

Exhibit No.:
Issues: Overview
Witness: Daniel I. Beck
Sponsoring Party: MO PSC Staff
Type of Exhibit: Rebuttal Testimony
Case No.: EA-2014-0207
Date Testimony Prepared: September 15, 2014

MISSOURI PUBLIC SERVICE COMMISSION

REGULATORY REVIEW DIVISION

REBUTTAL TESTIMONY

OF

DANIEL I. BECK

GRAIN BELT EXPRESS CLEAN LINE LLC

CASE NO. EA-2014-0207

*Jefferson City, Missouri
September 2014*

Exhibit No. 201
Date 11-10-2014 Reporter stewart
File No. EA-2014-0207

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Grain)
Belt Express Clean Line LLC for a)
Certificate of Convenience and Necessity)
Authorizing It to Construct, Own,)
Operate, Control, Manage, and Maintain a)
High Voltage, Direct Current)
Transmission Line and an Associated)
Converter Station Providing an)
Interconnection on the Maywood -)
Montgomery 345 kV Transmission Line)

Case No. EA-2014-0207

AFFIDAVIT OF DANIEL I. BECK

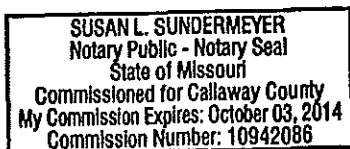
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

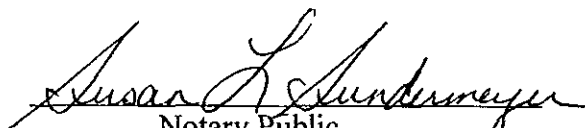
Daniel I. Beck, of lawful age, on his oath states: that he has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 22 pages of Rebuttal Testimony to be presented in the above case, that the answers in the following Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true to the best of his knowledge and belief.



Daniel I. Beck

Subscribed and sworn to before me this 15th day of September, 2014.




Notary Public

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REBUTTAL TESTIMONY

OF

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GRAIN BELT EXPRESS CLEAN LINE LLC

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Q. Please state your name and business address.

A. Daniel I. Beck and my business address is Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri, 65102.

Q. By whom are you employed and in what capacity?

A. I am employed by the Missouri Public Service Commission ("Commission") as the Manager of Engineering Analysis, which is in the Tariff, Safety, Economic and Engineering Analysis Department in the Regulatory Review Division. My credentials are attached as Schedule DB-1 to this testimony.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide a summary of this case with specific references to the other witnesses for Staff and to provide a list of conditions that Staff recommends as appropriate if the Commission grants the Certificate of Convenience and Necessity (CCN) to Grain Belt Express.

Q. Would you briefly describe the project for which Grain Belt Express is seeking a CCN from this Commission?

A. This project is an approximately 750 mile, overhead, multi-terminal 600 kilovolt high voltage direct current ("HVDC") transmission line and associated facilities that would deliver up to 500 megawatts from Kansas to Missouri and up to 3,500 megawatts to a

1 location near the Illinois/Indiana border. Several aspects of this project are different than any
2 project for which the Commission has previously granted a CCN in Missouri. First, this
3 would be the only HVDC line in Missouri. The nearest HVDC lines are located several states
4 away, with lines in Texas and other lines in South Dakota/Minnesota. Since it is a HVDC
5 line, while most of the transmission grid throughout the United States transmits electricity
6 using alternating current ("AC"), it will also require convertor stations at the requested
7 interconnection points in Kansas, Missouri and near the Indiana border. Second, this project
8 will traverse the entire state of Missouri, as well as the entire state of Illinois, and parts of
9 Kansas and Indiana. Third, Grain Belt Express will not begin construction of the project until
10 a "majority" of the capacity on the line is contracted. Fourth, the debt that will fund part of
11 the project will be secured with the project, and will be issued on a non-recourse basis.

12 While Missouri has several investor-owned electric utilities that do not serve retail
13 customers and their Missouri operations would generally be referred to as electric
14 transmission utilities, the other electric transmission utilities either have retail customers in
15 other states or were granted a CCN to build a transmission line that was approved by a
16 regional transmission organization ("RTO"). Grain Belt Express would be unique in
17 Missouri, since it is proposing to build a transmission line that crosses parts of three RTOs
18 based on a business model, not an identified reliability need.

19 Q. What investor-owned electric transmission utilities operate in Missouri, and in
20 which cases did the Commission grant them a CCN?

21 A. Entergy Arkansas, Inc., Case No. EA-2012-0321. This company's predecessor
22 served retail customers in Missouri until 1991. Those retail operations were then sold or
23 otherwise transferred to other Missouri electric utilities, but a small portion of the

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1 transmission and sub-transmission lines remained with the utility. In addition, Entergy
2 Arkansas, Inc. recently added a very short line, less than two miles, to one of its existing
3 Missouri transmission lines. Entergy Arkansas, Inc. filed an annual report with the Missouri
4 Commission for calendar year 2013.

