 Ill. App. 3d 868, 871, (2d Dist. 1977). In considering "necessity" under Section 8-406, Staff believes that the Commission should consider whether the public utility has demonstrated that: (1) the benefits of the Project are 'needful and useful to the public;' (2) the benefits outweigh the costs; and (3) the Project will not prevent the attainment of a greater net benefit through an alternative project or some combination of alternative projects. Staff believes that while it cannot be said that RICL has demonstrated that the proposed Project is "indispensably requisite," and, in fact, acknowledged that there is no actual need for it at this time (Rock Island Ex. 10.13, 3-4), whether the Project is "needful and useful" to a degree sufficient to justify the granting of a certificate of public convenience and necessity should be ascertained, among other things, by comparing the Project's benefits to its costs.

1. **Necessary to provide adequate, reliable, efficient service and is the least cost means of satisfying the service needs of its customers or will promote 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**⁵

Whether the Project is necessary to provide adequate reliable, efficient service.

Staff witness Yassir Rashid examined whether RICL's construction of the proposed project is necessary to provide adequate, reliable, and efficient service to Illinois ratepayer and concluded that the proposed project is not needed to provide electric service adequacy, efficiency, or reliability. (Staff Ex. 1.0, 8.) RICL does not argue or demonstrate that the reliability of the electric transmission system in Illinois will be compromised if the proposed project is not built. Id. Furthermore, RICL has not provided an independent study, such as load flow study, from transmission system operators in Illinois, namely PJM Interconnection ("PJM") or Midcontinent Independent System Operator ("MISO"), that would demonstrate the need for the project. Indeed, Petitioner admits in its testimony that no public need has been established for its proposed project. Specifically, Rock Island witness Berry states 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." (Rock Island Ex. 10.13, 3-4 (emphasis added).)

As such, Staff believes that Rock Island has not demonstrated that the Project is

⁵ The agreed upon outline inadvertently omitted certain key elements of the Section 8-406 requirements. 220 ILCS 5/8-406(b). Staff includes those here.

the “necessary to provide adequate reliable, and efficient service” test based on any tendency of the RICL to maintain or improve the reliability of the electric system in Illinois. Staff also examined whether RICL demonstrated that the project is necessary within the meaning of Section 8-406(b)(1) in some other way. See 220 ILCS 5/8-406(b)(1).

In his direct testimony, Mr. Rashid noted that RICL did not provide information on whether it considered or examined alternatives to the proposed project to ensure that the proposed project met the least-cost criterion defined in Section 8-406 of the Act. (Staff Ex. 1.0, 9.) To address Mr. Rashid’s point, in his rebuttal testimony, Mr. Galli presented a “hypothetical exercise” that compares a transmission line project similar to the RICL proposed project to different projects that utilize AC transmission lines. (RICL Ex. 2.11, 3 – 4.) Mr. Galli’s conclusion of that exercise was that it showed “the clear cost benefit of an HVDC project to an AC project.” (*Id.*, 7.) That hypothetical exercise, however, did not factor in the increased cost of interconnecting to HVDC transmission lines as opposed to AC transmission lines and the implications of that increased cost given that the proposed project is supposed to offer open access transmission services. Therefore, it is unclear from an engineering standpoint whether the proposal at issue is the least cost means of satisfying a service need as required by Section 8-406(b)(1) of the Act. 220 ILCS 5/8-406(b)(1).

Mr. Rashid took issue with the potential difficulty that Illinois generator and loads along the DC portion of the transmission line will face both to access and to making sound and economic use of the proposed project. (Staff Ex. 1.0, 7-8.) Mr. Galli stated that RICL plans to “provide open access transmission service” to the proposed project.

(RICL Ex. 2.0, 5.) In addition, RICL witness David Berry stated, “Rock Island will be obligated to provide non-discriminatory, open access transmission service to all “eligible customers...” (RICL Ex. 10.13, 4.) Although RICL plans to provide open access to the transmission line, this offer is only feasible outside the HVDC portion of the transmission line. Theoretically, interconnection with high voltage alternating current (“HVAC”) generators or other transmission lines along the HVDC portion of the project is attainable; however, it requires installation of AC-to-DC and/or DC-to-AC converters at each location where interconnection with the HVDC transmission line is sought. The addition of these converters will increase the interconnection cost significantly, making such an endeavor impractical and economically infeasible. This economic disadvantage will likely hinder Illinois electricity producers’ and electricity users’ ability to access the HVDC transmission line.

RICL’s proposed project is best suited to serve energy producers who access the HVDC transmission line at the west end of the transmission line (in O’Brien County, Iowa) and deliver their energy production to consumption centers at the east end of the HVDC transmission line (PJM Interconnection). (Staff Ex. 1.0, 7-8.) In that sense, for optimal use of the proposed project, it should be seen as analogous to a one-way highway with no entry or exit ramps that starts in northwestern Iowa and ends in northeastern Illinois. Id. As such, while an economic analysis might well indicate that the RICL is likely to promote the development of an effectively competitive electric market that operates efficiently, is equitable to all customers, and is the least cost means of accomplishing these goals, the manner in which the RICL is technically configured would impose costs on Illinois electric producers – the installation of AC/DC

and/or DC/AC converters at each location at which they wish to interconnect - that would likely to render use of the facility economically infeasible and thus inequitable to such Illinois producers in practical terms. To the extent that such technical impediments to interconnection remain a feature of the project, it cannot be conclusively determined that RICL is likely to promote the development of an effectively competitive electric market that operates efficiently, is equitable to all customers, and is the least cost means of accomplishing these goals.

RICL witness David Barry indicated that RICL's latest Project cost estimate is \$1.833 billion. (RICL Ex 10.26, 37.) Mr. Barry indicated that, "[of] this estimate, the cost of the Illinois converter station, including reactive equipment, is estimated at \$284.7 million; the AC facilities from the eastern converter station to the Collins Substation are estimated at \$13.5 million; the cost of Illinois line construction is estimated at \$265.5 million; and the cost of Illinois land acquisition is estimated at \$28.3 million. Therefore, the total cost estimate for the Illinois portion of the Project (excluding system upgrades to be owned by other parties) is \$592.0 million." Id. As discussed above, the Company has not shown whether this is the least-cost means of satisfying a service need.

Staff witness Zuraski testified that, to the extent to which the growing demand for renewable energy (cited by RICL) is based on Illinois renewable portfolio standards, that demand "is bounded and generally incapable of justifying, by itself, new transmission resources such as the RICL Project." (Staff Ex. 3.0, 7-11.) This is because: (1) the Illinois RPS includes budget constraints; (2) physical delivery of energy to Illinois is not a requirement of the Illinois RPS; and (3) the location of renewable energy resources within a state adjoining Illinois (like Iowa) is not required. Id. On the other hand, Mr.

Zuraski noted that the project may be justified on the basis of an economic analysis comparing the Project's benefits and costs. Id.

Mr. Zuraski noted that the testimony presented by RICL witnesses focuses only on benefits, and fails to compare those benefits to the costs of the Project. (Id., 11.) Furthermore, RICL included several "benefits" that Mr. Zuraski said he would exclude from an economic analysis of the benefits and costs of the project. Specifically, he recommended against taking into account RICL's claims that project will increase employment, revenues of manufacturing and service enterprises, landowners' wealth, and tax revenues at the State and local levels. (Id., 13-16.)

RICL witness Loomis responded to Staff witness Zuraski's testimony that an economic analysis of the benefits and costs of the Rock Island Project should exclude impacts of increased employment; revenues of manufacturing and service enterprises; landowner wealth and tax revenues at the State and local levels (which were the economic impacts estimated in Dr. Loomis' study). Included in his response, Dr. Loomis stated:

The purpose of my economic impact analysis is to estimate the incremental employment, income, and total economic benefits that the Project will bring to the State of Illinois. This type of study is intended to show the incremental economic activity that will be generated by building and operating a project - in this case, the Rock Island transmission line and the associated wind farms that will be constructed to connect to the transmission line. It is my understanding that the estimated increased economic activity in Illinois due to the Project, was not intended to be directly added to the benefits of the Project in terms of reduced electricity costs that are estimated by Rock Island witnesses Gary Moland and Karl McDermott or added to the other benefits listed on lines 221-238 of Mr. Zuraski's testimony. Rather, the economic impact analysis that I performed is a separate but complementary analysis to the other benefits of the Project described by other Rock Island witnesses.

(RICL Ex. 5.3, 2.)

Notwithstanding the exclusion of the effects estimated by Dr. Loomis, Staff

witness Zuraski testified that, based on his evaluation, he expects that the Project's benefits would outweigh its costs. (Staff Ex. 3.0, 5.) He further expects that the additional costs of RICL-dependent wind farms in the Resource Area would not significantly exceed the maximum allowable budget for incremental renewable resource expenditures by utilities and ARES in Illinois. Id. Both of these factors favor a finding that the benefits of the Project are "needful and useful to the public," and that they are likely to be at least commensurate with the costs of the Project. On the other hand, Mr. Zuraski testified that his analysis is subject to considerable uncertainty. Id.

In formulating his opinions, Mr. Zuraski employed a sensitivity analysis to determine how sensitive his overall results were to various individual factors, such as Project capital costs, the cost of renewable energy facilities, future market prices for electric energy, and the capacity factor of wind farms. (Id., 16-46.) While other inputs were held constant, some of these variables are still subject to uncertainty.

For example, Mr. Zuraski assumed the continuation of the \$22 per MWH federal production tax credit ("which, based on NYMEX settlement prices as of May 31, 2013, is roughly two-thirds of the average price of PJM Northern Illinois Hub futures contracts for the 12 month delivery period from June 2013 through May 2014"). However, Congress permitted these tax credits to expire on December 31, 2013. If these tax credits are not renewed, it could significantly affect the financial viability of new wind farms, and thus the viability of the Project.

Furthermore, for purposes of conducting his analysis, Mr. Zuraski assumed that the Project would be utilized to its full extent, thus enabling Project costs to be spread out over a large volume of capacity and energy sales. However, this assumption may

not be borne out; as ILA witness Gray and ComEd witness Naumann indicated (see above), there are no guarantees that the Project will be fully subscribed or that PJM will permit power injections nearing the Project's full capacity.

