

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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Rock Island Clean Line LLC)
)
Petition for an Order granting Rock Island)
Clean Line LLC a Certificate of Public)
Convenience and Necessity pursuant to)
Section 8-406 of the Public Utilities Act as a)
Transmission Public Utility and to Construct,)
Operate and Maintain an Electric Transmission)
Line and Authorizing and Directing Rock Island)
Clean Line Pursuant to Section 8-503 of the)
Public Utilities Act to Construct an Electric)
Transmission Line.)

Docket No. 12-0560

INITIAL BRIEF

Illinois Landowners Alliance

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INITIAL BRIEF OF ILLINOIS LANDOWNERS ALLIANCE

I. Introduction, Statement/Summary of Position, Description of Petitioner and the Project

The Illinois Landowners Alliance, NFP (the "ILA") is a not-for-profit corporation created by individuals spanning across the State of Illinois. Membership in the organization totals around 300 individuals, including those directly impacted by the project that Rock Island Clean Line ("Rock Island") proposes to build ("Project" or "Rock Island Project"), those having homes or property near the proposed transmission line, or those in the vicinity of the Project who oppose it. ILA members own or lease over 100,000 acres of land in the vicinity of the Project. The ILA is not an anti-transmission line organization. Rather, the ILA is an organization opposing the Rock Island Project for the reasons described in the testimony and exhibits of its witnesses and as described in its Initial Brief herein. ILA's members are concerned about the damage to the some of the most productive farms in the country and interference with their operation, health

issues, visual pollution, and future limitations on land use, all compounded by the fact that the transmitted electricity is being sent eastward, out of the state. These adverse effects, and others, are not a fair trade for the particular Project that Rock Island proposes, which will do nothing positive for the electric transmission system in this State, have little lasting effects on electricity markets in this State, and is an overly speculative venture on tenuous financial footing, with at most a highly questionable chance of ever getting constructed even if Illinois regulatory approval is granted.

Paul Marshall served as the lead witness and spokesperson for the ILA. Dr. Marshall has lived and farmed along the Proposed Route and is well-qualified to provide relevant facts and views pertaining to the Project. Dr. Marshall has a degree in Agriculture and a Ph.D. in Forestry and Botany (plant physiology). ILA Ex. 1.OREV, II. 92 - 94. Dr. Marshall is a 4th generation family member for a 200 acre farm that has been in his family since 1879; he owns a home and outbuildings and just under 100 tillable acres of farmland, and his sister owns a like amount. ILA Ex. 1.OREV, II. 104 - 107. He and his sister also own another 205 acres, 160 of which are tillable, in the area. ILA Ex. 1.OREV, II. 123 - 124. In addition to his farm ownership and operation, Dr. Marshall is Farm Manager for the First National Bank of Ottawa. ILA Ex. 1.OREV, II. 79 - 80. As his testimony shows, Dr. Marshall is well-experienced in farm ownership, operations, management, and transactions, including the adverse impacts major projects like wind farms (ILA Ex. 1.OREV, II. 172 - 184) and oil pipelines (ILA Ex. 1.OREV, II. 142 - 168) can have on farmland.

Several other landowners and business owners who are also members of ILA also provided testimony in the proceeding. Curtis Jacobs is a farmer who, with his wife and two young children, lives on land that would be affected by the Project. Also well-educated, Mr. Jacobs has a degree in engineering. His land has been farmed by his family for over 72 years. Mr. Jacobs grows exclusively non-GMO¹ crops – corn, soybeans, alfalfa - on his land. ILA Ex. 2.0, ll. 4 - 19. As Mr. Jacobs testified, non-GMO crops are more sensitive than more conventional, GMO crops. As such, they can more easily succumb to the many types of disturbances to their growing environment that a project like the one Rock Island is proposing can cause. ILA Ex. 2.0, ll. 41 - 105.

ILA witness Randy Rosengren is a 3rd generation farmer in his family, with his son in the process of taking over the operation, living on the farm with three of his own sons. ILA Ex. 3.0, ll. 9 - 11. After his discharge from the Army, Mr. Rosengren began his farming career by leasing 200 acres, and since then leasing several hundred additional acres and purchasing 670 acres. He raises corn, soybeans and parent seed for Pioneer Seed Corn Co. ILA Ex. 3.0, ll. 27 - 33. The Rosengren family has been heavily involved in the local community, as Mr. Rosengren has served on many local boards and organizations, and his wife is a retired schoolteacher. ILA Ex. 3.0, ll. 16 - 25. Mr. Rosengren testified that he is especially concerned about the effect the Project would have on his parent seed operation, with the transmission line's Proposed Route taking the line across three different fields of his. Mr. Rosengren explained the heightened,

¹ GMO stands for genetically modified organisms.

special requirements for raising parent seed and how the Project would adversely affect his ability to continue to grow parent seed. ILA Ex. 3.0, ll. 42 - 138.

Sid Nelson, another ILA witness, has farmed in the area and operates an aerial spraying business out of the Morris Municipal Airport, in Morris, Illinois. ILA Ex. 4.0, ll. 2 - 3. Mr. Nelson started flying in 1976, and has conducted various types of businesses involving flying. ILA Ex. 4.0, ll. 23 - 46. In 1987, he began his career as an aerial applicator, first for other business owners and then for his own businesses. ILA Ex. 4.0, ll. 48 - 53. Mr. Nelson testified to the adverse impacts the Project would have on aerial application, and the resulting adverse effects on the crops of affected farmers. ILA Ex. 4.0, ll. 61 - 137.

Ed Simpson is another landowner and ILA member who testified on behalf of the ILA. Mr. Simpson and his spouse own about 600 acres and live on property, which is located near the western end of the Illinois portion of the proposed transmission line, which his great-great-grandfather lived. Mr. Simpson farms and owns timber for harvest. ILA Ex. 5.0, ll. 4 - 8. Mr. Simpson testified that his land includes relatively extreme topology, with steep bluffs including some portions in timber that, together with the geology of the land, would result in severe erosion and destruction if the Project is allowed to be constructed through his land as planned. ILA Ex. 5.0, ll. 24 - 65. He further testified as to the points and areas of historical significance that the Project would disturb. ILA Ex. 5.0, ll. 64 - 72.

The ILA's last landowner witness was Bill Cole. Mr. Cole has been a tree farmer for many decades, and has managed thousands of acres of timber for other owners. ILA

Ex. 6.0, ll. 5 - 10. He currently manages timber for ILA witness Ed Simpson, as he has done for Mr. Simpson and his father for over forty years. ILA Ex. 6.0, ll. 17 - 18. Mr. Cole testified as to the sensitive nature of the soil, conducive to gully-formation and erosion, such that construction of the Project through the area would result in significant vegetation destruction as well as valuable timber clearing. ILA Ex. 6.0, ll. 35 - 45.

The last witness for the ILA was Jeffery Gray, an expert with respect to federal electricity regulation and the policies and operations of regional transmission organizations including MISO and PJM. Dr. Gray has an undergraduate degree in Industrial Engineering, and MBA, a law degree and Ph.D. His doctoral dissertation in 2004 examined the U.S. electricity industry restructuring with an emphasis on regional transmission organizations. His professional work experience includes positions with a Washington, D.C law firm and the public utility Alliant Energy in Wisconsin. Dr. Gray has had his own legal and consulting practice since 2011, emphasizing regulatory law and economics in the utility and energy industries. ILA Ex. 7.0, ll. 5 - 14. Dr. Gray testified that, based on his review of the Rock Island Petition and testimony, and his knowledge and understanding of the requirements for a CPCN under the Act, that Rock Island has not satisfied the requirements and that its Petition should be denied. ILA Ex. 7.0, ll. 54 - 61, *et seq.*

II. Review of ALJ Rulings on Motions

A. ILA and IAA Motions to Dismiss (Ruling dated March 18, 2013)

Both the ILA and the IAA filed a Motion to Dismiss Rock Island's Petition on the basis that, because Rock Island is not a public utility under Illinois law, it is not eligible

for the grant of a CPCN under Section 8-406 of the Act. Following responses from Rock Island, ComEd, IBEW and Wind on the Wires, and replies filed by the ILA and IAA, the ALJ issued a Ruling on March 18, 2013, in which he denied the Motions as to Rock Island's request for relief under Section 8-406.