5 ITC Midwest LLC, Case No. EA-2002-296. This company's predecessor operated
6 near the Missouri/Iowa border and was granted a CCN to install a 9.5 mile 161 kV line to
7 improve reliability in the area. ITC Midwest LLC filed an annual report with the Missouri
8 Commission for calendar year 2013.

9 Transource Missouri, LLC, Case No. EA-2013-0098. This company is currently
10 building two lines that were identified by the Southwest Power Pool ("SPP") as priority
11 projects that would improve the reliability of SPP's transmission footprint. These two lines
12 are currently under construction with anticipated completion dates of June 2015 and June
13 2017. Transource Missouri, LLC took over the ownership of the projects in January of 2014,
14 so it did not file an annual report for 2013.

15 Q. What is Grain Belt Express requesting in this case?

16 A. Grain Belt Express' Application lists the following requests:

17 WHEREFORE, Grain Belt Express Clean Line LLC respectfully requests the
18 Commission issue an order granting Grain Belt Express a certificate of
19 convenience and necessity:

20 (1) To construct, own, operate, control, manage, and maintain the Grain Belt
21 Express Missouri Facilities, including an HVDC transmission line in
22 Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls
23 Counties along the Proposed Route specified in Exhibit 2 to the Application,
24 and to allow for minor variations in the final route depending on landowner
25 requests, surveying results, engineering considerations, and other routing
26 factors.

27 (2) To construct, own, operate, control, manage, and maintain a converter
28 station and associated AC facilities in Ralls County to interconnect with the
29 Maywood-Montgomery 345 kV transmission line on property, the legal

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1 description of which will be furnished to the Commission pursuant to 4 CSR
2 240-3.105(2).

3 Finally, Grain Belt Express requests that the Commission waive the reporting
4 and filing requirements of 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-
5 3.175 and 4 CSR 240-3.190(1), (2) and (3)(A)-(D) for good cause shown.

6
7 Q. Part (2) of the request Grain Belt Express says it will provide a legal
8 description for a converter station in Ralls County, Missouri pursuant to 4 CSR 240-3.105(2).

9 Has it done so?

10 A. 4 CSR 240-3.105 is the Commission's rule titled, "Filing Requirements for
11 Electric Utility Applications for Certificates of Convenience and Necessity" and 4 CSR 240-
12 3.105(2) is the section that states, "If any of the items required under this rule are not
13 available at the time the application is filed, they shall be furnished prior to the granting of the
14 authority sought." In this case, based on Grain Belt Express' response to Staff Data Request
15 122.1, it is my understanding that Grain Belt Express has made progress in determining the
16 location of the converter station and the location of the AC transmission facilities that would
17 connect the converter station to Ameren Missouri's Maywood-Montgomery 345 kV
18 transmission line, but has not yet filed that information in this case.

19 Q. In Staff's opinion has Grain Belt Express met the filing requirements listed in
20 4 CSR 240-3.105 in its Application?

21 A. No, by its own admission, the Application does not contain all the information
22 required. However, 4 CSR 240-3.105(2) does allow information to be furnished at a later
23 date.

24 Q. What information does rule 4 CSR 240-3.105 require that Grain Belt Express
25 did not include in its Application?

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1 A. Most of the information provided by Grain Belt Express is what I would refer
2 to as “high level.” By that I mean that there is very little specific or detailed information
3 provided in the Application. Here is a list of the filing requirements and Staff’s general
4 assessment of the information provided:

5 4 CSR 240-3.105(1)(B)1. Exhibit 3 to the Application is the known list of utility
6 lines, railroad tracks and underground facilities which the proposed line will cross. The
7 Application states that “The Company will supplement this exhibit with any additional
8 facilities as they become known to it.”

9 4 CSR 240-3.105(1)(B)2. Paragraph 25 of the Application provides a general
10 description of the structures that will be used, paragraph 26 generally describes the converter
11 station in Ralls County, and paragraph 27 provides an estimate for the project and the
12 Missouri portion of the project. The Application also states that the “converter station and
13 associated AC facilities in Ralls County to interconnect with the Maywood-Montgomery 345
14 kV transmission line on property, the legal description of which will be furnished to the
15 Commission pursuant to 4 CSR 240-3.105(2).” The rule requires “plans and specifications
16 for the complete construction project” be filed, but the detailed engineering analysis required
17 to develop plans and specifications has not yet been performed. In addition, the current cost
18 estimate assumes that no additional cost will be incurred to connect to the SPP, MISO and
19 PJM transmission grids. In Staff’s opinion this is not a reasonable assumption.

20 4 CSR 240-3.105(1)(B)3. Paragraph 24 of the Application states that the initial
21 funding will be provided by Clean Line’s equity investors. It also discusses project financing
22 and explains that project-specific financing arrangements that will be entered into with
23 lenders. It goes on to state that additional infusions of capital “may” come from existing

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1 and/or new equity investors. Staff concludes that the sources for both debt and equity for the
2 construction of this project are not known at this time.