It is also noteworthy that Mr. Zuraski's analysis relied on Project cost estimates provided by RICL. (Id.; Staff Ex. 3.1) He addressed neither the concerns of additional upgrade costs raised by ComEd witness Naumann nor the cost implications of the various concerns raised by witnesses for the land owner interests, relating to the impact of the Project on land values, wildlife, quality of life, historically-significant lands, and the legacies left behind by the affected land owners.

In rebuttal testimony, RICL witness Berry agreed with Staff witness Zuraski's observation that RICL had presented certain claimed benefits of the Project, but had failed to compare those benefits to the cost of building, operating and financing the Project. (RICL Ex. 10.14, 47-48.) Mr. Berry defended RICL approach, stating:

Rock Island is not asking electric consumers (or their retail electric providers) to pay for the cost of the Project and, as I explain above, Rock Island's business model requires that the users of the Project's capacity recover the cost of their capacity contracts from the proceeds from selling wholesale energy (along with capacity and RECs). Thus, the costs actually incurred by consumers related to the Project (buying wholesale electricity, capacity and RECs) are analyzed and discussed by Dr. McDermott.

(Id., 48.)

Dr. McDermott echoed the above argument and compared his approach to that of Staff witness Zuraski:

[T]he costs associated with the Project are paid through market- based rates not through a regulated cost of service approach. A revenue requirements analysis, like Mr. Zuraski's, is appropriate for a cost of service project that a traditional utility builds. It may not be relevant to a merchant transmission line like the Rock Island Project.

(RICL Ex. 4.2, 9-10.) Dr. McDermott also stated:

[W]hile this may be an obvious point, it bears stating that a market-based transmission line must be the least-cost approach or the line will not obtain sufficient contracts to justify building it. If, for example, shippers could reach their desired markets using an alternative lower-cost resource they will not sign contracts.

(Id., 10.)

In effect, these RICL witnesses argue that the Commission need not concern itself with the cost or the viability of RICL's Project because RICL is a "merchant transmission company" and not a traditional public utility. However, the Commission is not authorized to grant certificates of public convenience and necessity to anyone with an idea for a transmission project, on the off chance that the project *might* succeed. Such an interpretation of Section 8-406(b) would render the section meaningless and the protections that it is intended to provide to the public superfluous.

Furthermore, there are real concerns that ratepayers may ultimately bear the Project costs. As Mr. Zuraski testified:

First, I do indeed understand that the stated intent of RICL is that "the costs associated with the Project are paid through market-based rates not through a regulated cost of service approach." I do not question that this is RICL's intent, hope, and expectation. However, even the best-laid plans can go awry. In such an instance, RICL might very well beseech the FERC, the Commission, and/or Illinois and Iowa state legislatures to help get the Project back on track. Such assistance could end up costing ratepayers more than what it would cost if all projects were based solely on the interaction of entrepreneurs vying against one another in a "competitive market."

Second, RICL is more likely to seek such non-market assistance if it finds that it is unable to cover its costs (which in regulatory parlance, we usually call "revenue requirements"). This is why I relied on a revenue requirement model in my analysis. An axiom in competitive market analysis is that, in the long run, firms break even (i.e., they cover their costs, including a normal rate of return). I fear that this point was not made clear in my direct testimony, but I will make it now: I am not suggesting that RICL's services should or will be priced using a set of revenue requirement calculations. Rather, I was using those calculations in a sensitivity analysis to judge the likelihood that the Project would fail to succeed with market-based rates, and hence the likelihood that RICL would seek a different means of cost-recovery.

...

I agree that the Project must *appear* to RICL's potential customers (to the extent they are profit-seeking enterprises) to be part of profit-maximizing business plans, in order for RICL to obtain commitments from those potential customers. However, what RICL considers "sufficient contracts to justify building" the Project depends on the risk-taking appetite of RICL's managers and investors and RICL's hopes and expectations for obtaining a bailout if plan A goes awry.

(Staff Ex. 6.0, 2-4)(citation omitted.)

In other words, the viability of the Project and the viability of the renewable resources that RICL expects to use the transmission resource are inextricably linked; and all the costs and all the benefits of these inter-related endeavors should be considered as fully as possible in order to determine whether the Project is sufficiently needful and useful. Mr. Naumann made a similar point, when he stated:

While these costs will not be faced by the Rock Island Project, the costs to interconnect to the Project, together with the cost of construction of the wind resources, plus the cost Rock Island will charge the wind resources for use of its line, all impact a decision as to whether connection to the Project is economic, and thus impacts the economics of the Project.

(ComEd Ex. 4.0, 32.) Mr. Naumann also described how the cost of wind farms interconnecting to RICL could be 10 times what Mr. Berry cited as the cost of connecting Illinois wind farms to the existing PJM grid. Id.

Mr. Rashid testified that RICL had failed to establish that Project is needed to maintain the reliability of the electric systems in Illinois. (Staff Ex. 1.0, 3, 8.) He also testified that it was not clear whether the proposed project, which RICL estimates will cost \$2 billion overall, is the least-cost project that would further the cause that RICL identifies for implementing the proposed project. (Id., 9.) Mr. Rashid suggested that one such alternative would be an AC transmission line of equal load capacity as RICL's proposed DC line. Id. While it is certainly related to the broader question of whether or

not the Project is the least cost alternative, Staff addresses the AC/DC issue other issues raised by Mr. Rashid in more depth elsewhere in this brief (see Section IV.B, "Route of the Project / Land Acquisition"; and Section IV.C, "Design and Construction of the Project").

The parties in this case have differed in their assessment of the need for the Project. Those positions are described in more detail below.

RICL Position

In its Petition and initial testimony, RICL argued as follows:

(1) RICL cited a large demand for electricity supplied by renewable resources, not just in Illinois, but elsewhere in the PJM region, driven by federal and state governmental policies which favor the production of electricity using renewable resources and discourage the production of electricity using fossil fuels. RICL argued that its project helps meet that demand by tapping into particularly rich wind resources that will remain under-exploited without a project like RICL's. RICL refers to this wind-rich area as "the Resource Area." RICL claimed that wind generators in the Resource Area can produce electricity at lower costs than regions, like Illinois, with less energetic wind resources. However, RICL argued, wind farm developers will not construct wind generation facilities in the Resource Area (or elsewhere) without reasonable assurances and expectations that transmission infrastructure will be in place on a timely basis to bring the output of the wind generation facilities to market. (See Petition at 2, 7-8; RICL Ex. 1.0, 4-6, 23-25; RICL Ex. 10.0, 3-24.)

(2) RICL also argued that wind farm development expected to occur in combination with the Project will result in a reduction in locational marginal prices and electric energy costs within Illinois (and elsewhere). RICL quantified these benefits.

Without quantification, RICL also argued that the wind farm development expected to occur in combination with the Project will result in a reduction in renewable energy credit prices. (See Petition at 9, 12; RICL Ex. 1.0, 7; RICL Ex. 3.0, 9-11; RICL Ex. 3.3; RICL Ex. 4.0; RICL Ex. 10.0, 9-10.)

(3) RICL further argued that integrating wind turbines in the Resource Area with other wind turbines that are interconnected to the transmission grid within Illinois will reduce the overall variability of wind generation and provide a more stable supply of power. (See Petition at 7, 20; RICL Ex. 1.0, 6, 27; RICL Ex. 10.0, 25-29.)

(4) RICL argued that, due to improvements in technology and market competition, electricity from wind has become one of the lowest cost sources of new generation. (See Petition at 7; RICL Ex. 1.0, 5; RICL Ex. 10.0, 24-25.)

(5) RICL argued that the Project will strengthen the transmission grid between the Resource Area and Illinois. (See Petition at 8; RICL Ex. 1.0, 6.)

(6) RICL noted that Illinois law currently provides a preference for cost-effective wind resources located within Illinois or adjacent states in the selection of resources to meet the statutory renewable portfolio standard ("RPS") requirements. RICL argued that the Project will significantly increase the availability of such resources to the Illinois market. (See Petition at 8; RICL Ex. 1.0, 7; RICL Ex. 4.0, 15-16; RICL Ex. 10.0, 15-16.)

(7) RICL argued that construction of the Rock Island Project and the generation resources that will connect to it will increase import transfer capability into Illinois, reduce loss of load expectation, and increase the reliability of electric service in Illinois. (See Petition at 9; RICL Ex. 1.0, 7; RICL Ex. 6.0.)

(8) RICL argued that its planned use of HVDC technology is a more efficient and lower-cost option than AC facilities for transporting large amounts of electricity over long distances, such as from the Resource Area to Illinois. (See Petition at 9, 21; RICL Ex. 1.0, 7; RICL Ex. 2.0, 20-24.)

(9) RICL argued that the added generation of electricity from wind farms would displace substantial amounts of other generation and therefore result in substantial environmental benefits for Illinois and the broader region. These environmental benefits would include significant reductions in emissions of carbon dioxide, nitrogen oxide, sulfur dioxide and mercury, and a substantial reduction in the quantities of water that otherwise would have been used by the displaced generation. (See Petition at 9, 23; RICL Ex. 1.0, 7; RICL Ex. 3.0, 9-10; RICL Ex. 3.4.)

(10) Finally, RICL argued that construction, operation and maintenance of the Rock Island Project and the wind generation facilities that will be connected to it will produce significant ancillary economic benefits to Illinois, including hundreds of construction jobs; orders and revenue for manufacturers and service companies providing materials, components and services for the construction and operation of the transmission line and of the wind farms that will connect to it; payments to landowners; and tax revenues for the State and for local governments. (See Petition at 10; RICL Ex. 1.0, 32-33; RICL Ex. 5.0, RICL Ex. 5.2.)