The ILA objects to the ALJ's ruling. ILA's position on the matter has not changed, and is grounded on the well-established legal principle that an administrative agency has no more authority than the applicable statute grants to it. That position may be summarized simply as follows. First, it is clear that Rock Island is not a "Public Utility" under Section 3-105 of the Act.² Secondly, in Section 8-406, governing the eligibility for and grant of a CPCN, Subsection 8-406(a) states, "No public utility ... shall transact any business" Similarly, Subsection 8-406(b) states, "No public utility shall begin the construction" Rock Island has identified no other statutory provision by which it may attain public utility status in Illinois. Under the language of Section 8-406, the Illinois Commerce Commission ("Commission") may consider requests for a CPCN to conduct business or to construct only if the request is submitted by a public utility. Either or both of Subsections 8-406(a) and (b) could easily have been worded instead to state, "No person shall" or "No entity shall;" but they didn't. Given that the Legislature chose the particular words that it did, which have remained intact for many years, rather than one of the above-quoted alternatives, the Legislature can only have intended that initiation of requests under Section 8-406 of the Act are restricted to entities that are public utilities at the time of the request. Rock Island is an entity, but it is not a public utility.

² Staff witness Rashid does not believe Rock Island to be a public utility. Tr., p. 703, ll. 1-5.

The result, therefore, is that the Commission may not entertain its Petition for a CPCN under Section 8-406. Beyond its position as simply stated above, the ILA stands on, adopts, and incorporates by reference, its Motion to Dismiss filed on February 7, 2013, and its Reply of Illinois Landowners Alliance to Responses to Motion to Dismiss filed on March 7, 2013.

The right of the ILA at this stage of the proceeding to object to and request that the full Commission review the ALJ's decision, and the ability of the Commission to review it, are provided by Rule 200.520(a) of the Rules of Practice: "Any ruling by a Hearing Examiner ... may be reviewed by the Commission, but failure to seek immediate review shall not operate as a waiver of any objection to such ruling." 83 Ill. Admin. Code 200.520(a).

The ILA requests that the Commission review and reverse the March 18, 2013, decision of the ALJ, and dismiss the Petition.

B. ILA Renewed Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources (Ruling Dated December 4, 2013)

The ILA seeks review both of (1) the ALJ's ruling issued on March 18, 2013, in which he determined that a ruling on the merits of the ILA's Amended Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources, filed on January 9, 2013, was premature; and (2) the ALJ's ruling issued on December 4, 2013, in which he denied the ILA's Renewed Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources, filed on July 12, 2013.

The ILA filed its first Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources ("IDNR") on January 7, 2013. The ILA filed an

Amended Motion on January 9, 2013. The gist of the Motion is that, because the Commission is being asked to authorize the Rock Island Project³ and because the Project could result in the destruction or modification of any registered natural area⁴, and could affect protected or endangered species,⁵ the Illinois Natural Areas Preservation Act and the Illinois Endangered Species Act require that the Commission, as a state agency, directly consult with the IDNR concerning the Project, and that the consultation should occur early in the process. Rock Island and the Staff opposed the Motion. In a ruling issued on March 18, 2013, the ALJ determined that a ruling on the Motion's merits was premature in that it appeared the Staff would be addressing the relevant issues in its discovery in the case, as well as in its direct testimony. The ALJ offered that if the ILA believes that Staff's testimony does not adequately address the concerns raised in the Motion, then the ILA could seek further relief at that time.

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

³ Illinois Public Utilities Act, 220 ILCS 5/8-503

⁴ Illinois Natural Areas Preservation Act, 525 ILCS 30/17

⁵ Illinois Endangered Species Act, 520 ILCS 10/11

other than through the Staff, or whether the ILA was seeking some other relief. In his ruling the ALJ gave the ILA an opportunity to respond.

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

In a response also filed on October 15, 2013, the Staff maintained its position that neither Section 8-406 nor Section 8-503 of the Act requires the Commission to consult with any other state agency, including the IDNR, when considering whether to grant a CPCN. The Staff also took the position that the ILA's approach in moving the Commission to consult was the wrong procedural vehicle; that the ILA should have filed a writ of mandamus to attempt to force the Commission to undertake the consultation action the ILA was seeking. The Staff additionally argued again that, contrary to the ILA's contention, neither of the referenced environmental statutes requires the Commission to consult with the IDNR because the Commission was not sufficiently involved with the Rock Island Project to trigger the consultation requirement. The Staff then cited its own role in considering the environmental impacts of the Rock Island Project as another

reason that the Commission should have to undertake the consultation that the ILA was seeking. Lastly, the Staff questioned how it could fulfill the role as the ILA had suggested given its authority and responsibilities in a proceeding like this.

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

In responding to the Staff's contention that mandamus was the proper procedural step, the ILA contended that it should not be forced to file a new action in circuit court for a writ of mandamus. The simple fact is that the Commission itself has not made known its position on whether it should consult with the IDNR in electric transmission line CPCN cases like this one. The ILA was attempting to ask the Commission for such a determination of whether it has such a duty. While the Staff certainly has made known its position, i.e., that no such consultation is required, by its own admission the "Staff does not represent the agency itself in this proceeding." Staff Response to ILA's Response Filed October 1, 2013 (Oct. 15, 2013), at p. 9.

As the ILA has pointed out, mandamus is a procedure utilized when an official refuses or otherwise fails to carry out a clear duty. ILA acknowledges that whether the Commission has a duty to consult with the IDNR is not admitted but is instead contested, and the issue of whether such duty exists has to the ILA's knowledge never

before been addressed. What the ILA is seeking at this point, given that it appears that the issue has been brought to the Commission's attention for the first time in this proceeding, is simply whether the Commission (not the Staff) believes it has such a duty to consult. If on the one hand the Commission agrees that it does, then we are left with determining how to have that duty carried out in this proceeding, and what effect the duty may have on this proceeding at this juncture. If on the other hand the Commission disagrees with the ILA and believes it does not have a duty to consult with the IDNR, and communicates that position to the ILA and other parties in the proceeding, then the ILA would have to determine whether it wishes to challenge that determination. If the ILA does wish to challenge such a Commission determination that it has no duty to consult, the ILA would have to determine the proper procedure for doing so, whether via filing for a writ of mandamus or otherwise. But at this stage of the proceeding, in which the Commission has not made known whether it believes it has the duty to consult that the ILA contends it has, it is wholly wasteful, inappropriate, and contrary to existing legal precedent for the ILA to have to initiate a wholly separate legal proceeding, in another tribunal, simply to obtain an answer in the first instance from the Commission.

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

It is noteworthy that Staff did not consult with the IDNR at any point in these proceedings. The Staff relied solely upon representations made by Rock Island. Tr., p. 700, ll. 20 – 24. When Rock Island consulted with the IDNR, no one other than Rock Island and IDNR staff was present. Tr. p. 396, ll. 23 – 34, p. 397, ll. 1 – 2. In relying upon the information put forth by Rock Island, an interested party, Rock Island set aside the IDNR's concerns about forest fragmentation. Tr. p. 398, ll. 3 – 10. Accordingly, it is evident that the Commission's failure to abide by its statutory obligation to consult with the IDNR, early in the process, was not a mere formality; but, rather, such failure to consult likely had real consequences.⁶

Beyond its position as restated and further explained above, the ILA stands on, adopts, and incorporates by reference, its (i) Amended Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources, filed on January 9, 2013; (ii) Illinois Landowners Alliance Reply to Staff & Rock Island Regarding ILA's Motion to Compel Consultation, filed on January 29, 2013; (iii) Renewed Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources, filed on July 12, 2013; (iv) Illinois Landowners Alliance Reply to Staff & Rock Island Regarding ILA's Renewed Motion to Compel Consultation filed on July 31, 2013; (v) Illinois Landowners Alliance Response to Administrative Law Judge's Ruling of September 17, 2013, filed on October 1, 2013; (vi) Motion to Strike Portions of Staff's Response to ILA's Response to ALJ's Ruling of September 17, 2013, filed on October 16,

⁶ Because the more objective consultation by the Commission with the IDNR did not occur, we have no way of knowing what the results would have been, but we certainly cannot reasonably conclude that the results would have been the same as those resulting from Rock Island's communications and interactions with the IDNR.

2013; and (vii) ILA Response to Staff's Response to Motion to Strike Portions of Staff's Response to ILA's Response to ALJ's Ruling of September 17, 2013, filed on November 5, 2013.

The right of the ILA at this stage of the proceeding to object to and request that the full Commission review the ALJ's decisions, and the ability of the Commission to review them, are provided by Rule 200.520(a) of the Rules of Practice: "Any ruling by a Hearing Examiner ... may be reviewed by the Commission, but failure to seek immediate review shall not operate as a waiver of any objection to such ruling." 83 Ill. Adm. Code 200.520(a).