3 4 CSR 240-3.105(1)(D) Paragraph 30 of the Application states that "Grain belt
4 Express will coordinate with state and federal agencies to obtain the necessary permits prior
5 to construction of the Project." The rule requires a "certified copy of the required approval of
6 other governmental agencies." Staff concludes that certified copies of the required approval
7 are not available at this time.

8 4 CSR 240-3.105(1)(E) requires an application for CCN include "the facts showing
9 that the granting of the application is required by the public convenience and necessity".
10 Paragraphs 17, 18 and 19 of the Application address the public interest, but Staff concludes
11 that the facts required by 4 CSR 240-3.105(1)(E) are the entire Application.

12 Q. In addition to the Application, did Grain Belt Express file Direct Testimony?

13 A. Yes. The Application lists the eight (8) Grain Belt Express witnesses who
14 provided Direct Testimony, and gives a one paragraph summary of the testimony of each
15 witness. In addition, Grain Belt Express also filed Additional Direct Testimony on June 27,
16 2014, for two of the previous eight witnesses, Dr. Anthony Wayne Galli, P.E., and David
17 Berry. These additional testimonies provided updates on the federal regulatory process,
18 background on the interconnection processes for the MISO and PJM interconnection study
19 processes, Grain Belt Express' plans to coordinate with gas utilities, the emergency
20 restoration standards that Grain Belt Express plans to adhere to, and Grain Belt Express'
21 commitment to not seek regional cost allocation from Missouri ratepayers without taking
22 additional action before the Commission.

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1 Q. Does the additional information contained in the Additional Direct Testimony
2 address all the outstanding issues that were not covered in the Application?

3 A. No. Although the Additional Direct Testimony addressed a few issues, it did
4 not contain the PJM study results that Staff expected. Instead, it discussed the PJM
5 interconnection process in more detail. In addition, Staff has been expecting the results of a
6 MISO study. In the Additional Direct Testimony, it states that the PJM study is expected in
7 July and the MISO study is expected in August. Staff has not received either study at this
8 time.

9 Q. Did the Application discuss the criteria that the Commission has previously
10 used when deciding whether to issue a CCN?

11 A. Yes. The Application lists the five criteria that the Commission applied in a
12 previous CCN case, File No. EA-2012-0321, related to a CCN request by Entergy Arkansas,
13 Inc. Although it is true that the Commission did apply these five (5) criteria in File No. EA-
14 2012-0321, the Commission's Order Granting Certificate of Convenience and Necessity in
15 that case noted that the criteria are based on Case No. GA-94-127, Tartan Energy Company, 3
16 Mo.P.S.C. 3d 173, 177 (1994). These five criteria are commonly referred to as the "Tartan"
17 criteria. The Application included a short description of how Grain Belt Express believes it
18 has met these criteria and Grain Belt Express witness David Barry provided testimony that
19 further discussed the Tartan criteria.

20 Q. What are the five (5) Tartan criteria?

21 A. The five (5) Tartan criteria are:

22 1) There must be a need for the service;

23 2) The applicant must be qualified to provide the proposed service;

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1 3) The applicant must have the financial ability to provide the service;

2 4) The applicant's proposal must be economically feasible; and

3 5) The service must promote the public interest.

4 Q. In Staff's opinion, has Grain Belt Express met the Tartan criteria?

5 A. No, but Staff, in its Rebuttal Testimony, has identified various additional
6 studies and other information that, in its opinion, would address the Tartan criteria and allow
7 the Commission to determine if the criteria have been met.

8 Q. Which members of Staff address the first criterion, a need for the service?

9 A. Since the need for a service as proposed for this transmission line includes the
10 end users of the electricity, the producers of the electricity, and the effects that the line would
11 have on the larger transmission grid, several Staff witnesses have testimony that partially
12 address this criterion. However, Grain Belt Express' Application, in paragraphs 13-16,
13 explains that the need is based on the Missouri's Renewable Energy Standard ("RES"),
14 similar renewable portfolio standards in other MISO and PJM states, and the large number of
15 wind projects in western Kansas that "have not begun construction because of the lack of
16 transmission infrastructure prevents them from participating in the large and growing markets
17 for renewable energy." In Staff's opinion, the lack of transmission infrastructure is not the
18 sole reason that many of these proposed projects have not begun construction. Instead, many
19 of these projects are project financed and, therefore, need sufficient financing commitments
20 before beginning construction.