IBEW Position

IBEW witness Bates expressed his support for the Project. He generally summarized and concurred with each item in RICL's list of Project benefits. Mr. Bates agreed that the Project would strengthen the transmission grid and provide reliable electric service, would provide access for additional high quality wind generation

resources to Illinois markets, and would create jobs and support economic development, adding that these would be "good quality jobs." (IBEW Ex. 1.0, 4.) He also agreed that the Project would be beneficial to the overall economy of Illinois, noting that some components of the Project would be manufactured in Illinois, along with some components of the renewable energy facilities purportedly made possible by the Project. Mr. Bates further agreed that the Project would assist utilities and power suppliers in meeting the Illinois Renewable Portfolio Standards; increase import capability into Illinois; lower electricity prices; and improve reliability of service for Illinois. (IBEW Ex. 1.0, 5-6.)

WOW Position

WOW witness Goggin supported RICL's description of the relative quality and quantity of wind resources in the Resource Area versus Illinois. After summarizing wind resource data for both areas, he testified that, "If anything these assessments are likely to be conservative..." which presumably applies to both the Resource Area and Illinois. (WOW Ex. 1.0, 2-3.) Nevertheless, the thrust of his testimony is that the remaining wind resources in the Resource Area are both better and more plentiful than the remaining wind resources within Illinois. (Id., 4-6.) He testified that transmission is essential, both for allowing wind resources to be developed and for protecting already-developed wind resources against output curtailment. (Id., 10.) He testified it is common for transmission development to precede wind development. He testified the Resource Area possesses wind resources that are many times greater than its electricity demand, so making use of these wind energy resources requires transmission to move that energy to load centers to the east. (Id., 11-12.)

Mr. Goggin noted the results of RICL witness Moland's analysis, with which Mr.

Moland estimated that the Project would reduce market energy prices and induce energy cost savings. Mr. Goggin cited other studies purporting to show wind energy's contribution to lowering energy prices, but he was not involved in producing any of these studies. Mr. Goggin also testified that both wind and transmission resources protect consumers against volatility in the price of other fuels used to produce electricity. He also testified that, by encouraging wind resource development in the Resource Area, the Project would result in lower RPS compliance costs for both Illinois utilities and Alternative Retail Electric Suppliers ("ARES"). (Id., 12-20.)

BOMA Position

BOMA witness Cornicelli offered conditional support for the Project: "to the extent the project is market-based and does not increase costs to BOMA/Chicago members and other similarly situated end-use customers in Illinois." (BOMA Ex. 1.0, 3.) He clarified that "it seems just and reasonable to provide support to a project that is self-funding and not trying to make our buildings pay up front and under all circumstances, as well as a project that enhances competitive options." (Id., 5.) On the other hand, "if the Rock Island transmission line project suddenly changes their direction and proposes using traditional cost allocation methods, then BOMA/Chicago would not be providing its support." Id. Finally, Mr. Cornicelli stated that he had conducted no independent studies to verify the impacts of the Project and that BOMA "has no opinion on the technical aspects of this project." (Id., 6.)

Land Owner Interests Position

The estimated costs of the Project, presented by RICL, include an allowance for purchasing land and easements, for alleviating adverse land impacts (such as soil compaction), and for compensating land owners for remaining damages. However, the

ILA and the Bedeker Parties presented testimony calling into question the sufficiency of that cost allowance and the effectiveness of RICL's proposed efforts to address adverse land impacts. Some witnesses even took the position that no level of payment could ever sufficiently compensate them for the expected devaluation of their land. This testimony relates to the costs of the Project, both in objective dollar terms and in more subjective terms. Therefore, even though the common brief outline contains a separate section, IV.C.2, for "Landowner Concerns about Impacts of Construction of the Project," Staff discusses these concerns here in Section IV.A.1, first.

Potential damage to farmland, disruption to farming operations, and devaluation of property

Much of the testimony of the land owner interests focused on the Project's disruption of farm operations and the devaluation of farm property. For instance, ILA witness testified that the type of heavy construction equipment used to erect transmission lines can damage drainage tile and cause deep soil compaction, both of which can have long-lasting negative effects on drainage and crop yield. These effects decrease the value of farm property. (ILA Ex. 1.0, 1-15.) ILA witnesses Jacobs and Rosengren, who also have extensive farming experience, testified about the negative impact of the Project on soil compaction and drainage, as well. (See generally, ILA Ex. 2.0; ILA Ex. 3.0.)

Mr. Jacobs also expressed concern that the Project would place in jeopardy payments from an existing lease to the USDA, which is tied to his participation in good standing in a land conservation program managed by both the Farm Service Agency and the Natural Resource Conservation Service. (ILA Ex. 2.0, 5-6.) Mr. Jacobs also expressed concern that the Project would place in jeopardy his continued ability to raise

non-genetically-modified crops, which receive premium prices. (Id., 2-5.)

Mr. Rosengren expressed concern that the Project would place in jeopardy payments from Pioneer Seed Company for Mr. Rosengren's production of parent seed. (ILA Ex. 3.0, 4-7.)

Some of these witnesses also expressed deeply personal concerns of the Project's impact. For instance, ILA witness Marshall stated:

I'm the 4th generation owner of the land that this project wishes to cross. It's very distressing to think that I will not be allowed to pass this farm to my children in the condition as when I inherited it.

(ILA Ex. 1.0, 4.)

Bedeker Parties witness Bedeker stated:

[M]y wife and I maintain a home on the property. It goes without saying that the construction activities and installation of a line so close to my home will severely impact my use and enjoyment of the home as well as my property values as a whole. The impact would be such that it would render my property valueless.

(Bedeker Ex. 1, 3.)

Responding to concerns expressed by various landowner witnesses, RICL witness Detweiler testified that RICL has taken many steps in the routing process to identify a route that has the least overall impact to communities, government, and private property owners as it traverses the State of Illinois. "Additionally, Rock Island has executed an Agricultural Impact Mitigation Agreement ("AIMA") with the Illinois Department of Agriculture ("IDOA") (Rock Island Exhibit 7.28) which meets the IDOA's requirements to minimize and mitigate impacts of the Project on agricultural activities." (RICL Ex. 7.30, 4.)

Mr. Detweiler testified that RICL can and will take measures to avoid or minimize soil compaction during the construction process. (Id., 5.) He also cited specific

provisions of the AIMA relating to the restoration of land that has been left compacted or rutted due following construction. Id. He also testified that RICL will compensate landowners for damage to property and crops to the extent caused by construction activities and maintenance activities for the Project. For instance, with respect to the landowner concerns that damage due to soil compaction may continue indefinitely, he indicated that RICL is proposing compensation based on 90% of the fair market value of the area, plus a structure payment, as well as for actual crop damages resulting from the construction and maintenance of the Project for the life of the easement. Id.

RICL witness Adam also explained the steps that RICL could take to minimize the impact of Project construction on soil compaction and damage to drain tiles. (RICL Ex. 9.2, 2-7.) He also explained how RICL could control erosion. (Id., 7-8.)

RICL witness Koch also responded to concerns expressed by the ILA and the Bedeker Parties about the impact of the Project on farmland and farming operations. For instance, he testified that the Project would not interfere with ILA witness Rosengren's seed corn operations. "Nevertheless, ... if Mr. Rosengren's operation will be impacted by the placement of these structures or construction of the Project in general, Rock Island will compensate him for the impacts." (RICL Ex. 8.3, 26-27.)

Mr. Koch also testified that it is possible that Project construction could temporarily limit Mr. Bedeker's use of his irrigation system if construction occurs during the irrigation season. "However, if crop production were to be impacted by temporary or permanent impacts to Mr. Bedeker's center pivot irrigation system, Rock Island would compensate Mr. Bedeker per the requirements of the AIMA (Rock Island Exhibit 7.28, Section 6)." (RICL Ex. 8.3, 29.)

With respect to Mr. Bedeker's assertion that the use and enjoyment of his home will be impacted by the installation of power lines so close to his home, Mr. Koch pointed out that the house is currently located approximately 320 feet from an existing 765 kV transmission line, while the preferred route of RICL's proposed transmission line (planned to be less than 700 kV) would come no closer than 3,800 feet. RICL witness Detweiler added that "there is no basis" for Mr. Bedeker's claim that the Project "would render my property valueless." (RICL Ex. 7.30, 36-37, quoting from Bedeker DT, 3.)

Potential interference with aerial application of farm chemicals

ILA witness Nelson, a licensed pilot and the owner of a crop dusting company, testified that the Project, by placing transmission lines across farmland, would pose a serious threat to crop dusting operations. (ILA Ex. 4.0, 6.) Herbicides, fungicides, fertilizer, and insecticides that are now applied aerially, would have to be applied, if at all, through less effective, more costly, and/or soil-damaging methods. (*Id.*, 5.) Thus, the Project would not only impose financial losses on his own crop dusting business, it would also impose costs on those farmers who would no longer have the option of using crop dusting services. (*Id.*, 6-8.)

With respect to aerial application of chemicals, Mr. Detweiler claimed that, in developing the preferred and alternative routes, the routing criteria were designed "to minimize impacts to aerial application in several ways." (RICL Ex. 7.30, 10-11.) Mr. Detweiler also claimed that electric transmission and distribution lines are common in the Project region and throughout agricultural areas in Illinois and elsewhere, and aerial applicators regularly work in the vicinity of transmission lines. "Based on our research into the extent of difficulties transmission lines may present for aerial applicators, in general, Rock Island does not believe there will be any reduction in the ability of aerial

applicators to treat crops outside of the easement area of the Project, with the potential exception of the internal corner of 90 degree turns.” (Id., 11-12.) Mr. Detweiler specifically responded to the concerns expressed by Mr. Nelson – the pilot who testified for the ILA – about losing a significant amount of aerial spraying business in the vicinity of the Project. For instance, Mr. Detweiler testified that in Grundy County, where Mr. Nelson’s business is based, there are already many high voltage (345 kV and 765 kV) transmission lines, and yet these existing lines have not ended aerial application on the impacted fields. Mr. Detweiler estimated that only about 0.2% of Grundy County acreage used for corn and soybean production would potentially be limited or unavailable for aerial application, due to the Project. (Id., 11-16.)