The ILA requests that the Commission (a) review and reverse the decision of the ALJ issued March 18, 2013; (b) find that (i) the Commission has a statutory duty to consult with the IDNR, (ii) it failed to comply with that duty, and (iii) such failure to consult was material; and (c) either dismiss the Rock Island Petition or enter an order directing the ALJ to conduct further proceedings consistent with the Commission's decision and directive. Alternatively, with respect to the December 4, 2013, ruling of the ALJ, the ILA requests that the Commission (a) decide that the ILA need not file for a writ of mandamus in order to have the Commission in the first instance determine whether it has a duty to consult with the IDNR; (b) review and reverse the decision of the ALJ issued December 4, 2013; (c) find that (i) the Commission has a statutory duty to consult with the IDNR, (ii) it failed to comply with that duty, and (iii) such failure to consult was material; and (d) either dismiss the Rock Island Petition or enter an order directing the

ALJ to conduct further proceedings consistent with the Commission's decision and directive.

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

Section 8-406(a) of the PUA provides:

Sec. 8-406. Certificate of public convenience and necessity.

(a) No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

220 ILCS 5/8-406(a)

Because Rock Island is not a public utility, it is not eligible for, and the Commission lacks statutory authority to grant it, a Certificate of Public Convenience and Necessity ("CPCN") under Section 8-406 of the Act. In addition, the public convenience and necessity do not require Rock Island to conduct the business it proposes to conduct. The law in this State pertaining to the grant of a CPCN has been long-established. The Commission may issue a CPCN only if it finds that the proposed service is necessary for public convenience and necessity. *New Landing Utility v. Illinois Commerce Comm'n*, 58 Ill.App. 868, 374 N.E.2d 6 (2d Dist. 1977). The Commission must specifically find that public convenience and necessity require the proposed service. *Eagle Bus Lines v. Illinois Commerce Comm'n*, 3 Ill.2d 66, 119 N.E.2d 915 (1954). The convenience of and advantages to the promoters of a service are not alone sufficient to justify the grant of a CPCN. *Wabash, C & W Ry. Co. v. Commerce Comm'n ex rel. Jefferson Southwestern R.R.*

Co., 309 Ill. 412, 141 N.E. 212 (1923). Even if here the proposed business would meet the public convenience and necessity standard if it were to be conducted, the Project is so speculative that it cannot be said to meet the public convenience and necessity standard and does not merit a CPCN.

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

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

(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.

A. Statutory Prerequisites for Public Convenience and Necessity

- 1. Necessary to provide adequate, reliable, efficient service or will promote development of an effectively competitive electricity market**

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

The ILA has expressed its concern regarding this particular factor. ILA witnesses understand that reliable electric supply is critical to the State, and to landowners in this State. Tr. p. 585, ll. 16 -22. The ILA is not anti-power line, and in fact, at least one member has granted easements to power transmission companies. Tr., p. 586, ll. 9 – 16. However, the ILA has made it clear that it does not believe Rock Island has shown that this project is not needed to supply Illinois with reliable electric power. ILA Ex. 1.0REV, p. 3, ll. 23 – 25. Staff witness, Mr. Rashid agrees. Tr. P. 712, ll. 9 – 11.

The focus of ILA witness Dr. Gray's testimony was that Rock Island, and the Project, do not meet the requirements under Section 8-406(b) for a CPCN. With the advent of regional transmission organizations ("RTOs"), including the Midcontinent Independent System Operator, Inc. ("MISO") and PJM Interconnection, L.L.C. ("PJM"), and policies and orders of the Federal Energy Regulatory Commission ("FERC"), the role of transmission-owning public utilities and state regulatory commissions has changed as those roles pertaining to electric transmission planning, markets, and operations. As Dr.

Gray testified, MISO has a process for determining the need for high-voltage transmission projects within MISO's multi-state operations; and its process produces an annual MISO Transmission Expansion Plan ("MTEP"). PJM has a similar process for the area of its multi-state operations, producing its Regional Transmission Expansion Plan ("RTEP"). ILA Ex. 7.0, pp. 3 – 4, ll. 62 – 71.

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

1. Ensure the reliability of the transmission system over the planning horizon;
2. Provide market efficiency and other economic benefits;
3. Facilitate public policy objectives, such as renewable portfolio standards ("RPS"); and
4. Address other issues and objectives that the stakeholder process helps identify.

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

As Dr. Gray testified, MISO's MTEP process identifies and evaluates transmission projects designed to provide value in excess of cost under many future policy and economic conditions. Such projects, which will provide regional public policy, economic, and/or reliability benefits spread across MISO's footprint, become designated as Multi Value Projects ("MVPs"). As an example, Dr. Gray described MISO's 2011 MTEP, in which MISO's Board identified 17 high-voltage transmission projects, which became integrated

into MISO's subsequent 2012 MTEP planning model. According to the 2012 MTEP, these 17 MVPs promise the delivery of 41,000,000 MWh of renewable energy each year. ILA Ex. 7.0, p. 5, ll. 89 – 101, ILA Ex. 7.1, 81 - 95.

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

Dr. Gray noted that, even though the Project was not a product of the MISO MTEP process, Rock Island had expected that the Project would be reflected in the MISO MTEP for 2012⁷ but that it was not; that a MISO planning appendix had identified it as conceptual. ILA Ex. 7.0, pp. 5 - 6, ll. 102 - 109.

This Commission is familiar with the MISO MTEP process, and resulting MVPs, having just recently addressed the subject in the context of another major electric transmission project. As evident from its Order⁸ in Docket 12-0598, the Ameren

⁷ Projects such as that proposed by Rock Island that, in contrast to most projects, are not vetted by an RTO such as MISO and not identified as needed by the MTEP process are nevertheless reflected in an MTEP data base so that the Project's impact can be considered as the MTEP process identifies other transmission projects. See RI Ex. 2.0, ll. 231 – 236. See also RI Ex. 2.11 (Revised), ll. 843 – 853 for corresponding treatment by PJM.

⁸ ICC 12-0598, Order (August 20, 2013), *reh'g granted in part & denied in part & appeal filed*

Transmission Company of Illinois (“ATXI”) Illinois Rivers Project, the Commission determined the ways many of the factors and considerations pertaining to a MISO-undertaken planning process and resulting project feed into and relate to the utility’s presentation of the project when it seeks a CPCN. The Commission, and parties, benefitted greatly by the ATXI Project having been vetted through a thorough process, with review by highly qualified, technical experts at MISO and elsewhere who understand the regional grid and could consider the Project in the context of the overall MISO region. Even though the ATXI Project arose out of the MISO MTEP process, this Commission nevertheless rightfully reviewed it from a technical and operational perspective, rather than merely rubber-stamp it because it had been vetted in the MISO MTEP as an MVP. A key point here is that the Commission’s review occurred only after MISO had performed its role with respect to the ATXI Project, and not before. This is in contrast to the Rock Island Project, for which Rock Island is urging the Commission to place its trust in MISO, and PJM, to do their jobs prospectively, without any subsequent review by this Commission, and other interested Illinois stakeholders who would not have been as involved in the RTO processes. The Commission must conduct its own review that is sufficient to satisfy itself that Rock Island and its proposed Project meet the statutory requirements under PUA Section 8-406; the Commission may not abdicate its statutory responsibility to MISO, to PJM, or to Rock Island.

In contrast to the Rock Island Project, the ATXI Project that became the subject of a request for a CPCN in ICC 12-0598 was developed through a multi-year MISO

planning process beginning with a Regional Generation Outlet Study in 2008,⁹ the start of a long, detailed analysis of the transmission system that led to the implementation of the ATXI Project along with other MVPs. These MVPs, including ATXI's Project, were developed utilizing reliability and economic analyses applying several future scenarios to determine the robustness of the designed portfolio under different potential energy policies.¹⁰ The Commission found that "a 345 kV transmission line is necessary to address transmission and reliability needs in an efficient and equitable manner and will benefit the development of a competitive electricity market," and that the record (including the testimony of a witness from MISO) "provides no grounds for the Commission to generally find that the Illinois Rivers Project is not the best approach to meet the needs" involved. The Commission concluded that "the record supports a finding that the type of project represented by the Illinois Rivers Project is necessary and appropriate under Section 8-406.1(f)(1)."¹¹

⁹ A goal of the study was to develop a transmission plan that would enable MISO states to meet RPS obligations at the lowest delivered wholesale energy cost.