21 With regard to the need in Missouri for the project, the Application states in paragraph
22 13 that "[a]pproximately 12-15 million megawatt hours ("MWh") per year of renewable
23 electricity will be needed by 2021 for Missouri's investor-owned utilities to meet their RES

1 requirements.” This statement is misleading in several ways. First, it ignores the fact that the
2 investor-owned utilities can meet the RES using renewable energy credits (“RECs”), and
3 those RECs do not have to be associated with energy that is delivered to or generated in
4 Missouri. Second, Grain Belt Express witness David Barry’s Direct Testimony, page 12,
5 lines 6-7, contradicts the Application by stating that “[a]pproximately 9-10 million MWh per
6 year of renewable electricity will be needed by 2021 for Missouri’s investor-owned utilities to
7 meet their RES requirements.” The estimate of 9-10 million MWh per year is more realistic,
8 since the PSC Annual Report for 2013 shows that retail sales by Missouri investor-owned
9 electric utilities for 2012 was 57.9 million MWh and a requirement of 15% would be 8.7
10 Million MWh. Third, it appears Grain Belt Express is unaware of the fact that three of the
11 four investor-owned electric companies in Missouri (The Empire District Electric Company,
12 Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company)
13 have existing capacity and new contracts that are projected to not only supply enough RECs
14 for each to meet the 15% RES requirement for 2021, but also for each to have excess RECs to
15 sell. In addition, Ameren Missouri has made public statements that renewable energy will be
16 a significant part of its Integrated Resource Plan to be filed on October 1, 2014, but Staff is
17 unable to provide an assessment of how a new preferred resource plan will affect Ameren
18 Missouri’s need for RECs. Using 2012 retail sales and Ameren Missouri’s existing resources
19 would result in the need for an additional 4.3 million RECs in future years, without taking
20 into account any new renewable resources.

21 Q. Are there other aspects of the RES the Commission should be aware of for
22 purposes of this proceeding?

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1 A. Yes. The RES statute includes the following language: “Each kilowatt-hour
2 of eligible energy generated in Missouri shall count as 1.25 kilowatt-hours for purposes of
3 compliance.” This language reflects a clear preference for renewable energy to be generated
4 in Missouri. The Grain Belt Express proposal would bring renewable energy from another
5 state, specifically wind energy from Kansas, to Missouri, but would not provide renewable
6 energy generated in Missouri.

7 Q. Which Staff witnesses address the second criterion, that the applicant must be
8 qualified to provide the proposed service?

9 A. For this criterion, Staff is not questioning the qualifications of the staff that
10 Grain Belt Express has in place to date. However, Staff witnesses Lange and Leonberger
11 point out many issues, including engineering and safety issues, that have not yet been
12 resolved, and which will require additional expertise that Grain Belt Express does not yet
13 have in place.

14 Q. Which Staff witnesses address the third criterion, that the applicant must have
15 the financial ability to provide the service?

16 A. Staff witness David Murray discusses the financing of this project. He
17 sponsors the following two conditions to address the financial aspects of this case:

- 18 1. Grain Belt Express Clean Line LLC shall not begin construction of its
19 proposed transmission line or converter station in Missouri until it makes a
20 filing with the Commission which shows that it has secured sufficient
21 contracted capacity to service the most current projected amount of debt
22 needed to complete the construction of the line in its entirety from its point of
23 origin in Kansas to its termination point in Indiana and the three associated
24 converter stations;

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1 2. ZAM Ventures shall guarantee Clean Line Investor Corp.'s obligations
2 as it relates to its investment in Grain Belt Express Clean Line LLC through
3 its equity interest in Clean Line Energy Partners LLC.

4 Q. Which Staff witnesses address the fourth criterion, that the applicant's proposal
5 must be economically feasible?

6 A. Several Staff witnesses address this criterion. Specifically, Staff witness Sarah
7 Kliethermes discusses issues related to the economic feasibility of the proposal, including its
8 effect on retail rates in Missouri, its effect the efficiency of existing energy generation, and
9 the lack of a centralized plan for the regional transmission organizations that supports the
10 economic and operational feasibility of this project. Staff witness Michael L. Stahlman
11 discusses the economic feasibility and the benefits to Missouri. Staff witness Shawn E. Lange
12 discusses the safety aspects of Electric and Magnetic Fields ("EMF") and the need for a storm
13 restoration plan, as well as the results of the studies currently performed for the requested
14 transmission line and converter stations. In general, there are a lot of studies and other
15 information that has not yet been provided that could have major impacts on the economic
16 feasibility of this project. Staff has proposed several conditions that would address the
17 additional information that is needed to help clarify the economic feasibility of this project.
18 All of Staff's proposed conditions are listed at the end of this testimony.

19 Since Grain Belt Express is using project funding, the ultimate economic feasibility of
20 this project will be determined in the marketplace, not in any preliminary studies.

21 Q. Which Staff witnesses address the fifth criterion, that the applicant's proposal
22 must promote the public interest?