*Potential damage to existing wetlands, forests, historical sites,
and other conservation areas*

Various ILA witnesses expressed concern about the impact of the Project on wildlife. For instance, ILA witness Jacobs cited not only nesting bald eagles, but also a family of otters and migrating Indiana Bats that could be affected by the Project. (ILA Ex. 2.0, 9-10.) He noted that the Natural Resources Conservation Service asked him and other landowners to avoid the clearing of trees “due to them serving as a habitat for these endangered species.” Id. ILA witness Cole testified about the Project’s negative impact on a parcel of “very sensitive” and “pristine” woods, and on the wildlife within those woods, including wild turkey populations. (ILA Ex. 6.0, 2-3.) ILA witness Simpson testified to seeing bald eagles on that same parcel of land. (ILA Ex. 5.0, 5.)

RICL witness Koch addressed concerns raised by landowner interests about the Project’s potential to damage existing wetlands, forests, historical sites, and other conservation areas. Mr. Koch indicated that the route development process identified

potential wetland areas crossed by the Preferred Route and the Proposed Alternative Route, and that RICL will avoid adverse impacts to wetlands to the extent possible and employ measures to minimize impacts where those impacts are unavoidable. (RICL Ex. 8.3.) He testified that RICL will comply with Section 404 of the Clean Water Act, relevant regulations, and associated permit terms and conditions, and that RICL will apply for any permits required by the U.S. Army Corps of Engineers ("USACE"), the Illinois Department of Natural Resources ("IDNR"), and the Illinois Environmental Protection Agency ("IEPA") for jurisdictional wetlands. (Id., 3-4.) Mr. Koch claims that the Preferred Route crosses no historical sites, but does cross seven archaeological sites as identified by the Illinois Historic Preservation Agency ("IHPA"). (Id., 3.) He testifies that RICL plans to span these sites (i.e., it will not place transmission structures at these sites). Furthermore, he claims RICL will continue to coordinate with IHPA regarding the identified sites that are in proximity to the approved route of the Project and perform cultural resource surveys to determine the presence of any previously unrecorded archaeological sites and/or historical properties that may be required. If a Section 404 permit is required from the USACE, Mr. Koch claims that IHPA will also review the Project for potential impacts to cultural resources as required under Section 106 of the National Historic Preservation Act ("NHPA"). Mr. Koch testified that forests and conservation areas were also identified as Sensitivities that were *considered* during the route determination process. (Id., 2-4, 16.) He claimed that, in determining the Preferred Route and the Proposed Alternative Route, RICL sought to minimize impacts to these features while also balancing its efforts to minimize impacts to other Sensitivities. According to Mr. Koch, of the 117.2 miles of land that the Preferred Route

crosses in Illinois, 4.5 miles is forested. (Id., 4, 16.) No witnesses responded to the portion of Mr. Koch's rebuttal testimony summarized above.

ILA Position

Finally, ILA witness Gray explicitly addressed the requirements of Section 8-406(b)(1). Dr. Gray testified that RICL has failed to demonstrate a need for the Project, apparently because the Project has not been identified as needed or beneficial for regional public policy, economic, and/or reliability reasons, through either the MISO Transmission Expansion Plan ("MTEP") process or the PJM Regional Transmission Expansion Plan ("RTEP") process. (Id., 3-7.). He noted that the MISO Board of Directors has already approved 17 high-voltage transmission projects in the 2011 MTEP, which are now integrated into MISO's future-year 2012 MTEP planning models, and, according to MISO, will reliably facilitate the delivery of 41 million MWh of renewable energy annually. (Id., 5.)

Dr. Gray acknowledged that "RICL might be able to demonstrate need if it could show that the Project is adequately subscribed," but "[u]ntil then, the demand, or need, for the Project is speculative." (Id., 7.) "However, because the Project has no customers, RICL appears to be requesting a different sequence, whereby the Commission issues a CPCN first, and then RICL attempts to demonstrate customer demand, or need, for the Project." (Id., 8.)

Countering RICL's claims that "[i]t is necessary that the transmission facilities be in place, or at least substantially into development (including the government approval processes), so that it is apparent to developers of and investors in wind generation facilities that the necessary transmission capacity is likely to become a reality" (Petition at 35.), Dr. Gray stated:

RICL appears to be seeking the Commission's assistance in overcoming a perceived "chicken and egg" problem by asking the Commission to issue a CPCN before the Project has subscribers. However, even if we assume adequate future market demand for wind energy and renewable energy credits ("REC") produced by hypothetical wind farms potentially located within the Resource Area 4 because alternatives to the Project are under development within the MISO MTEP process, as described above, it is unreasonable to assume that the Project would be the preferred transmission alternative if only Illinois and Iowa regulatory approvals could be secured first.

...

The Project is a bet on future demand for wind energy and RECs in the PJM states; and, by extension, on the continuing existence of government incentives (e.g., state RPSs) and subsidies (e.g., the federal production tax credit). While RICL and its equity investors may have a healthy appetite for risk in this regard, it is unreasonable to expect the Illinois public to share in that risk. If the Commission grants a CPCN, RICL witness Skelly has indicated that RICL may seek eminent domain authority in Illinois under section 8-509 of the Act (RICL Exhibit 1.0, p. 5, lines 99-102). Land-use impacts are a substantial concern to ILA members potentially impacted by such eminent domain authority.

(ILA Ex. 7.0, 8-9.)

Dr. Gray also noted that "RICL leaves open the possibility of allocating future transmission costs, of unknown amounts, to Illinois electricity consumers" and "has not demonstrated a willingness to adequately protect the Illinois public from the risks of Project failure." (Id., 10.)

RICL's response to Dr. Gray's testimony will be discussed following a review of ComEd witness Naumann's testimony.

ComEd Position

ComEd witness Naumann testified that uncertainties surrounding the Project limit one's ability to assess its benefits and costs. For example, concerning costs, he noted that hundreds of millions of dollars in additional upgrades may be required. (ComEd 1.0, 11-12, 19-21.) As for benefits, he noted that RICL cannot assure the Commission that the Project can or will deliver 100% renewable energy. (Id., 39-40.) In addition, he

disputed RICL's claims that the Project will reduce Loss of Load Expectations ("LOLE") and that it will increase transfer capacity. (Id., 40-45.)

Mr. Naumann pointed out that RICL has neither claimed nor shown that the Project is necessary for reasons of reliability, operating efficiency, or market efficiency, in the regional planning process conducted by PJM. (Id., 6.) Indeed, Mr. Naumann cites a PJM stability analysis which found that the system dynamic performance with 3,500 MW of power delivered by the Project failed to meet applicable NERC, PJM and ComEd standards. (Id., 25.) He also noted that, notwithstanding the Project's total capacity of 3,500 MW, RICL has requested firm injection rights into PJM of only 1,192 MW. (Id., 42.)

RICL's reply to ILA and ComEd on the need for the Project

RICL witness Berry addressed testimony by ILA witness Gray and ComEd witness Naumann concerning the Project's absence from the PJM RTEP and the MISO MTEP. Mr. Berry explained that the MISO MTEP includes a category of transmission upgrades called Multi-Value Projects ("MVPs"), which, in part, are intended to help accommodate the renewable portfolio standards of various MISO states. (RICL Ex. 10.14, 59-60.) He noted, however, the PJM RTEP has no such category of transmission upgrades. That is, there is no explicit attempt by the PJM RTEP to accommodate the renewable portfolio standards of PJM states. He opined that the MVPs approved by MISO are not "alternatives" to the RICL Project because they will accomplish different things. He testified that the MISO MVP projects are intended to accommodate renewable portfolio standards in the MISO footprint, while, in contrast, the primary purpose of the RICL Project is to deliver additional low-cost renewable energy to PJM by increasing transfer capacity between Northwest Iowa and Northern

Illinois. (Id., 60-61.) He added that:

In 2020, PJM's total demand for renewable energy to meet state RPS requirements will be several times greater than MISO's. Compared with Rock Island, the MVP lines serve different geographies and different markets. Both the MISO MVP Projects (which enable 41 million MWh of renewable energy) and the Rock Island Project (which enables more than 15 million MWh of renewable energy) can be justified by the total demand for renewable energy needed to meet regional RPS requirements, while neither is by itself sufficient.

(Id., 61.)

ILA witness Gray rejected these arguments in his rebuttal testimony, stating that:

Mr. Berry attempts to draw distinctions, but because current and future MVP portfolios will facilitate the production of renewable energy credits ("RECs") for purposes of Illinois renewable portfolio standard ("RPS") compliance by Commonwealth Edison and others, those current and future MVPs are alternatives to the Rock Island Project. As I discussed in previous testimony, the physical delivery of renewable energy into Illinois is not a requirement for Illinois RPS compliance, which is based solely on RECs.

(ILA Ex. 7.2, 5-6.)

RICL witness Berry addressed the contention by ILA witness Gray that the absence of any signed capacity contracts between RICL and potential wind farms (and RICL's general lack of customers) is part of RICL failure to establish a public "need" for its Project. Mr. Berry presented "factors [that] speak to the likely demand for Rock Island's transmission service from wind generation developers in the Resource Area."

(RICL Ex. 10.14, 34.) Mr. Berry also testified that the alternative sequence of events suggested by ComEd witness Naumann and ILA witness Gray is not conducive to an effectively competitive market:

The ComEd witnesses (and potentially ILA) are saying that the Rock Island Project and presumably any other merchant transmission line must sell its capacity before it obtains permits and therefore before a firm capacity price can be set. Effectively, this would require buyers to choose a transmission option before they know how much the options cost and if they can actually be built. This result deprives transmission customers of the benefit of competition. Further, because under the ComEd approach transmission developers would

need a base of contracted customers in order to obtain a certificate, those few transmission developers who obtain a certificate would have a great deal of pricing power relative to new transmission customers, reducing competition.

(RICL Ex. 10.14, 24.) Mr. Berry added:

The consequence would be that Rock Island could not proceed, and if the same sequence is imposed, no other merchant transmission line could proceed. Rate-based transmission lines would be customers' only option, and there would be no meaningful competition to provide electric transmission service.

Id.