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

¹¹ PUA Sections 8-406(b)(1) and 8-406.1(f)(1) are substantially similar:

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

This Commission will shortly have an opportunity to review a CPCN request for a transmission project that was the product of the PJM RTEP process. In ICC 13-0657, ComEd is seeking approval for its Grand Prairie Gateway Project. ComEd's Petition, filed on December 2, 2013, describes how its project resulted from PJM's RTEP process, with PJM selecting the project in October 2012 following its analysis of several projects that addressed the issues involved with the ComEd transmission system. See ICC 13-0657, ComEd Petition, pp. 3 -4 (December 2, 2013). Again, the ComEd Project stands in stark contrast to the proposed Rock Island Project in terms of the analysis and review the

8-406(b)(1): "that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives;"

8-406.1(f)(1): "That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives."

project has received at the time the CPCN application is sought, or the time it is to be issued.

Just as the Rock Island Project was not included in the MISO MTEP, Dr. Gray pointed out that it also was not included in PJM's RTEP for 2012¹², despite Rock Island's expectations that it would be included (even though not a project resulting from the PJM RTEP process); and it was not apparent to Rock Island why it was excluded. ILA Ex. 7.0, pp. 6 – 7, ll. 120 – 129. Dr. Gray observed that PJM likely declined to include the Rock Island Project in its RTEP, which other industry stakeholders rely upon, because it was at such an early, still conceptual, stage, without any subscribers (customers), which Rock Island readily acknowledges¹³. Indeed, even Rock Island's witness Rudolph Wynter of National Grid (a recent major new investor in Rock Island's parent company¹⁴) understands and admits that the Rock Island Project is "at the initial stage of its development." RI Ex. 12.0, p. 9, l. 202; *see also* ll. 206, 209, Tr., p. 372, ll. 3 – 24, and p. 373, ll. 1 – 3.

The fact that Rock Island has no customers, either presently or any contractually bound or even specifically identified prospects (*See* Tr., p. 1061, ll. 2 – 19) caused Dr. Gray to suggest that the Project cannot be judged as satisfying the first prong of PUA Section 8-406(b)(1), which first prong states, "that the proposed construction is

¹² See footnote 7 *supra* for description of inclusion of a non-vetted transmission line project in an RTO plan.

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

¹⁴ *See, e.g.*, ComEd Cross Ex. 5.

necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers.” See ILA Ex. 7.0, p. 8, ll. 154 – 162.¹⁵ Rock Island took issue with Dr. Gray’s direct testimony on this point, arguing that because the Project was designed as a merchant project, it necessarily is not meant to have customers at this stage. RI Ex. 10.14, ll. 531 – 572. Dr. Gray, in his rebuttal testimony, responding to Rock Island’s argument by stating that Rock Island’s argument highlights a significant weakness in Rock Island’s business model, by which Rock Island is circumventing the regional planning processes normally utilized for new interstate electric transmission projects. As Dr. Gray correctly noted, regardless of Rock Island’s business model, under which customers and capacity contracts are deferred until sometime later in the Project’s development life, the PUA Section 8-406 requirements still apply and must be satisfied in order for a CPCN to be granted. ILA Ex. 7.2, ll. 30 – 43. Moreover, as Dr. Gray pointed out, the need to be shown is “customer” need, not needs of the public in general. ILA Ex. 7.2, ll. 44 – 50.

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

¹⁵ Rock Island witness Januzik’s attempts to categorize the Project as one that would improve reliability (see RI Ex. 6.0), were discredited by ComEd witness Steve Naumann. See, e.g., ComEd Ex. 1.0, ll. 818 – 876; ComEd Ex. 4.0, ll. 684 – 710. On the contrary, Mr. Naumann provided evidence of the Rock Island Project’s significant threats to reliability. ComEd Ex. 1.0, ll. 416 – 595; ComEd Ex. 4.0, ll. 115 – 354.

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

It should be noted at this point that Section 8-406(b)(1) is but one of three threshold requirements that the utility¹⁶ has the burden of proving (“only if the utility demonstrates”); the requirements are not alternatives but instead all must be satisfied, all constituting elements of the public convenience and necessity which the utility project must promote. To explain further, by the use of “or” it is evident that the two standards contained in Section 8-406(b)(1) are alternative standards, such that (b)(1) may be satisfied by a showing of reliability-related need or the promotion of electricity market competition. Once one of those alternative showings has been met, however, the remaining two requirements for a CPCN under Section 8-406 must also be met. The first additional requirement (Section 8-406(b)(2)) pertains to the utility’s capability to manage and supervise the construction; and the other requirement (Section 8-406(b)(3)) pertains to the utility’s capability to finance the construction without significant adverse financial consequences.

¹⁶ Rock Island is not a utility, yet another reason it cannot meet the requirements of Section 8-406.

Because Rock Island is unable to meet its burden to demonstrate, under Section 8-406(b)(1), that the Project is necessary “to provide adequate, reliable, and efficient service to its customers,”¹⁷ then it is incumbent upon Rock Island, alternatively, to demonstrate that its Project meets the second prong of the Section 8-406(b)(1) test, 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.”

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

1. The significant negative land-use impacts and externalities that Rock Island and the Project would impose on the Illinois public for the primary benefit of the eastern PJM states¹⁸ to meet their RPS goals.
2. In the absence of actual subscribers, or customers, Rock Island’s assumed traits and characteristics about generators that could potentially connect to the Project cannot be substantiated.
3. Rock Island has reserved the right to seek to switch the project from merchant status¹⁹ and have allocated to Illinois electricity consumers, future transmission costs, of unknown amounts.
4. Rock Island is unwilling adequately to protect the Illinois public from the risks of failure of the Project.

ILA Ex. 7.0, ll. 191 – 204.

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

ILA Ex. 7.2, ll. 127 – 131.

¹⁷ Another basis for Rock Island’s inability to satisfy this first prong of Section 8-406(b)(1) is that it has no customers.

¹⁸ Eastern PJM states are all or parts of Delaware, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. ILA Ex. 7.0, ll. 112 – 115.

¹⁹ ComEd witness Steve Naumann asserted during the hearings that the presence of this switch to cost allocation factor. Tr., p. 965, l. 25, p. 966, ll. 1 – 10.

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

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

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

cost-allocation request would lack the discipline, openness and scrutiny it should. ILA Ex. 7.0, ll. 239 – 259.

The subject of the possible re-classification of the Project to one whereby Rock Island²⁰ is able to recover Project costs through tariffed rates rather than through negotiated contracts with willing subscribers was the subject of much further testimony during this proceeding, with Rock Island offering to place certain conditions on its ability to seek cost-recovery treatment. Rock Island's final word on the matter was presented through the surrebuttal testimony of Rock Island witness Berry wherein he, speaking for Rock Island, further modified the condition under which Rock Island could re-structure the Project as a cost-recovery project rather than one by which revenues would depend upon voluntary Rock Island - subscriber negotiations.

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

RI Ex. 10.26, ll.486 – 497.

Staff witness Richard Zuraski, who still had concerns in his rebuttal testimony about the possibility of cost allocation treatment for the Project (Staff Ex. 6.0, ll. 116 – 119), acknowledged during cross-examination that Rock Island was attempting to retain

²⁰ Or whatever entity may own the Project at the time.

the right, once having been granted the CPCN it is seeking, to come back to the Commission and seek recovery of Project costs from Illinois ratepayers through transmission service charges that would be imposed on Illinois retail electric suppliers. Tr., p. 687, ll. 7 – 14. Rock Island’s assurance that, if it decides to switch the Project to a rate-recovery model, it will come back to the Commission for permission to have its Project costs imposed on Illinois retail ratepayers through regional cost allocation, may have some surface appeal but the assurance is superficial. Many unknown factors surrounding such a process remain – “the devil’s in the details”. Mr. Zuraski acknowledged that certain questions remain unanswered by Mr. Berry, Rock Island’s spokesperson on the matter. Mr. Berry failed to indicate, for example, (i) what section of the PUA might govern such a proceeding; (ii) what showing Rock Island would be required to make; (iii) what standard the Commission would apply in making a decision; or (iv) what time period within which the Commission would need to make its decision. Tr., p. 687, ll. 15 – 24, p. 688, ll. 1 – 7. Mr. Zuraski, who has undergraduate and graduate degrees in Economics, stated that he could not think of a reason Rock Island²¹ would seek a change to cost allocation unless it was under financial distress, meaning it was not making an adequate rate of return on investment, or possibly was losing money. Tr., p. 689, ll. 8 – 14.