23 A. For this criterion, the rebuttal testimony of all of the Staff witnesses in this case
24 relate to the public interest. In addition to the testimonies of Staff witnesses Murray,

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1 Kliethermes, Stahlman, and Lange, Staff witness Natelle Dietrich discusses the large number
2 of public comments, over 7000, that the Commission has received regarding this case, and
3 Staff witness Robert R. Leonberger discusses concerns about the impacts that the transmission
4 lines and converter station could have on other utility facilities, and he proposes conditions to
5 address those concerns.

6 Two Staff witnesses attended each of the eight (8) local public hearings held in this
7 case. Although, at this time, the transcripts are only available for the first four (4) local public
8 hearings, the Staff witnesses are generally aware of the testimony that was given in those
9 proceedings.

10 Q. Is Staff aware of any prior decisions of the Commission that might assist the
11 Commission in addressing easement concerns that were raised at the local public hearings?

12 A. Yes. Although, it does not address all of the concerns raised in the local public
13 hearings regarding easements, in Case No. EO-2002-351, in the "IT IS THEREFORE
14 ORDERED:" section of its Report and Order, the Commission conditioned the approval of
15 the CCNs and ordered the company in that case to "follow the construction, clearing,
16 maintenance repair, and right-of-way practices set out in Exhibit A attached to this order."
17 Staff recommends that the Commission consider including other conditions that were
18 contained in that Report and Order before granting Grain Belt Express a CCN. Specifically,
19 conditions 2, 4, 6, and 7 appear to be issues related to the easements that should be included
20 as conditions to the grant of any CCN for Grain Belt Express. These conditions are listed
21 below, with "Grain Belt Express" being inserted into the language where appropriate:

22 2. That the certificate is limited to the construction of this line in the location
23 specified in the application, and as represented to the landowners on the aerial
24 photos provided by Grain Belt Express, unless a written agreement from the
25 landowner is obtained, or the company gets a variance from the Commission

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1 for a particular property.
2

3 4. That absent a voluntary agreement for the purchase of the property rights,
4 the transmission line shall not be located so that a residential structure
5 currently occupied by the property owners will be removed or located in the
6 easement requiring the owner to move or relocate from the property.
7

8 6. That Grain Belt Express, shall survey the transmission line location after
9 construction and record the easement location with the Recorder of Deeds in
10 the appropriate counties. Grain Belt Express shall also file a copy of its survey
11 in this case.
12

13 7. That Grain Belt Express shall follow the construction, clearing,
14 maintenance, repair, and right-of-way practices set out in Exhibit A attached to
15 [the Grain Belt Express] order.¹
16

17 Q. Is Staff aware of any other Orders associated with the project, or other Clean
18 Line projects, that might be helpful to the Commission?

19 A. Yes. The Kansas Corporation Commission has issued orders in two dockets
20 related to this transmission line: 1) *Order Approving Stipulation & Agreement and Granting*
21 *Certificate* in Docket No: 11-GBEE-624-COC and 2) *Order Granting Siting Permit* in Docket
22 No. 13-GBEE-803-MIS. The Indiana Utility Regulatory Commission has issued its *Order of*
23 *the Commission* in Cause No. 44264. In addition, although it is not a final order and it is to be
24 applied to another project of Clean Line, the Illinois Commerce Commission has issued a
25 Proposed Order in Case No. 12-0560 dated August 11, 2014. These orders are attached to my
26 testimony as Schedules DB-3 through DB-6. Many of the conditions included in these Orders
27 are similar to the conditions Staff is recommending—I comprehensively present them in my

¹ Staff has modified the attachment to the Case No. EO-2002-351 order to reflect the Grain Belt Express request and eliminated references to AECl that are not relevant to the current case. The modified Exhibit A to the order is attached to this rebuttal testimony as Schedule DB-2

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1 testimony, but many of them are supported by other Staff witnesses. There are also several
2 conditions from other states that I recommend the Commission adopt with modifications:

3 Reporting Requirements.

4 1. Grain Belt Express will file the Commission with quarterly updates on the Project while
5 development and construction are ongoing. These updates should summarize the Project
6 construction and operational status and financing milestones, including:

- 7 a. identification of major construction vendors and contractors hired;
8 b. identification of major operation and maintenance contractors retained;
9 c. significant new debt and equity financings completed at the Petitioner level; and
10 d. significant changes in Grain Belt Express's or Petitioner's senior management.

11
12 File annually with the Commission information about any affiliates that own or control
13 electric generation resources in the MISO or PJM regions (which the Petitioner does not
14 anticipate having).

15
16 Quarterly progress reports: Grain Belt Express shall file quarterly progress reports in this
17 docket. The reports shall include:

- 18 (1) Percent completion of project;
19 (2) Amount spent to date;
20 (3) Amount previously expected to have been spent to date;
21 (4) Total budget of project (and explanations of increases/decreases);
22 (5) SPP agreements and invoices;
23 (6) Agreements with other Missouri jurisdictional public utilities; and
24 (7) FERC filings.
25 (8) Status of routing;
26 (9) Status of public outreach/public meetings; and
27 (10) Status of right-of-way and real estate acquisition in Missouri.