RICL's reply to ILA, ComEd, and Staff on cost allocation

Responding to testimony by Dr. Gray, Mr. Naumann, and Mr. Zuraski, Mr. Berry proposed assurances that Rock Island will not allocate costs from the Project to Illinois retail ratepayers at a later date. (RICL Ex. 10.14, 29-30.) However, Mr. Naumann testified that RICL's proposal "will not work for multiple reasons." (ComEd Ex. 4.0, 26.) First, "Mr. Barry [sic] cannot prevent some party (perhaps even future Rock Island management) from pushing for inclusion of the Projection [sic] in the RTEP, nor can he assure the Commission that PJM will not reclassify the Project." (Id., 27.) Second, according to Mr. Naumann, if the Project is included in a future RTEP, it will not be up to RICL how its revenue requirements are allocated; PJM will allocate them according to its tariff. Id.

Argument and Staff Conclusions

Staff believes that the degree to which RICL's Project is necessary, or whether the Project is "needful and useful," should be ascertained, among other things, by comparing the Project's benefits to its costs. In this case, the proposed construction project is a long-distance DC transmission line that has the potential to contribute to both national and state objectives of greater reliance on renewable energy. In addition,

the Project has the potential to reduce the price of electric energy and provide other benefits to consumers. On the other hand, there are questions regarding whether the Project will succeed in attaining these goals. There is some question whether the Project will succeed at all and whether the potential benefits justify these risks. Mr. Zuraski testified that benefits did not outweigh the costs. (Staff Ex. 3.0, 11.) Specifically, he testified that, "The direct testimony presented by RICL witnesses focuses only on certain alleged benefits of the project. RICL has not compared the benefits to the project's expected costs." Id. This is tempered somewhat by the Project's merchant transmission status. If RICL were a traditional public utility, with a well-defined service territory and existing duty to serve customers within that territory, or a traditional public utility with a plan to provide service to a new community, Staff would be more concerned with RICL's potential for failure because of the direct rate consequences. Unlike those traditional cases, however, this proceeding involves a sole-purpose entity. Aside from Illinois landowners who do not want to transfer ownership of their property to the entity, and possible environmental consequences, Project failure appears less likely to have serious immediate consequences for Illinois consumers or other Illinois utilities, unless RICL seeks rate recovery for any resulting stranded costs.

RICL fashions itself a "merchant" transmission company. RICL states that it will set its transmission rates through negotiation with its client subscribers, rather than through a regulatory authority's translation of revenue requirements. In theory, this merchant model provides some protection to retail ratepayers within Illinois, but witnesses for ILA, ComEd, Staff, and BOMA expressed concerns that retail ratepayers

within Illinois are not entirely free of risk. Further RICL has not ruled out the option of pursuing recovery of costs through retail rates. (Tr. at 1073-1076; RICL Ex. 10.14, 29-30.) Notwithstanding the potential benefits from the Project that RICL has identified, it is noteworthy that the Project has not been determined to be necessary by either MISO or PJM. Since the Project, as planned, would deliver all of its transmitted power to the ComEd Zone within PJM, it is reasonable for us to focus on the PJM transmission expansion planning process. According to Mr. Naumann, the RICL Project has not been found by the PJM process to be necessary for either reliability, operating efficiency, or market efficiency reasons. While not controlling under Illinois law, this has probative value and is a factor the Commission should consider.

It is also noteworthy that, while MISO specifically looks for projects to accommodate the renewable portfolio standards of MISO states, PJM's transmission planning process has no analogous goal to accommodate the renewable portfolio standards of PJM states. On the other hand, as Dr. Gray noted, existing and future MISO-approved projects could contribute to the attainment of Illinois renewable portfolio standard goals in both Ameren (MISO) and ComEd (PJM) service territories. (ILA Ex. 4.1, 5-6) For that matter, this could be true of transmission projects anywhere in the United States, since the Illinois renewable portfolio standards do not require delivery of energy into Illinois. (Id., 6)

Staff agrees that existing and future MISO-approved projects, like transmission projects anywhere else in the United States, can be considered substitutes for the RICL Project. However, they can also be considered complements. That is, there is no compelling evidence in the record of this proceeding showing that the RICL Project and

these other projects are mutually exclusive; nor is there evidence that they do not all contribute toward attainment of the nation's and the State's renewable energy goals.

As for costs, RICL appears to take the position that its costs should be considered irrelevant to the Commission. The Commission should reject this argument. RICL urges the Commission to consider costs too narrowly. The Commission needs to consider the impact of the Project on the public, not just RICL. For example, the Commission needs to exercise its judgment to determine whether the impact on landowners and the environment have been adequately taken into account.

With respect to landowners, RICL presents a convincing case that the compensation that it will purportedly offer to affected landowners is within, or at least approaching, a reasonable level; and that these costs have already been accounted for in the total cost figures that RICL presented. (RICL Ex. 7.30, 3, et seq.; RICL 7.31; RICL Ex. 10.13, 3.) Of course, in some circumstances, there may be no reasonable level of compensation that would ever be adequate to someone forced to give up their home or land against their will through condemnation.

With respect to the environment, RICL addresses concerns raised by landowner interests about the Project's potential to damage existing wetlands, forests, historical sites, and other conservation areas. First, the route development process identified potential wetland areas crossed by the Preferred Route and the Proposed Alternative Route, and RICL claims that it will avoid adverse impacts to wetlands to the extent possible and employ measures to minimize impacts where those impacts are unavoidable. Second, RICL must comply with the Clean Water Act and relevant regulations; and RICL must obtain permits from USACE, IDNR, and the IEPA. RICL

also claims it will cooperate with the IHPA and USACE concerning any historical or archeological sites along the Project's route. Finally, if the Project is successful in encouraging the construction of new wind farms in the Resource Area, those new wind farms may displace electricity production from less environmentally friendly generating resources.

Nevertheless, it cannot be confidently stated, based on this record, that Rock Island has shown here that the Project is necessary to provide adequate, reliable, efficient service and is the least-cost means of satisfying the service needs of its customers as required under the first prong of Section 8-406(b)(1).

Whether 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.

Staff examined the evidence in the record including the positions of the parties as follows:

RICL Position

According to Dr. McDermott:

The General Assembly added, in 2007, in both Sections 8-406 and 8-503 (and subsequently in new §8- 406.1), language that recognized that because competition is important to protecting consumers interests, certain utility infrastructure may be necessary to support and promote competition, quite aside from, or perhaps in addition to, the traditional concern over reliable and safe service.

(RICL Ex. 4.0, 5.)

Dr. McDermott concludes that the Project is an example of that "certain utility infrastructure ... necessary to support and promote competition":

My conclusion is that the Project will allow lower cost generation to enter the Illinois market, which will create competitive downward pressure on prices in the wholesale market. The additional transmission capacity promotes an effectively competitive electricity market by increasing the size of the supply side of the market competing to serve load in Illinois and opening the Illinois market to lower cost generation resources. Moreover, the projected downward pressure on prices is a strong indication of a market operating efficiently and it is expected to benefit customers directly through lower prices for electricity. Further, although not directly estimated in this testimony, consumers should benefit indirectly through lower input cost into production, which can help maintain lower prices for other goods and services.

(Id., 2.)

Dr. McDermott acknowledges that the PJM wholesale market and the interchange between PJM and MISO are already competitive. (Id., 12.) He further acknowledges that his analysis assumes this existing competitive market. Id. Thus, Dr. McDermott's analysis actually does not show how the Project directly promotes the development of a competitive market. Rather, it shows how the reduction in prices resulting from the Project are due, in part, to the existing competitive market.

IBEW Position

As previously noted, Mr. Bates generally summarized and concurred with each item in RICL's list of Project benefits, including RICL's claim that the Project would promote the development of an effectively competitive electricity market. (IBEW Ex. 1.0, 6.)

WOW Position

Mr. Goggin testified that:

Transmission infrastructure is also a powerful tool for increasing competition in wholesale power markets and reducing the potential for generators to harm consumers by exercising market power. Just as consumers who have access to one local retailer and lack high quality roads to easily access stores in other regions would be at the mercy of the prices charged by that retailer, a weak grid makes it possible for generation owners in constrained sections of the grid to exert market power and charge excessive prices. In any market, the more

supply options that are available to an area, the less likely it is that any one of those suppliers will be in a position to exert market power.

(WOW Ex. 1.0, 16.)

Mr. Goggin further opined that “higher-voltage, higher-capacity transmission lines tend to see more equitable distribution of their benefits,” and that this “is inherent ... due to the large amount of energy they are carrying that will provide price-reducing benefits across a large area, and the related fact that high-capacity lines resolve transmission constraints across a large geographic area.” (Id., 23.) After noting RICL witness Loomis’ testimony on the impact of the Project on economic development, Mr. Goggin opined that “Economic development benefits are typically broadly spread around the project area.” (Id., 23.)

BOMA Position

BOMA witness Cornicelli testified that:

Increasing access to generation resources enhances the competitive marketplace, which can help temper rising capacity costs. A large-scale merchant transmission line enriches the Illinois electric market landscape and should be supported from BOMA/Chicago’s competitive market point of view. With that said, BOMA/Chicago is supporting this project to the extent it enhances competition, lowers costs to our members, increases reliability, and, to the extent that it does not increase costs.

(BOMA Ex. 1.0, 3.)

ILA Position

Dr. Gray testified that RICL had failed to satisfy the requirement in the second prong of section 8-406(b)(1) of the Act, in that failed to demonstrate 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. (ILA Ex. 7.0, 9-10.) He stated:

I do not believe that RICL has satisfied this requirement, for several reasons. First, RICL has scarcely addressed the costs of negative land-use impacts and externalities that RICL would impose on the Illinois public for the benefit of eastern PJM states in meeting their RPS targets. Second, given the absence of actual subscribers, RICL has assumed traits and characteristics about potentially connected generators that cannot be substantiated. Third, RICL leaves open the possibility of allocating future transmission costs, of unknown amounts, to Illinois electricity consumers. Fourth, RICL has not demonstrated a willingness to adequately protect the Illinois public from the risks of Project failure.

Id.

ComEd Position

In their direct testimony, ComEd witnesses did not address explicitly the impact of the Project on the development of an effectively competitive electricity market. However, Mr. Naumann testified generally about how uncertainties impede a complete analysis of the Project. (ComEd Ex. 1.0) For instance, Mr. Naumann testified that “real market uncertainties prevent accurate predictions of what generation, if any, might find use of the line to be economic.” (Id., 8.) In his rebuttal testimony, he clarified that “the Project is not sufficiently developed and has too many critical unknown factors to allow the Commission to conclude ... 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.” (ComEd Ex. 4.0, 2.)