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

²¹ Or a successor owner

Project in this regard to a wind energy project, which typically has a decommissioning plan including an escrow fund or other financial security to help cover decommissioning costs and land reclamation costs in the event the project fails and is no longer used. ILA Ex. 7.0, ll. 275 – 280. As Rock Island pointed out, it is uncommon for electric transmission line developers to have to post financial security to protect against the possible decommissioning of the project. The Rock Island Project, however, is not comparable to other transmission projects in that, (a) it is not designed to have regulated rate recovery protection, and (b) it will be housed in a single purpose legal entity. In these two important aspects, then this Project more closely resembles a wind energy project, and financial security is therefore a reasonable requirement to impose on the Project owner.

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

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

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

2. Capable of efficiently managing and supervising the construction process

Rock Island, which has no operating history, has not met its burden to show that it is capable of efficiently managing and supervising the construction of the Project.

Staff’s position, as evidenced in its prepared testimony and testimony during the hearings, is that based upon Rock Island’s complete lack of experience in this kind of project, Rock Island has not demonstrated it is able to manage the construction of the propose line. Tr., p. 703, ll. 24, p. 704, ll. 1 – 4. In fact Staff witness Rashid has never seen a Commission CPCN proceeding for a transmission project involving an applicant that has never built a transmission line. Tr., p. 713, ll. 8 – 10.

3. Capable of financing the proposed construction

Rock Island has not met its burden to show that it is capable of financing the proposed construction without significant adverse financial consequences.

ComEd expert witness Ellen Lapson offered testimony demonstrating that Rock Island is unable to show the requisite financial capability to satisfy its statutory burden. ComEd Ex. 2.0; ComEd Ex. 5.0. ILA witness Paul Marshall has indicated that the organization has concerns with Rock Island's financials, and whether or not the line would actually be built. Tr., p. 588, ll. 21 – 24, p. 589, ll. 1 – 2. In fact, the record shows that in Dr. Marshall's experience as a banker and farm manager, a hypothetical company with a similar profile as Rock Island – i.e. approximately one percent equity, one percent or less collateral, no contractually committed source of equity, no contractually committed customers, and no contractually committed revenue stream, Tr. p. 597, ll. 1 – 8, p. 9 – 13 – would be unlikely to be financed. Tr. p. 600, ll. 9 – 13 (break in transcript due to objections).

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

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

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

RI Petition; RI Ex. 1.1REV; Tr. pp. 192 – 196, p. 269.

As can be seen from the above, Clean Line is facing the task of raising financing not just for the Rock Island Project, but over \$8 billion for all of its projects. See Tr., p. 1107, ll. 1 – 20. At the hearings, certain confidential cross-examination exhibits were introduced showing development expenses incurred by Clean Line to date, and projected additional development expenses through 2015. See, e.g., ILA Group Cross Ex. 1 CONFIDENTIAL. Beyond, the 2015 projected year, as Mr. Skelly testified, Clean Line will need to continue to spend additional monies on development. Tr., p. 211, ll. 21 – 24, p. 212, ll. 1 – 5 (“It’s a certainty”). Clean Line’s Board of Directors determines how available development capital is allocated among its subsidiaries and projects. TR., p. 215, ll. 19 – 24, p. 216, ll. 1 – 7; ComEd Cross Ex. 10 PUBLIC. Consequently, Rock Island does not control its own capital sourcing or spending, as those decisions are made at the parent company level; it is fair to say that Rock Island has to compete with other Clean Line project entities for capital.

Clean Line has \$15 million left in committed development capital, that coming from National Grid. ComEd Cross Ex. 4 PUBLIC; Tr., p. 1110, ll. 4 – 17. Based on its capital available both on-hand and committed, at present rates of development spending, Mr. Berry testified at hearing that Clean Line will need to find additional capital during 2014 in order to continue to fund its projects. Tr., p. 1111, ll. 16 – 24 (“Based on these projections, and assuming the board allocates capital consistently with these projections, we would need to raise additional capital from our investors or other sources sometime in 2014.”).

Mr. Berry explained how Clean Line plans to finance the actual construction of its projects (\$8 billion plus) once they reach a financeable stage. *See Tr.*, pp. 1087 – 1101. He stated that, for the Rock Island Project, in order to obtain binding debt financing (60-80% of total cost; *Tr.*, p. 1089, ll. 5 – 12) commitments for the construction, investors would require signed capacity contracts with anchor tenants assuring a revenue stream that Rock Island would pledge to secure repayment. *See Tr.*, p. 1093, ll. 11 – 21. The capacity contracts would be signed, according to Mr. Berry, before any generators had constructed any generation in the Resource Area. The generator customers of Rock Island, which become the shippers, will be expected to make binding minimum revenue commitments to Rock Island, both before the Project starts construction and before the generating project starts construction, but the revenue commitments would not be contingent on either (transmission line or generating facility) being built. Mr. Berry says that is a risk that the shipper will take. *Tr.*, p. 1096, ll. 12 – 24, p. 1097, ll. 1 – 24, p. 1098, ll. 1 – 19. In order to finance the Rock Island Project in this manner, Rock Island would need signed capacity commitments, with corresponding revenue assurances, from generators representing about 4,000 MW of capacity. At an estimated cost of \$1.5 million/MW, generators in aggregate would be committing to the development of generation in the Resource Area at a total cost of \$6 billion. *Tr.*, p. 1098, ll. 22 – 24, p. 1099, ll. 1 – 24, p. 1100, ll. 1 – 24, p. 1101, ll. 1 – 3.

The scenario that Mr. Berry described, which was not explained in detail in Rock Island's direct, rebuttal, or surrebuttal testimony, seems like an incredibly risky undertaking for the generator-subscribers. On top of what Mr. Berry explained, the

generators will need to find ways to finance their \$6 billion of new generation, thereby injecting yet another significant contingency and element of risk. So, in summary, Rock Island faces the dual financial challenge of finding sufficient development capital to continue on its quest, and then, assuming it is able to do that, to find financing providers and subscribing generators at levels sufficient to permit the actual construction of the Project. We can reach no other conclusion that Rock Island has not satisfied its burden of demonstrating under PUA 8-406(b)(3) that it “is capable of financing the proposed construction without significant adverse financial consequences.”

4. Other factors bearing on public convenience and necessity

Rock Island has not shown that the Project is the least cost means of satisfying the Project's objectives, in part because its routing study is flawed and numerous disadvantages to landowners and other constituents have been shown and not adequately addressed.

Rock Island provided its list of milestones and activities pertaining to the Project in response to a data request, which was subsequently included as part of an exhibit introduced during the hearings. Except for the last two items, the following list incorporates those milestones which at the time of submission remain to be obtained or completed.

<u>No.</u>	<u>Activity/Approval</u>	<u>Expected Date</u>
1	Completion of Iowa county informational meetings	Q4 2013
2	MISO No Harm and Affected System Impact Study Results	Q1 2014
3	Ill. Commerce Commission Decision	Q2 2014

4	RI initiates detailed landowner negotiations for easements based on ICC-approved route	Q2 2014
5	RI commences environmental, cultural and engineering surveys for ICC-approved route pursuant to survey authority granted by ICC certificate order	Q3 2014
6	RI engages in detailed engineering and pole spotting based upon detailed survey data for the ICC-approved route	Q3 2014
7	PJM issues Facilities Study results	Q3 2014
8	RI executes Interconnection Services Agreement with PJM and appropriate parties	Q1 2015
9	RI executes Interconnection Services Agreement with MISO and appropriate parties	Q1 2015
10	Additional construction hires completed (as described in RI Ex. 1.5)	Q1 2015
11	Iowa Utilities Board issues decision on Franchise	Q2 2015
12	RI completes all necessary ROW agreements	2015-2016
13	RI completes HVDC converter station design and develops detailed converter budget estimate	Q2 2015
14	RI completes transmission line design	Q2 2015
15	RI executes EPC contract with transmission line constructor, incorporating key supplier agreements	Q3 2015
16	RI executes contract with HVDC converter station supplier	Q3 2015
17	RI executes transmission service agreements with anchor tenants	Q3 2015
18	RI completes open season process	Q4 2015
19	RI completes receipt of any permits, licenses, and approvals that may be required as set forth in RI Ex. 7.20	Q4 2015

- | | | |
|----|---|---------|
| 20 | RI finalizes transmission line operations and maintenance plan | Q4 2015 |
| 21 | RI closes construction financing for the project and submits documentation to ICC staff per conditions | Q4 2015 |
| 22 | Full development operating guides (after all PJM and MISO studies are completed); these address concerns re. stability, voltage, overload, congestion | |
| 23 | PJM's determination of effect of generators connected to the transmission line above capacity level of 1,192 MW (whether additional transmission reinforcements will be required) | |

Items 22 and 23 above added by ComEd witness Naumann, see Tr. p. 962, ll. 14 – 25, p. 963, l. 1, p. 964, ll. 7 – 20.