28
29 a. The cost of the Project and any AC Collector System owned by Grain Belt Express will not be
30 recovered through the SPP cost allocation process or from Missouri ratepayers.

31 b. Prior to commencing construction of the DC component of the Grain Belt Project in Missouri,
32 Grain Belt Express will obtain the state or federal siting approvals required by law to begin
33 construction on the entirety of the direct current portion of the Grain Belt Project outside the state
34 of Missouri. For the avoidance of doubt, transmission line siting approvals from the Kansas,
35 Illinois, and Indiana state utility commissions shall be sufficient to satisfy this condition.

36
37 The Commission emphasizes the duty of Grain Belt Express to restore affected land to the
38 condition which existed prior to the construction once construction of the line is complete, to the
39 extent reasonably possible.

40
41 Grain Belt Express will not install transmission facilities for the Grain Belt Express Clean
42 Line Project on easement property until such time as Grain Belt Express has obtained
43 commitments for funds in a total amount equal to or greater than the total project cost. To
44 allow the Commission to verify its compliance with this condition, Grain Belt Express shall

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1 file the following documents at such time as Grain Belt Express is prepared to begin to install
2 transmission facilities:

3 a) On a confidential basis, equity and loan or other debt financing agreements and
4 commitments entered into or obtained by Grain Belt Express or its parent company for the
5 purpose of funding the Grain Belt Express Clean Line Project that, in the aggregate, provide
6 commitments for funds for the total project cost;

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

10 c) A statement of the total project cost, broken out by the components listed in the definition
11 of "total project cost," above, and certified by an officer of Grain Belt Express, along with a
12 reconciliation of the total project cost in the statement to the total project cost as of the
13 Application of \$2.2 billion; and property owned in fee by Grain Belt Express including the
14 converter station sites;

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

18
19 Q. Grain Belt Express requests that the Commission allow it not to comply with
20 the reporting and filing requirements of 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-
21 3.175 and 4 CSR 240-3.190(1),(2) and (3)(A)-(D) for good cause shown. Does Staff support
22 this relief?

23 A. In previous CCN cases involving a transmission only entity, the Commission
24 has granted variances from the reporting requirements of 4 CSR 240-3.175 and 4 CSR 240-
25 3.190(1), (2) and (3)(A)-(D) and Staff supports this request in this case. However, the
26 applicants in those cases did not request relief from the reporting and filing requirements of
27 4 CSR 240-3.145 and 4 CSR 240-3.165.

28 4 CSR 240-3.145 is the Commission Rule titled, "Filing Requirements for Electric
29 Utility Rate Schedules." To the extent that this rule would require Grain Belt Express to file
30 its FERC-approved tariffs with the Missouri Public Service Commission, Staff supports the
31 Grain Belt Express request that it not be required to do so since, as Grain Belt Express states,

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1 “The Missouri Facilities will not provide retail service to end-use customers and will not be
2 rate-regulated by the Commission.”

3 4 CSR 240-3.165 is the Commission Rule titled, “Annual Report Submission
4 Requirements for Electric Utilities.” Grain Belt Express requests it be allowed not to comply
5 with this Rule, but “agrees to file with the Commission the annual report that it files with
6 FERC.” Other transmission only entities file annual reports under 4 CSR 240-3.165. Staff is
7 unable to determine what requirements of this rule Grain Belt Express needs relief from if it
8 “agrees to file with the Commission the annual report that it files with FERC.” Therefore,
9 Staff opposes this request at this time. However, Staff proposes to discuss this request with
10 Grain Belt Express and the other parties to this case during the October 24, 2014, Settlement
11 Conference to see if it may be resolved among them.

12 To summarize Staff’s position with regard to the requested relief from Commission
13 rules, Staff supports the request for relief from rules 4 CSR 240-3.145, 4 CSR 240-3.175, and
14 4 CSR 240-3.190(1), (2) and (3)(A)-(D), but, presently, opposes the request for relief from
15 rule 4 CSR 240-3.165.

16 Q. Please provide the list of conditions recommended by Staff should the
17 Commission grant Grain Belt Express’ request for a Certificate of Convenience and Necessity
18 and note the Staff witness that is sponsoring each recommended condition.

19 A. Here is the complete list of Staff recommended conditions:

20 **The following conditions are sponsored by Staff witness Daniel I. Beck:**

21
22 That the certificate is limited to the construction of this line in the location
23 specified in the application, and as represented to the landowners on the aerial
24 photos provided by Grain Belt Express, unless a written agreement from the
25 landowner is obtained, or the company gets a variance from the Commission
26 for a particular property.