Staff analysis

Mr. Zuraski stated that a competitive electricity market already exists, but that the Project would not threaten the competitiveness of the market. Specifically, he stated:

With respect to whether or not the proposed construction will **promote the development of an effectively competitive electricity market**, it is my opinion that an effectively competitive electricity market already exists. However, it is also my opinion that the RICL Project would not threaten the competitiveness of the electricity market.

(Staff Ex. 3.0, 5.)

In assessing the projected benefits and costs, Mr. Zuraski considered three ways through which approximately 15 million MWHs of additional RECs per year could be made available to Illinois firms subject to the State's RPS, and additional revenues that would be needed to cover the costs. (Staff Ex. 3.0, 16.) These three ways were: (1) the scenario presented by RICL, building and operating the transmission project and building and operating new wind farms located near the western extreme of the project, and assumed a capacity factor of 40% for the wind farms; (2) building and operating the new wind farms located in Illinois without building and operating the proposed Project and used three different capacity factors; and (3) building and operating new wind farms located in the Resource Area without building and operating the proposed Project, using several alternative capacity factors. (Id., 16-17, 27-28)

The results were inconclusive and varied widely. For example, in Mr. Zuraski's Model A, the average results with a real discount rate of 5% was negative \$1.8 billion when counting all LMP "savings." Staff Ex. 3, at 32. It was a positive \$100 million when counting only Illinois LMP savings. Id. In Mr. Zuraski's model, negative results correspond to a decrease in net costs, meaning that the project would lead to net economic benefits. (Id., 30.) Mr. Zuraski explained that around these averages, the results of the sensitivity analysis vary between negative \$7.9 billion and positive \$5.8 billion when counting all LMP "savings" and between negative \$5.9 billion and positive \$7.8 billion when counting only Illinois LMP "savings." Id. In general, the range between low and high is larger with lower real discount rates and smaller with larger real discount rates. Id.

RICL Response to ILA, ComEd, and Staff

As noted, further above, Mr. Berry responded to the opinions expressed by Mr. Naumann and Dr. Gray that the issuance of a certificate of public convenience and necessity is premature:

The ComEd witnesses (and potentially ILA) are saying that the Rock Island Project and presumably any other merchant transmission line must sell its capacity before it obtains permits and therefore before a firm capacity price can be set. Effectively, this would require buyers to choose a transmission option before they know how much the options cost and if they can actually be built. ***This result deprives transmission customers of the benefit of competition.*** Further, because under the ComEd approach transmission developers would need a base of contracted customers in order to obtain a certificate, those few transmission developers who obtain a certificate would have a great deal of pricing power relative to new transmission customers, ***reducing competition.***

(RICL Ex. 10.14, 24, emphasis added.) Mr. Berry also stated:

The consequence would be that Rock Island could not proceed, and if the same sequence is imposed, no other merchant transmission line could proceed. Rate-based transmission lines would be customers' only option, ***and there would be no meaningful competition to provide electric transmission service.***

Id. (emphasis added)

On the issue of what constitutes a competitive market analysis, Dr. McDermott's responded to Mr. Zuraski as follows:

First, a competitive market analysis should look at the difference between market outcomes (or equilibria) under various assumptions such as with the line and without the line which is the approach I used in my Direct Testimony. That is a proper market analysis of the value of the line. Comparing outcomes to hypotheticals, as Mr. Zuraski does, is a less theoretically sound approach, since the competitive market, not a theoretical model, will decide which alternatives actually proceed.

(RICL Ex. 4.2, 9:190-096.) In his response to Dr. McDermott, Mr. Zuraski stated:

It is not clear what Dr. McDermott means by "competitive market analysis." There are many forms of economic analysis concerning competitive markets. Some concentrate on "market outcomes (or equilibria)," while others concentrate of the behavior of economic actors or the structure of the market. Which type of analysis should be performed depends on what questions are being asked and

the purpose of the analysis. In the case of Dr. McDermott's analysis, the apparent purpose was to identify the likely difference in electric energy prices between a world *with* the Project and a world *without* the Project. He was not attempting to address the likelihood of a world with the Project coming into existence, and he was not attempting to identify the factors that would impinge on such likelihood, as was I.

Dr. McDermott's focus seems to be due to his contention that "the competitive market ... will decide which alternatives actually proceed." (RICL Ex. 4.2, 9:190-196.) However, this contention is only partially true. Presently, in this country, decisions to construct electric transmission lines and power plants are not the products of unfettered unregulated undisturbed competitive markets. For instance, decisions to construct electric transmission lines and power plants are heavily influenced by government intervention. In part, the success or failure of projects is determined by government subsidies and involuntary ratepayer subsidies. Thus, it is not unreasonable to pick apart these factors and determine the extent to which a project is bound to succeed, versus the extent to which it is bound to fail without additional largesse.

(Staff Ex. 6.0, 1-2.)

Dr. McDermott also stated:

Second, the costs associated with the Project are paid through market-based rates not through a regulated cost of service approach. A revenue requirements analysis, like Mr. Zuraski's, is appropriate for a cost of service project that a traditional utility builds. It may not be relevant to a merchant transmission line like the Rock Island Project. Mr. Berry discusses this issue further in his rebuttal testimony.

(RICL Ex. 4.2, 9-10:197-202.) In his response to this part of Dr. McDermott's rebuttal testimony, Mr. Zuraski stated:

First, I do indeed understand that the stated intent of RICL is that "the costs associated with the Project are paid through market-based rates not through a regulated cost of service approach." I do not question that this is RICL's intent, hope, and expectation. However, even the best-laid plans can go awry. In such an instance, RICL might very well beseech the FERC, the Commission, and/or Illinois and Iowa state legislatures to help get the Project back on track. Such assistance could end up costing ratepayers more than what it would cost if all projects were based solely on the interaction of entrepreneurs vying against one another in a "competitive market." On the other hand, such an outcome would be less likely if RICL were to make the type of assurances discussed in the rebuttal testimony of RICL witness Berry.

Second, RICL is more likely to seek such non-market assistance if it finds

that it is unable to cover its costs (which in regulatory parlance, we usually call "revenue requirements"). This is why I relied on a revenue requirement model in my analysis. An axiom in competitive market analysis is that, in the long run, firms break even (i.e., they cover their costs, including a normal rate of return). I fear that this point was not made clear in my direct testimony, but I will make it now: I am not suggesting that RICL's services should or will be priced using a set of revenue requirement calculations. Rather, I was using those calculations in a sensitivity analysis to judge the likelihood that the Project would fail to succeed with market-based rates, and hence the likelihood that RICL would seek a different means of cost-recovery.

(Staff Ex. 6.0, 2-4.) (citations omitted.)

Dr. McDermott also stated:

Third, while this may be an obvious point, it bears stating that a market-based transmission line must be the least-cost approach or the line will not obtain sufficient contracts to justify building it. If, for example, shippers could reach their desired markets using an alternative lower-cost resource they will not sign contracts.

(RICL Ex. 4.2, 10: 203-207.) In his response to this part of Dr. McDermott's rebuttal testimony, Mr. Zuraski stated:

I agree that the Project must appear to RICL's potential customers (to the extent they are profit-seeking enterprises) to be part of profit-maximizing business plans, in order for RICL to obtain commitments from those potential customers. However, what RICL considers "sufficient contracts to justify building" the Project depends on the risk-taking appetite of RICL's managers and investors and RICL's hopes and expectations for obtaining a bailout if plan A goes awry.

(Staff Ex. 6.0, 4.)

Dr. McDermott also stated:

Fourth, my analysis directly addresses the question raised by Sections 8-406 and 8-503 of the PUA concerning a proposed project's ability to promote competitive markets by looking at the net direct economic benefits (lower energy prices) and the effect on creating a larger regional generation market (by increasing import capacity).

(RICL Ex. 4.2, 10:208-212.) To this, Mr. Zuraski replied:

I take no issue with Dr. McDermott's conclusion that the Project would promote competitive markets and, in the short run, may lower energy prices. The

Project certainty will not weaken competitive markets. However, the infusion of any other set of new generators with or without any other new transmission projects coming on-line would have similar impacts.

(Staff Ex. 6.0, 4-5.)

Finally, Dr. McDermott stated:

Fifth, while there is uncertainty in projecting any future benefits, especially long-term benefits, my analysis focuses on the shorter-term and, therefore, more certain benefits. Further, because the Project is not recovering its costs through rates, there is no risk to ratepayers that the benefits to ratepayers are lower than the costs they must pay. The investors who back Rock Island bear that risk.

(RICL Ex. 4.2, 10:213-218.) To this, Mr. Zuraski replied:

RICL's investors may face the brunt of the risk. However, due to the potential, discussed above, for RICL to seek government assistance to resuscitate the Project if it begins to financially falter, it is an overstatement to say "there is no risk to ratepayers."

(Staff Ex. 6.0, 5.)

Argument and Staff Conclusion

Staff believes that with respect to the second part of the first numbered condition of Section 8-406(b), in considering whether the utility has shown 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," the Commission should consider whether the utility has shown that: (a) the Project contributes to increasing the degree of competition for electric energy, capacity availability, renewable energy credits, or other electricity market goods and service; (b) the benefits of the increased competition outweigh the costs of the Project; and (c) the Project will not prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects. On this record, it is not clear that the Company has met its burden.

RICL maintains that its Project will enhance competition for electric energy and capacity and renewable energy credits. However, this would be true of any and all transmission projects within MISO or PJM. Interpretation of the 8-406(b) requirement that a project “will promote the development of an effectively competitive electricity market...,” in this proceeding (or any transmission upgrade case), cannot be so literal that any and all transmission projects would meet the requirement, automatically. Thus, as Staff argues in sub-section b, above, in considering whether the utility has shown 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,” the Commission may consider whether the utility has shown that: (a) the Project contributes to increasing the degree of competition for electric energy, capacity availability, renewable energy credits, or other electricity market goods and service; (b) the benefits of the increased competition outweigh the costs of the Project; and (c) the Project will not prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects. In Staff’s view, substantial uncertainties exist as to whether the evidence supports such a finding.