Even for an established public utility with an existing transmission system, the foregoing list would present a major challenge. But for a start-up like Rock Island, the challenges are undoubtedly even greater, thereby presenting yet more reasons that it should not be granted a CPCN.

B. Route of the Project / Land Acquisition

1. Proposed Route

The ILA is not an advocate for any particular routing for the proposed project. However, the record indicates that Rock Island has engaged in a flawed, incomplete, and already out of date routing study, in its attempt to fragment forests and spoil prime farmland rather than parallel existing infrastructure. The complete inadequacy of the routing study is not only a reason to deny the relief sought on its own, but it also suggests that this aspect of the Project, combined with Rock Island's inability to demonstrate that the Project will satisfy any market or government-imposed need or objective, along with the shaky and speculative financial situation in which Rock Island

finds itself, and Rock Island's lack of demonstrated ability manage and supervise the construction, suggest that Rock Island's Petition is at best premature.

Perhaps the primary reason for the inadequacy of the routing rests with leadership of the nineteen person routing team. Tr., p. 414, ll. 16. Hans Detweiler served as the Director of Development on the routing team. Tr., p. 415, ll. 19 – 22. In particular he supervised the routing team. Tr., p. 415, ll. 23 – 24, p. 416, ll. 1 – 5. Unfortunately, Mr. Detweiler lacked qualifications for such an undertaking. First, the extent of his formal education is a Bachelor of Arts degree in political science. Tr., p. 413, ll. 11 – 14. All of his experience prior to being hired by Clean Line was in public policy, policy advisement, outreach, and communications. Tr., p. 413, ll. 15 – 22. It is only once he got a job working for a company proposing to build a two-state HVDC transmission line did Mr. Detweiler begin to gain any experience in "infrastructure development." Tr., p. 413, ll. 22 – 24. Considering this utter lack of experience in a relevant industry position in the private sector, and lack of supervisory experience, it is no surprise that the study is flawed, incomplete, and already out of date.

Rock Island's routing study began several years ago, in March of 2010. Tr., p. 393, ll. 7 – 12. The most recent visual inspection relied upon by the routing study took place nearly two years ago. RI Ex. 8.3, ll. 409 – 411. The routing study has not been amended to include any information learned of or discovered since September 2012. Tr., p. 393, ll. 43, p. 394, ll. 1 – 3, 8. That fact, given that construction will not be proceeding until 2017, seven years after the routing study began, and over four years

from when Rock Island ceased gathering and considering new information, renders the study outdated. Tr., 395, ll. 1 – 4.

Such large temporal gaps between studies and execution upon the study are troubling for obvious reasons. Within just a little over a year, Rock Island has already admittedly missed a home, other distribution lines, a commercial development near Morris, and a private airport. RI Ex. 8.3, ll. 411 – 419; Tr., p. 395, ll. 14 – 15, 21 – 22;; Tr., p. 396, ll. 1, 5 – 7. Further, the study does not consider the location of possible wind turbines for the Walnut Ridge wind farm in Bureau County, despite Rock Island’s knowledge of the same. RI Ex. 8.10, ll. 65 – 67; RI Ex. 7.35, ll. 533 – 538. Even if the routing study were adequate now, which it is not, it certainly will not be when it is four to seven years old. The particularly large gap in time between study and construction for this Project is attributable to Rock Island’s fledging status and its attempt to ram through this Commission its CPCN application when so many steps remain to be accomplished, after it would receive the approval here which it seeks.

Additionally, Rock Island’s routing study relied upon a principle that any residential structure counts as a full sensitivity, whether occupied, not occupied, already impacted by existing infrastructure, or in a non-impacted location. Tr., p. 400, ll. 11 – 24, p. 401, ll. 2 - 8. In fact, when considering the Rock Island Railroad, a benefit of that corridor was that it was “made up of land already impacted to some degree.” RI Ex. 8.2, p. 23. Additionally, Rock Island makes it abundantly clear that homes that are already impacted – at least visually – are to be given less weight. RI Ex. 8.3, ll. 665 – 666.

However, when dismissing some admittedly attractive routing options, Rock Island fails to heed its own sensitivity and opportunity factors.

Railroads are defined as a routing opportunity by Rock Island. RI Ex. 8.2, p. 16. Additionally, the so-called Rock Island Railroad right of way was initially identified as a beneficial corridor for the development of this Project. RI Ex. 8.2, p. 23. However, the Rock Island Railroad opportunity was dismissed early on without proper analysis and consideration. Tr., p. 398, ll. 15 – 18. Despite Rock Island’s earlier admission that the opportunity was attractive due to the already impacted nature of the route, Rock Island claimed that this early dismissal was due to development of population centers along the railroad. RI Ex. 8.2, p. 31. Further, the limited study of the Rock Island Railroad opportunity did not include a detailed quantitative analysis of bypassing any population centers along that route. Tr., p. 399, ll. 10 – 15. In fact, Rock Island’s witness was unable to provide any information as to distance of homes to the railroad. Tr., p. 399, ll. 17 – 21. Accordingly, this potentially attractive corridor and routing option was dismissed early, and not adequately studied, despite following a major opportunity for the majority of the route. Instead, Rock Island chose to proceed across miles and miles of prime farmland that has not already been “impacted to some degree.”

Fundamentally, Rock Island’s entire routing study depends upon the place where it starts at the western edge of Illinois and enters this State, i.e., the location of the Mississippi River crossing. In fact, identification of the Mississippi River crossing was part of the first step in the development process. RI Ex. 8.2, p. 11. The river crossing analysis was completed in January 2011. RI Ex. 8.2, p. 11. However, consultation with

the Illinois Department of Natural Resources did not begin until 2011, after the crossing was chosen. RI Ex. 8.8, p. 1. (“Clean Line Energy submitted an initial corridor alignment to IDNR in 2011”). Consultation with the IDNR was not concluded until November 8, 2013. RI Ex. 8.1, ll. 86 – 87. The IDNR, perhaps in an exercise of futility, suggested that the crossing Rock Island had already determined and set be moved further south due to mussel concentrations and forest fragmentation, with the latter concern never being resolved. RI Ex. 8.8, p. 1; Tr., p. 397, ll. 9 – 12, 23 – 24, p. 398, ll. 1 – 7. In fact, the suggestion to move the line further south would have placed the line at a location already identified as an opportunity. Tr., p. 397, ll. 13 – 18. The record shows that Rock Island had solidified the Mississippi River crossing well before discussing the issue with the IDNR. This begs the question of what good is an interested party’s consultation with a government agency regarding a foundational, primary, piece of a routing study that was set prior to the consultation. And for the adequacy of the routing study, it calls into question how a routing study that is entirely dependent on a river crossing be adequate when the crossing was determined prior to needed input.

Additionally, Rock Island’s routing study does not consider impacts to Conservation Reserve Program (“CRP”) property. Indeed, Rock Island has no idea as to the extent to which the proposed route will impact CRP property. Rock Island claims that the location of such land is confidential and that it “cannot determine” the extent of these lands. RI Ex. 8.3, ll. 172 – 175. Rock Island never attempted to contact any landowners to determine the location of CPR land, despite being able to do so by mail. Tr., p. 402, ll. 3 – 6; Tr. p. 449, ll. 6 – 9. In fact, Rock Island did continue to write

landowners after being asked to communicate only in writing. Tr., p. 630, ll. 5 – 7. However, even when it became aware of CRP land, Rock Island did not contact any Farm Service Administration personnel about the same. Tr., p. 401, ll. 9 – 22. Thus, Rock Island’s routing study is further flawed by its own refusal to attempt to gain important input data.