1
2 That absent a voluntary agreement for the purchase of the property rights, the
3 transmission line shall not be located so that a residential structure currently
4 occupied by the property owners will be removed or located in the easement
5 requiring the owners to move or relocate from the property.
6

7 That Grain Belt Express, shall survey the transmission line location after
8 construction and record the easement location with the Recorder of Deeds in
9 the appropriate counties. Grain Belt Express shall also file a copy of its survey
10 in this case.
11

12 That Grain Belt Express, shall follow the construction, clearing, maintenance,
13 repair, and right-of-way practices set out in Schedule DB-2 attached to this
14 Rebuttal Testimony.
15

16 Reporting Requirements.

17 1. Grain Belt Express will file the Commission with quarterly updates on the
18 Project while development and construction are ongoing. These updates should
19 summarize the Project construction and operational status and financing
20 milestones, including:

- 21 a. identification of major construction vendors and contractors hired;
22 b. identification of major operation and maintenance contractors retained;
23 c. significant new debt and equity financings completed at the Petitioner level;
24 and
25 d. significant changes in Grain Belt Express's or Petitioner's senior
26 management.
27

28 File annually with the Commission information about any affiliates that own or
29 control electric generation resources in the MISO or PJM regions (which the
30 Petitioner does not anticipate having).
31

32 Quarterly progress reports: Grain Belt Express shall file quarterly progress
33 reports in this docket. The reports shall include:

- 34 (1) Percent completion of project;
35 (2) Amount spent to date;
36 (3) Amount previously expected to have been spent to date;
37 (4) Total budget of project (and explanations of increases/decreases);
38 (5) SPP agreements and invoices;
39 (6) Agreements with other Missouri jurisdictional public utilities; and

Rebuttal Testimony of
Daniel I. Beck

- 1 (7) FERC filings.
2 (8) Status of routing;
3 (9) Status of public outreach/public meetings; and
4 (10) Status of right-of-way and real estate acquisition in Missouri.
5

6 a. The cost of the Project and any AC Collector System owned by Grain Belt
7 Express will not be recovered through the SPP cost allocation process or from
8 Missouri ratepayers.

9 b. Prior to commencing construction of the DC component of the Grain Belt
10 Project in Missouri, Grain Belt Express will obtain the state or federal siting
11 approvals required by law to begin construction on the entirety of the direct
12 current portion of the Grain Belt Project outside the state of Missouri. For the
13 avoidance of doubt, transmission line siting approvals from the Kansas,
14 Illinois, and Indiana state utility commissions shall be sufficient to satisfy this
15 condition.
16

17 The Commission emphasizes the duty of Grain Belt Express to restore affected
18 land to the condition which existed prior to the construction once construction
19 of the line is complete, to the extent reasonably possible.
20

21 Grain Belt Express will not install transmission facilities for the Grain Belt
22 Express Clean Line Project on easement property until such time as Grain Belt
23 Express has obtained commitments for funds in a total amount equal to or
24 greater than the total project cost. To allow the Commission to verify its
25 compliance with this condition, Grain Belt Express shall file the following
26 documents at such time as Grain Belt Express is prepared to begin to install
27 transmission facilities:

28 a) On a confidential basis, equity and loan or other debt financing agreements
29 and commitments entered into or obtained by Grain Belt Express or its parent
30 company for the purpose of funding the Grain Belt Express Clean Line Project
31 that, in the aggregate, provide commitments for funds for the total project cost;

32 b) An attestation certified by an officer of Grain Belt Express that Grain Belt
33 Express has not, prior to the date of the attestation, installed transmission
34 facilities on easement property; or a notification that such installation is
35 scheduled to begin on a specified date;

36 c) A statement of the total project cost, broken out by the components listed in
37 the definition of "total project cost," above, and certified by an officer of Grain
38 Belt Express, along with a reconciliation of the total project cost in the
39 statement to the total project cost as of the Application of \$2.2 billion; and

1 property owned in fee by Grain Belt Express including the converter station
2 sites;
3 d) A reconciliation statement, certified by an officer of Grain Belt Express,
4 showing that the agreements and commitments for funds provided in (a) are
5 equal to or greater than the total project cost provided in (c).
6

7 **The following conditions are sponsored by Staff witness Sarah**
8 **Kliethermes:**
9

10 Regarding retail rate impact on Missouri customers of investor-owned utilities,
11 Staff recommends that the Commission order Grain Belt Express to perform a
12 number of studies and to provide for Commission approval in compliance with
13 the Tartan Criteria and other applicable law, the following items:

- 14 1. Production modeling that incorporates:
 - 15 • Day Ahead market prices to serve load,
 - 16 • Real Time market prices to serve load,
 - 17 • Ancillary Services prices to serve load,
 - 18 • Day Ahead market prices realized by Missouri-owned or located
19 generation,
 - 20 • Real Time market prices realized by Missouri-owned or located
21 generation,
 - 22 • Ancillary Services prices realized by Missouri-owned or located
23 generation,
 - 24 • An estimate of the impact of Grain Belt Express' Proposal on the
25 operational efficiency of Missouri-owned or located generation.
- 26 2. Production, transmission, and economic modeling or analysis to
27 determine:
 - 28 • The cost of transmission upgrades that may be economical to resolve
29 the transmission constraints that its energy injections will cause or
30 exacerbate.
 - 31 • The impact of using the entire design capacity of the Missouri
32 Converter Station.
 - 33 • The net impact to Missouri utilities of picking up Missouri energy by
34 day for export to PJM or SPP.
 - 35 • Whether the variability of the injected wind could be better managed in
36 the SPP prior to injection.