On the one hand, RICL witnesses present theoretical arguments supporting its contention that the project enhances competition, along with the results of market model simulations measuring the impact of the added resources on competition. In addition, Mr. Zuraski presented a financial model supporting his expectation that “the RICL Project will promote or contribute to an effectively competitive electricity market that operates efficiently ... and is the least cost means of satisfying those objectives,” but

also noted that "this assessment is subject to considerable uncertainty." (Staff Ex. 3.0, 5-6.)

On the other hand, ComEd and ILA witnesses focused on the uncertainties. Mr. Naumann's argument is that the impact of the Project on competition is unknown because "the Project is not sufficiently developed and has too many critical unknown factors." Dr. Gray's argument is that the impact of the Project on competition is unknown because:

1. "RICL has scarcely addressed the costs of negative land-use impacts and externalities that RICL would impose on the Illinois public for the benefit of eastern PJM states in meeting their RPS targets."
2. "RICL has assumed traits and characteristics about potentially connected generators that cannot be substantiated."
3. "RICL leaves open the possibility of allocating future transmission costs, of unknown amounts, to Illinois electricity consumers."
4. "RICL has not demonstrated a willingness to adequately protect the Illinois public from the risks of Project failure." (ILA 7.0, 10.)

Staff agrees that there is significant uncertainty about whether the Project will successfully promote or contribute to an effectively competitive electricity market that operates efficiently and is the least cost means of satisfying those objectives. (Staff Ex. 3.0, 3.) As set forth above, in assessing the projected benefits and costs, Mr. Zuraski considered three ways through which approximately 15 million MWhs of additional RECs per year could be made available to Illinois firms subject to the State's RPS, and additional revenues that would be needed to cover the costs. (Staff Ex. 3.0, 16.) These

three ways were: (1) the scenario presented by RICL, building and operating the transmission project and building and operating new wind farms located near the western extreme of the project, and assumed a capacity factor of 40% for the wind farms; (2) building and operating the new wind farms located in Illinois without building and operating the proposed Project and used three different capacity factors; and (3) building and operating new wind farms located in the Resource Area without building and operating the proposed Project, using several alternative capacity factors. (Id., 16-17, 27-28)

The results were inconclusive and varied widely. For example, in Mr. Zuraski's Model A, the average results with a real discount rate of 5% was negative \$1.8 billion when counting all LMP "savings." Staff Ex. 3, at 32. It was a positive \$100 million when counting only Illinois LMP savings. Id. In Mr. Zuraski's model, negative results correspond to a decrease in net costs, meaning that the project would lead to net economic benefits. (Id., 30.) Mr. Zuraski explained that around these averages, the results of the sensitivity analysis vary between negative \$7.9 billion and positive \$5.8 billion when counting all LMP "savings" and between negative \$5.9 billion and positive \$7.8 billion when counting only Illinois LMP "savings." Id. In general, the range between low and high is larger with lower real discount rates and smaller with larger real discount rates. Id. These uncertainties should not be overlooked.

With respect to whether the proposed construction will promote the development of an effectively competitive electricity market, an effectively competitive electricity market already exists, but the RICL Project would not threaten the competitiveness of the electricity market. (Staff Ex. 3, 5.) Whether the RICL Project will

promote or contribute to an effectively competitive electricity market that operates efficiently and is the least cost means of satisfying those objectives largely depends on whether the project's benefits outweigh the costs. (Id., 6.) Staff believes that the evidence supports a finding that the Project would promote an effectively competitive electricity market, but that the preponderance of evidence in favor of such a finding is not a strong preponderance and is subject to "considerable uncertainty." Id. Staff notes that there is no evidence suggesting that the Project would prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects.

2. Capable of efficiently managing and supervising the construction process

Under Section 8-406(b)(2) of the Act, the utility must demonstrate it is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof. 220 ILCS 5/8-406(b)(2). In his direct testimony, Mr. Rashid voiced skepticism concerning RICL's ability to efficiently manage and supervise the proposed project. (Staff Ex. 1.0, 15.) Mr. Rashid's skepticism stemmed from the fact that, in direct testimony, RICL had provided no evidence that it, as an entity, or its parent company had ever managed or supervised a transmission line project, let alone a transmission line project of this magnitude. Mr. Rashid requested that RICL provide information in its rebuttal testimony on its capability to efficiently manage and supervise the construction of the proposed project. Id.

In his rebuttal testimony, RICL witness Michael Skelly detailed RICL's plan to manage and supervise the construction of the proposed project. (Generally, RICL Ex.

1.4.) In RICL Ex. 1.5, Mr. Skelly provided an organizational chart depicting the management structure of RICL, including different positions in that organizational structure. RICL plans to fill these positions with thirty-four to thirty-five individuals, but only fifteen positions in that organizational chart are currently filled. That means that RICL has yet to hire about 20 highly experienced employees and the Commission has no way to know whether RICL will find those essential employees.

Mr. Rashid noted in his rebuttal testimony that Mr. Skelly described the qualifications of the individuals who occupy the fifteen filled positions in RICL Ex. 1.3 and in his rebuttal testimony; however, those descriptions did not explain each individuals' involvement in previous transmission line projects. Mr. Skelly also attached an exhibit, which listed various projects in which he, Mr. Galli, and three other individuals were involved. Nevertheless, Mr. Skelly did not describe how these individuals' involvement in those projects was pertinent to transmission line construction management and supervision as required by Section 8-406(b)(2) of the Act. (Staff Ex. 7.0, 6 -7.)

Mr. Rashid explained that it was important that RICL had to demonstrate solid experience managing and supervising the construction and operation of transmission lines because the Commission needed to know that RICL has the demonstrated ability to construct, maintain, and operate a reliable, high voltage, direct current, electric transmission line. (Id., 7.)

Staff believes that RICL has not demonstrated that it is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof. Aside from a lack

of experienced employees, RICL failed to demonstrate that it has the organization to make use of those employees to succeed in this project. (Staff Ex. 7.0, 6.) According to the record evidence, RICL has never built a transmission line project of any kind or of any size. (Id., 8; Tr., 838:7-12; 840:8-12 (Dec. 12, 2014).) The proposed project is of a large scale and uses high voltage direct current technology that is not new, but is rather rare. (Staff Ex. 7.0, 6.) In the entire United States of America, there are only a few high voltage direct current lines. Staff believes that a startup company like RICL, which has many vacancies in its management structure, would not be able to effectively and efficiently manage and supervise the construction of this \$2.0 billion project. As such, Rock Island has not shown that the it is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof, as required under Section 8-406(b)(2) of the Act. 220 ILCS 5/8-406(b)(2).

3. Capable of financing the proposed construction

Staff witness Alan Pregozen testified regarding whether RICL meets the financing condition of Section 8-406 of the Act. Mr. Pregozen testified that:

To ensure that Rock Island does not begin construction of the project without sufficient funding in place to complete it, I recommend that the Commission impose the conditions set forth in Rock Island Ex. 10.13 lines 36-94 in any order that grants a certificate of public convenience and necessity to Rock Island to construct the proposed transmission line.

(Staff Ex. 4.0, 2.)

Rock Island witness David Berry describes RICL's intent to raise sufficient funding to complete the Project before it permanently installs transmission towers on landowner property. (Rock Island Ex. 10.13, 2.) Rock Island also accepts a condition

recommended by Mr. Pregozen to formalize its financing commitment in its Certificate of Public Convenience and Necessity.

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. For the purposes of this condition:

(i) "install transmission facilities" shall mean to affix permanently to the ground transmission towers or other transmission equipment, including installation of bases and footings for transmission towers, but shall not include (A) preparatory work such as surveys, soil borings, engineering and design, obtaining permits and other approvals from governmental bodies, acquisition of options and easements for right-of-way, and ordering of equipment and materials, and (B) site preparation work and procurement and installation of equipment and facilities on property owned in fee by Rock Island including the converter station sites;

(ii) "easement property" shall mean property on which Rock Island has acquired an easement to install transmission facilities;

(iii) "has obtained commitments for funds" shall mean (A) for loans and other debt commitments, that Rock Island has entered into a loan agreement(s) with a lender(s) and has received the loan funds or has the right to draw down the loan funds on a schedule that is consistent with the need for funds to complete the Project, and (B) for equity, that Rock Island or its parent company has received the funds from the equity investors or that the equity investors have entered into a commitment to provide funds on a schedule that is consistent with the need for funds to complete the Project; and

(iv) "total project cost" shall mean the 64 total estimated remaining cost, at the time that Rock Island is prepared to begin to install transmission facilities, for the following Project activities: engineering, manufacturing and installation of converter stations; transmission line engineering; transmission towers; conductor; construction labor necessary to complete the Project; right of way acquisition costs; and other costs necessary to complete the Project. For reference, the total estimated project cost as of November 1, 2012 is \$2.0 billion.

To allow the Commission to verify its compliance with this condition, Rock Island shall submit the following documents to the Director of the Financial Analysis Division and the Director of the Public Safety & Reliability Division at such time as Rock Island is prepared to begin to install transmission facilities:

a) On a confidential basis, equity and loan or other debt financing agreements and commitments entered into or obtained by Rock Island or its parent

company for the purpose of funding the Rock Island Clean Line Project that, in the aggregate, provide commitments for funds for the total project cost;

b) An attestation certified by an officer of Rock Island that Rock Island has not, prior to the date of the attestation, installed transmission facilities on easement property; or a notification that such installation is scheduled to begin on a specified date;

c) A statement of the total project cost, broken out by the components listed in the definition of "total project cost," above, and certified by an officer of Rock Island, along with a reconciliation of the total project cost in the statement to the total project cost as of November 1, 2012 of \$2.0 billion; and

d) A reconciliation statement, certified by an officer of Rock Island, showing that the agreements and commitments for funds provided in (a) are equal to or greater than the total project cost provided in (c).

(Id., 2-3.)