Staff lodged no objection to the proposed Project’s routing. Staff Ex. 1.0, ll. 319 – 326. This lack of opposition, however, is based solely upon Staff’s review of the routing study provided by Rock Island. Tr., p. 701, ll. 10 -11. Staff did not undertake any independent investigation, or look into possible routing along existing infrastructure near Interstate 80 or the Rock Island Railroad right of way. Tr., p. 702, ll. 10 – 11. Additionally, despite the IDNR’s concerns about forest fragmentation at the Mississippi River crossing, Staff did not consult with the IDNR to determine whether or not this route was appropriate. Accordingly, the record indicates that Staff’s non-opposition should not be construed as an endorsement of or active support for the proposed route, or the routing study.

Overall, the record indicates that the routing study is flawed by Rock Island’s failure to seek out or consider appropriate input data, its failure to follow its own routing criteria, the fact it is already outdated, and will only become further outdated, and otherwise. The carelessness of the proposed routing serves as reason to deny the relief sought by Rock Island. However, it also serves as evidence that Rock Island is fundamentally incapable of properly executing upon the proposed Project.

2. Proposed Easement Widths

Rock Island attempts to minimize the impression of the impact of the easements it seeks by stating that only a very small portion of land will be taken out of permanent production within those easements. Rock Island, however, in addition to not adequately addressing issues of compaction, ignores the fact production isn't lost just for a tower superstructure's footprint, but also for areas around it. Tr., p. 608, ll. 12 - 18. Additionally, production will be decreased insofar as the important tool of aerial application is rendered no longer usable for some landowners. ILA Ex. 1.0REV, ll. 291 – 298; ILA Ex. 4.0, ll. 90 - 107. Rock Island failed to provide any witness that is qualified to speak to the application of herbicides, pesticides, or fungicides by air. *See, e.g.*, Tr., p. 401, ll. 23 - 24, p. 402, ll. 1 - 2; Tr., p. 414, ll. 3 – 6.

3. Easement Acquisition and Landowner Compensation

While it may be somewhat premature to address details of easement acquisition and landowner compensation, Rock Island's testimony, both prepared and at hearing, indicates that it is putting forth evidence of the same for the purposes of obtaining the relief needed to construct the State's first high-voltage direct current transmission line. Further, a brief discussion is not premature when Rock Island will not forego the right to seek eminent domain in a later proceeding. Tr., p. 421, ll. 1 – 5; ILA Cross Ex. 2 (Detweiler). Rock Island has not estimated how many landowners for whom it will have to seek eminent domain authority. In fact, Rock Island has attempted to obtain easements from only a "very small number" of affected landowners. Tr., p. 421, ll. 23 – 24, p. 422, l. 1.

Without fully delving into the compensation package Rock Island indicates it plans to offer, it is apparent from the record that it is inadequate. Several particularly troubling issues to the Illinois Landowners Alliance include a failure to consider compensation to non-landowners who are affected, a failure to adequately address compensation for timber, an unwillingness to consider compensation for demonstrated loss of business income the Project will cause, and the failure to provide any standards regarding the time period for which compaction damage will be paid.

Many individuals and businesses will be impacted by the proposed Project even though construction may not occur on their property. One such category of individuals is aerial applicators. ILA Ex. 4.0, ll. 113 – 123. The record reflects that Rock Island has provided no competent testimony from any witness that can speak as to the aerial application business. See, e.g., Tr., p. 401, ll. 23-24, p. 402, ll. 1-2; Tr., p. 414, ll. 3 – 6. Yet, Rock Island does not plan on compensating any aerial applicators for loss of business. Tr., p. 441, ll. 4 – 8.

In addition to aerial applicators, those with timber operations on their property will not be adequately compensated. The cutting of timber within the Project's right of way and erosion from construction will impact large swaths of timber. ILA Ex. 5.0, ll. 52 – 64. In ILA member Simpson's timber operation, trees sell for as much as \$1,000 each. ILA Ex. 6.0, ll. 28 – 30. However, Rock Island only intends to compensate landowners with timber operations for the value of timber that is commercially valuable at the time of clear cutting. Tr., p. 443, ll. 3 – 18. Despite the uncontroverted statements in the record regarding values of approximately \$1,000 a tree, Rock Island's only offer of

compensation for growing trees, not yet commercially marketable, and the loss of ability to grow any marketable timber in the right of way, is a one-time payment of ninety percent the fair market value of the easement. Tr., p. 519, ll. 19 – 24, p. 520, ll. 1 – 8. Rock Island’s compensation package simply does not add up for those with timber operations.

Finally, Rock Island refuses to provide any standards for the length of time it intends to compensate landowners for reduced crop yields due to the project. Rock Island has suggested that it will compensate for such damages for a “reasonable time period.” RI Ex. 7.3, ll. 542. However, there is no standard or method for determining what that time period is, meaning that the answer will be left within Rock Island’s discretion. Tr., p. 446, ll. 21. Perhaps the inability to provide a standard is due to the selection of Mr. Detweiler to provide testimony as to damages from soil compaction. Mr. Detweiler, having no agricultural education or experience, and otherwise being utterly unqualified to opine on these matters, reviewed studies regarding compaction, summarized them, and drew the conclusion that long-term impacts from compaction would be rather small. Tr., p. 439, ll. 8 – 13. Further Rock Island, through Mr. Detweiler, summarily dismissed studies cited and endorsed by Dr. Paul Marshall, holding a Ph.D. in forestry and botany and a bachelor’s degree from the University of Illinois College of Agriculture, because Mr. Detweiler “found those studies . . . to be not applicable to the situation. . . .” Tr., p. 440, l. 24, p. 441, ll. 1 – 3.

C. Design and Construction of the Project

1. Proposed Structures and Other Components

The ILA recognizes that many of the supporting superstructures proposed for this project are lattice box structures²² with a single base. Tr., p. 608, ll. 4 – 7. While such a superstructure is preferable to other means of supporting transmission lines with larger footprints, suggesting that the only land permanently impacted is that at the structure base is incorrect. Landowners will be required to farm around those obstacles. Tr., p. 608, ll. 12 – 18. Some may lose the ability to hire aerial applicators for portions of the land. ILA Ex. 1.OREV, ll. 291 – 298; ILA Ex. 4.0, ll. 90 - 107. Further, any obstacle lowers the value of entire parcels. ILA Ex. 1.OREV, ll. 190 – 197.

2. Landowner Concerns about Impacts of Construction of the Project

The fact that Rock Island is proposing building a transmission line from nowhere, to an interconnection point for which it has not resolved technical and locational issues, is in and of itself troubling. However, when coupled with the impacts of construction to landowners along the proposed route, the issue becomes disconcerting. Rock Island's Project (if it were ever to be built) would compact vast swaths of prime farmland, crushing tile, and place a scar across the width of the State. It will also cause economic damage to those individuals having Conservation Reserve Program property, operating aerial application businesses, or those with timber operations. Rock Island fails to adequately address any of these concerns.

Dr. Paul Marshall, who is uncontrovertibly qualified and credible on the subjects on which he testified, concluded that, based upon his studies and personal experiences the proposed Project would result in compaction that may not be able to be

²² Lattice box structures are distinguishable from larger-based lattice towers.

remediated. ILA Ex. 1.0REV, ll. 198 – 211. His conclusion based on his own, lengthy experience was supported by his review of many studies relating to compaction. ILA Ex. 1.2 REV, ll. 70 – 76, 93 – 95, 261 - 274. Additionally, the Agricultural Impact Mitigation Agreement which Rock Island repeatedly touted provides no assurance that Rock Island will engage in adequate compaction remediation. ILA Ex. 1.2 Rev, ll. 118 – 121.

In response to concerns about compaction, Rock Island offered the opinions and conclusions of an unqualified Mr. Detweiler. As noted hereinabove, but bears repeating, Mr. Detweiler has no experience or education in agricultural compaction issues, having an undergraduate degree in political science (Tr., p. 413, ll. 11 – 14); his professional experience prior to being hired as a Director of Development for Clean Line was in public policy, policy advisement, outreach, and communications (Tr., p. 413, ll. 15 – 22; and only after starting his job working for a company proposing to build a two-state HVDC line did Mr. Detweiler gain any experience in “infrastructure development” (Tr., p. 413, ll. 22 – 24). Mr. Detweiler, despite being unqualified to do so, reviewed studies regarding compaction, summarized them, and drew the conclusion that long-term impacts from compaction would be rather small. Tr., p. 439, ll. 8 – 13. Further Rock Island, through Mr. Detweiler, summarily dismissed studies cited by Dr. Paul Marshall, with advanced degrees encompassing compaction issues and decades of agricultural experience, because Mr. Detweiler “found those studies . . . to be not applicable to the situation. . . .” Tr., p. 440, ll. 24, p. 441, ll. 1 – 3. The Commission should dismiss Mr. Detweiler’s unqualified opinions regarding compaction and instead adopt the well-researched and studied conclusions of Dr. Marshall.

Rock Island has suggested that it will compensate landowners for reduced crop yields, yet refuses to provide any standards for the length of time it will do so. Rock Island has suggested that it will compensate for such damages for a “reasonable time period.” RI Ex. 7.3, ll. 542. However, there is no standard or method for determining what that time period is. Tr., p. 446, ll. 21. This is particularly troubling considering that the adverse impacts of compaction and crushed tile on crop yields may not be known for some time, as demonstrated above. Perhaps the inability to provide a standard is due to the selection of Mr. Detweiler to provide testimony as to damages from soil compaction. Mr. Detweiler drew the conclusion that long-term impacts from compaction would be rather small. Tr., p. 439, ll. 8 – 13. Again, Rock Island, through Mr. Detweiler, summarily dismissed studies cited by the much more qualified Dr. Paul Marshall, because Mr. Detweiler “found those studies . . . to be not applicable to the situation. . . .” Tr., p. 440, ll. 24, p. 441, ll. 1 – 3.

Rock Island also suggests that it will simply mitigate compaction. Rock Island witness Pierre Adam, the lead for Kiewit Power Constructors (“Kiewit”) on this Project, attempted to explain how Kiewit will mitigate compaction. Tr., p. 858, ll. 15 – 17, 20 - 23. Regrettably, Mr. Adam lacks experience with transmission projects in agriculturally dominated areas.

As a threshold matter, Kiewit may not even be constructing this Project. As such, its ability to mitigate compaction is irrelevant as of right now. Kiewit has not been hired to construct the Project. Tr., p. 854, ll. 14 – 15. In fact, no construction contract is expected to be signed for at least another year and a half. Tr., p. 857, ll. 22 – 25. It is

currently unknown if Kiewit will even be hired by Rock Island, or any successor in interest to the Project. Tr., p. 854, ll. 16 – 21. However, even if Kiewit were hired to construct the Project, concerns about compaction still abound.

The majority of Mr. Adam's construction experience concerns urban, not rural, areas, and transportation, not transmission, infrastructure. Tr., p. 860, ll. 10 – 13. For the three transmission projects on which Mr. Adam has worked, none had a length of more than 25 percent the length of the Rock Island Project. Tr., p. 861, ll. 13 – 14, 17 – 18, p. 865, ll. 4 – 7. Additionally, none of Mr. Adam's projects involved direct current transmission. Tr., p. 863, l. 22, p. 865, ll. 2 – 3, p. 866, ll. 4 – 5.

The projects on which Mr. Adams's experience is based are not comparable to the Rock Island Project. The Utah-Idaho project which he cited did not cross agricultural lands anything like, or as extensive as, the prime Midwest farmland that Rock Island proposes crossing and disturbing. ILA Ex. 1.2 Rev, ll. 33 – 35. For the portions of the Utah-Idaho project that did cross agricultural land, the majority of that land was used for growing hay, cereal grain, grazing ground, and fruit orchards, not corn-soybean rotated land. Tr., p. 863, ll. 11 – 18. Similarly, the Canada Detour project he cited did not involve crossing agricultural lands. Tr., p. 866, ll. 13 – 15. Finally, the New Jersey project which Mr. Adam also described involved land already impacted; and did not include land in a corn-soybean rotation. Tr., p. 866, ll. 12 – 18. Mr. Adam's only rural experience concerning land devoted to either corn or soybeans, was a transportation project in Lake Zurich, Illinois, outside Chicago. However, Lake Zurich is not rural. Tr., p. 568, ll. 1. The affected landowner was not at the work site, but rather, merely wanted

Kiewit to dispose of dirt and stone on his property just outside of suburban Lake Zurich. Tr., p. 868, ll. 19 – 21, p. 860, ll. 6 – 9.

Further indications of Kiewit's inability to sufficiently appreciate or mitigate soil compaction were deduced from Mr. Adam's inconsistent testimony as to the ranges of pressure, in pounds per square inch, that his company's tracked equipment will exert upon land. Tr., p. 871, ll. 7 – 9, 13 – 18, p. 872, ll. 7 – 10. Even the low-impact tracked equipment will exert at least 17 pounds per square inch of ground pressure. Tr., p. 872, ll. 7 – 10. However, its non-tracked equipment will exert as much as 100 pounds per square inch of ground pressure. Tr., 872, ll. 12 – 15. Meanwhile, Rock Island admits that equipment used by landowners in harvests is generally designed for the purposes of spreading such pressures. Tr., p. 874, ll. 12 – 18. Consequently, Rock Island's testimony cannot be considered trustworthy regarding its assertions as to ground pressure.

Much of the land impacted by the proposed Project makes use of drainage tile. IIA Ex. 1.OREV, ll. 212 – 216. Some of that tile was installed in the 1930's. IIA Ex. 1.OREV, l. 216. The same kind of construction traffic that causes compaction can lead to tile being crushed and broken. IIA Ex. 1.OREV, ll. 226 – 228. Indeed, those same pressures that lead to irreversible compaction can create drainage tile issues, which may not be revealed for several years. Tr., p. 876, ll. 14 – 18. Compounding the issue is the fact that lands which are compacted actually require more functional drainage tile. IIA Ex. 1.OREV, ll. 237 – 240. Rock Island has also refused to agree unconditionally to move

transmission line structures when they are known prior to construction to interfere with drainage tile. Tr., p. 877, ll. 17 – 25, p. 881, ll. 9 – 13, p. 883, l. 3.

Additionally, Rock Island's proposed Project will impact Conservation Reserve Program ("CRP") property. Differing Farm Service Administration ("FSA") offices have different policies regarding these impacts. Tr., p. 401, ll. 9 – 14. At least one landowner has testified that he believes that there have been no provisions for transmission structures or utilities on CRP land in his area. ILA Ex. 2.0, ll. 83 – 86. Rock Island failed to contact any FSA offices to determine their policies on impacts to CRP land that may be impacted. Tr., p. 401, ll. 9 – 22. Constructing the proposed project across CRP land not only necessarily affects the environmental purposes of the CRP land, but also could result in the forfeiture of payments for land enrolled in the CRP program. ILA Ex. 2.0, ll. 76 – 81, 87 – 91.

In addition, individuals and business that may not have the proposed transmission line being built on their property will be affected. As explained above, one such group consists of aerial applicators, who Rock Island does not intend to compensate for loss of business. Tr., p. 441, ll. 4 – 8. Additionally, those with timber operations will not be adequately compensated, as addressed above.

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

Rock Island does not qualify for an Order from the Commission "authorizing and directing" Rock Island to construct the Project under Section 8-503 of the PUA because Rock Island admits that the Project is viable, and will be constructed, only if certain contingencies are met (e.g., project financing obtained, wind projects are developed,

adequate capacity on the line is purchased); without an Order under 8-503, Rock Island will not have a right to seek eminent domain authority under Section 8-509, as an 8-503 order is a prerequisite. In its Petition initiating this proceeding, Rock Island applied for an Order “authorizing and directing” (emphasis added) Rock Island, pursuant to PUA Section 8-503, to construct the transmission line. Petition, p. 1. Especially given all of the myriad conditions, contingencies, further government and regulatory approvals, Rock Island, as it has admitted, cannot commit to construct the Project even if it receives a CPCN. Consequently, Rock Island is petitioning this Commission for something that it cannot utilize.

VI. Rock Island’s Accounting-Related Requests

A. System of Accounts

B. Maintaining Books and Records Outside of Illinois

C. Request for Proprietary Treatment of Certain Information

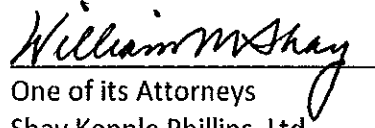
VII. Conclusion/Request for Relief

The Illinois Landowners Alliance respectfully requests that the Illinois Commerce Commission, upon review of the rulings and findings of the Administrative Law Judge, enter orders granting the relief described in Sections II.A. and II.B. of this Initial Brief. The ILA additionally requests that the Commission deny the Petition of Rock Island Clean Line LLC for the reasons contained hereinabove.

Respectfully submitted,

Illinois landowners Alliance, NFP

By its Counsel

A handwritten signature in black ink that reads "William M. Shay". The signature is written in a cursive style and is positioned above a horizontal line.

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