4. Other factors bearing on public convenience and necessity

B. Route of the Project / Land Acquisition

1. Proposed Route

The proposed project extends for approximately 121 miles in Illinois from a point where it crosses the Mississippi River in Rock Island County to the Collins Substation in Grundy County. Petition at 2-3. RICL witness Hans Detweiler indicated that RICL retained environmental professionals, public involvement specialists, and engineers from HDR Engineering, Inc., POWER Engineers, Inc., and Kiewit Power Constructors Co., and RICL to form the Routing Team that performed the routing analysis. (RICL Ex. 7.0, 6.) RICL witness Matthew Koch indicated that the preferred route and the proposed alternative route for the HVDC portion of the transmission line were developed separately from the preferred route and the proposed alternative route for the HVAC portion of the transmission line. (RICL Ex. 8.0, 5.) Mr. Detweiler explained the criteria that RICL used to select the routes for the proposed project. The main elements

of the routing criteria that RICL used to develop the routes were sensitivities, opportunities, and technical guidelines. Mr. Detweiler stated that sensitivities refer to “[resources] or conditions that can potentially limit transmission line development and may include areas restricted by regulations, or where impacts to these resources would be very difficult or impractical to mitigate.” (RICL Ex. 7.0, 10.)

Mr. Detweiler stated that opportunities refer to “[pre-existing] linear infrastructure or features (*e.g.*, existing linear corridors such as roads or transmission lines...) along which transmission line development is potentially compatible and where impacts to sensitivities may be reduced by following these features.” *Id.* Mr. Detweiler also stated that technical guidelines refer to “[the] specific engineering requirements and objectives associated with the construction of the project[,]” such as maintaining at least 200 feet of separation between centerlines when paralleling other electric transmission lines of 345 kV or above, or the requirement to minimize the overall length of the line. (RICL Ex. 7.0, 10.) RICL developed the Routing Study that it used to select a preferred and proposed alternative routes for the HVDC and the HVAC portions of the proposed transmission line. RICL included the Routing Study as RICL Ex. 8.2. As a result of the Routing Study, RICL selected Study Route A and Study Route B as preferred and proposed alternative routes for the HVDC portion; and Study Route F and Study Route G as preferred and proposed alternative routes for the HVAC portion for the proposed project respectively. Additionally, RICL states that it needs to acquire land, on which it can construct the eastern converter station. Mr. Detweiler indicated that RICL is in the process of acquiring land in Grundy County at the proposed location for the eastern converter station. (RICL Ex. 7.0, 9.) Mr. Detweiler also indicated that RICL is also

negotiating the purchase of a parcel in Kendall County north of the proposed location for the eastern converter station “in case the Grundy County location proves unsuitable for any reason.” Id. RICL need to “acquire land in fee of 20 acres or less adjacent to Collins substation” to house three 345/765 kV AC transformers, if the Collins Substation cannot be expanded to house the three transformers. (RICL Ex. 2.0, 6.)

After examining RICL witnesses’ testimony and the exhibits attached to them, including the Routing Study, Staff has no reservations concerning RICL’s process or procedure concerning the route selection. (Staff Ex. 1.0, 14.) In addition, if the Commission were to approve RICL petition, Staff would have no objection to the preferred or the proposed alternative routes that RICL identifies in its filing.

2. Proposed Easement Widths

Mr. Galli stated, “[the] current designs allow for 1500-foot spans for lattice towers and 1200-foot spans for tubular steel monopoles.” (RICL Ex. 2.0, 28.) Mr. Galli indicated that poles heights would be between 100 feet and 175 feet depending on the location of each pole. RICL requests a 200 feet ROW for the HVDC portion of the transmission line and 270 feet for the HVAC portion of the transmission line. (Id., 29-30.)

3. Easement Acquisition and Landowner Compensation

C. Design and Construction of the Project

This proposed HVDC transmission line originates in O’Brien County, Iowa and terminates in Grundy County, Illinois. Petition, 2-3. The total length of the transmission line is approximately 500 miles, 121 miles of which are in Illinois. The transmission line’s nominal voltage will be ± 600 kilovolt (“kV”) direct current (“DC”). This is the first

DC transmission line proposed for Illinois. All other transmission lines in Illinois operate using alternating current ("AC"). High voltage direct current ("HVDC") technology has advantages over high voltage alternating current ("HVAC") technology when power flows are large and transmission distances are long. (RICL Ex. 2.0, 21.) Some of these advantages include lower power losses, lower construction cost, and narrower horizontal clearance for the transmission line, which means the DC transmission line can operate safely and reliably inside a narrower Right of Way ("ROW"). (Id., 20.)

RICL indicated that the proposed project would be rated at ± 600 kV DC, which could be as high as ± 640 kV to ± 660 kV DC, based on the final design of the proposed project. RICL Petition, ¶ 6. Mr. Galli testified that RICL will utilize a bipolar design for the project. (RICL Ex. 2.0, 24.) A bipolar design utilizes two poles for the transmission line. In this case, a pole means a conductor through which energy transmits. Id. In AC transmission, conductors through which energy transmits are called "phases." In DC transmission, the conductors are called "poles". Used in this context, "pole" is best defined as either of the two terminals of an electric cell, battery, generator, or motor. Because of the polarity nature of DC voltage, the potential difference (the DC voltage) between the two poles will be 1,200 kV. Mr. Galli testified that the proposed project could operate in a monopolar mode in case one of the two poles is not available. (Id., 25.) In addition, Mr. Galli stated the proposed transmission line "will be capable of delivering 3,500 megawatts ("MW") of power and is expected to deliver approximately 15 million megawatt hours ("MWh") of renewable energy per year to Illinois for delivery into the PJM Interconnection." (Id., 5.)

1. Proposed Structures and Other Components

According to the Petitioner, the HVDC portion of the proposed transmission line will originate from an AC-to-DC converter station at O'Brien County in Iowa and will terminate at a DC-to-AC converter station ("eastern converter station") located approximately four miles north of the Collins Substation in Grundy County. Petition at 2-3. The converter stations are essential for HVDC transmission technology. The energy generated in wind farms is in AC form. To transmit this energy over a HVDC transmission line, the energy must be converted to DC form. In addition, since the energy used domestically is in AC form, the DC energy transmitted through the HVDC transmission line must be converted back to AC form before delivery to customers. RICL will also install a 345/765 kV step-up transformer facility to interconnect to the Collins Substation. RICL Petition at ¶6. RICL witness Wayne Galli indicated that the proposed project would originate within O'Brien County, Iowa, where it would connect to a 345 kV AC transmission system, and would terminate in Grundy County, Illinois where it would connect to the existing 765 kV AC transmission system at the Collins Substation. (RICL Ex. 2.0, 5.) RICL will construct three parallel 345 kV AC transmission lines between the eastern converter station and a new substation adjacent to ComEd's existing Collins Substation (a distance of approximately 3 to 4 miles), where the voltage will be stepped-up to 765 kV using two or three 345/765 kV transformers for interconnection to the Collins 765 kV bus. The 345 kV AC transmission lines will consist of one single circuit and one double circuit running contiguously. Mr. Galli indicated that RICL "will acquire land in fee of 20 acres or less adjacent or near to the Collins substation on which to place the new AC substation." (Id., 6.)

RICL provided information regarding the structures that RICL intended to use for the transmission line and the ROW that RICL would need for the transmission line. (RICL Ex. 2.0, 27-32.) Mr. Galli stated, "two primary structure types have been identified: lattice structures and tubular steel "monopole" structures." (Id., 27.) Mr. Galli also added, "Rock Island has not made a determination as to the final structure type but would like to have flexibility in such a determination so that landowner concerns, project costs, terrain, land use, and other relevant factors can be considered when making a final selection. It is likely that a mix of structures could be utilized to help maximize flexibility and optimize costs." (Id., 27-28.) On May 31, 2013, RICL filed an Agricultural Impact Mitigation Agreement ("Agreement") that it negotiated with Illinois Department of Agriculture. (Generally, RICL Ex. 7.28.) One of the issues that the Agreement addressed was RICL's potential use of the lattice towers, which require a larger base than the monopole structure design. Paragraph 3 of the "Construction Standards and Policies" section of the Agreement states:

Tangent structures (straight-line, non-turning structures) will utilize only single, drilled pier type concrete foundations or direct embed type foundations that are typical of single pole type structures. Clean Line will not utilize multi-foundation lattice type structures for tangent structures, though such structures may be used for turns, long spans such as river crossings, and similar situations where specific engineering and environmental challenges are present.

The use of guy wires will be avoided to the extent feasible. If guy wires are required, they will be marked with highly visible guards.

(RICL Ex. 7.28.)

2. Landowner Concerns about Impacts of Construction of the Project

D. Other Proposed “Conditions”

V. Public Utilities Act §8-503 – Order Authorizing and Directing Construction

VI. Rock Island’s Accounting-Related Requests

A. System of Accounts

The Company agreed to submit annual financial information required by ILCC Form 21 and 83 Ill. Adm. Code 210 (Section 5-109 of the Act) and will use the FERC Uniform System of Accounts to complete ILCC Form 21. (Staff Ex. 2.0, 2:29-35.) No party objected to the Company’s proposed accounting treatment for the RICL project. (Staff Ex. 5.0, 2:26-28.)

B. Maintaining Books and Records Outside of Illinois

The Company proposed to maintain its books and records at its principal office in Houston, Texas. (RICL Ex. 10.0, 46.) The Act requires public utilities to keep all such books, accounts, papers, records and memoranda as shall be ordered by the Commission within the State. (220 ILCS 5/5-106.) With the Company’s agreement to reimburse travel costs incurred by Staff in order to review RICL’s books and records, Rock Island Ex. 10.14, 16 17:416-424, Staff recommends that the Commission approve the Company’s request. (Staff Ex. 5.0, 1:13-18.) The Final Order should include the following statement:

The Commission conditionally approves the Company’s request to maintain its books and records at its principal office and that of its ultimate parent company, Clean Line Energy Partners, in Houston, Texas. Further, the Commission orders that the Company shall reimburse any Staff travel costs and expenses incurred in order to review these books and records.

C. Request for Proprietary Treatment of Certain Information

VII. Conclusion

For the reasons set forth *supra*, Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with this Initial Brief.

Respectfully submitted,

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