37
38 Staff recommends that the Commission order Grain Belt Express to provide to
39 the Commission documentation of:

1 1. Grain Belt Express' commitment that it will not seek RTO cost
2 allocation for the Project itself, nor for any transmission system upgrades
3 necessary to safely accommodate the Project.

4 2. Grain Belt Express' commitment to utilize only the studied portion of
5 the Missouri Converter Station.
6

7 **The following conditions are sponsored by Staff witness Shawn E. Lange:**
8

9 (1) That the Commission order Grain Belt Express to provide for Commission
10 acceptance, the following items:

- 11 • Completed Storm Restoration Plans for the proposed project,
- 12 • The Interconnection Agreement with SPP,
- 13 • The Interconnection Agreement with MISO, and
- 14 • The Interconnection Agreement with PJM,
- 15 • MISO Feasibility Study,
- 16 • MISO System Planning Phase Study,
- 17 • MISO Definitive Planning Phase Study,
- 18 • SPP Dynamic Stability Assessment of Grain Belt Express Clean Line
19 HVDC Project,
- 20 • SPP Steady State Review,
- 21 • SPP System Impact Study,
- 22 • PJM Feasibility Study,
- 23 • PJM System Impact Study,
- 24 • PJM Facilities Study, and
- 25 • Any further study necessary for interconnection with any of SPP,
26 MISO, or PJM.

27
28 (2) that the Commission order Grain Belt Express to comply with the
29 appropriate NERC standards for a project of this scope and size, National
30 Electric Safety Code for a project of this size and scope, 4 CSR 240-18.010,
31 and the Overhead Power Line Safety Act section 319.075 et al.;

32
33 (3) that the Commission order Grain Belt Express to provide to the
34 Commission completed documentation of the Grain Belt Express plan,
35 equipment, and engineering drawings to achieve compliance with NERC
36 standards for a project of this scope and size, National Electric Safety Code
37 for a project of this size and scope, 4 CSR 240-18.010, and the Overhead
38 Power Line Safety Act section 319.075 et al.;

39

1 (4) that the Commission order Grain Belt Express to meet a short-circuit ratio,
2 of two or more, at the Kansas converter station, Missouri Converter Station,
3 and the converter station near Sullivan, Indiana; and
4

5 (5) that the Commission order Grain Belt Express to provide to the
6 Commission as completed, documentation of the Grain Belt Express plan,
7 equipment, and engineering drawings to achieve a short-circuit ratio of at
8 least two, for each converter station. .
9

10 **The following conditions are sponsored by Staff witness Robert R.**
11 **Leonberger:**
12

13 Staff recommends that the Commission limit the authority it gives for building
14 the HVDC transmission line in any CCN to construction of a HVDC
15 transmission line built with dedicated metallic return conductors.
16

17 Staff recommends that the Commission limit any CCN it issues in this case by
18 explicitly requiring the installation of protection and control safety systems
19 that will automatically de-energize the system when an abnormal or fault
20 condition occurs.
21

22 Staff recommends that the Commission condition any such CCN by requiring
23 proof to the Commission that these safety systems are operational prior to
24 commercial operation of the Grain Belt Express HVDC electric transmission
25 line.
26

27 Staff recommends that if the Commission issues Grain Belt Express a CCN in
28 this case it include as a condition that if any of the studies show that mitigation
29 measures are identified/needed, those measures must be in place prior to
30 commercial operation of the HVDC transmission line. The Commission
31 should also require that these studies be made available to Staff and affected
32 facility owners at least 45 days prior to commercial operation of the HVDC
33 transmission line and that these engineering studies/analyses are conducted by
34 persons knowledgeable in (1) HVDC power lines, (2) DC-to-AC converter
35 stations, (3) pipeline cathodic protection systems, (4) corrosion of underground
36 metallic facilities, (5) interference with AC utility lines, (6) interference with
37 telecommunications facilities, and (7) the effects of DC and AC interference
38 on the facilities identified in Exhibit 3 of Grain Belt Express' Application.
39

1 Staff recommends the Commission order Grain Belt Express to file annual
2 status updates on discussions with Staff regarding the need for additional
3 studies, a summary of the results of any additional studies, and any mitigation
4 measures that have been implemented to address underground metallic
5 structures, telecommunications facilities, and AC lines.
6

7 **The following conditions are sponsored by Staff witness David Murray:**

8 1. Grain Belt Express Clean Line LLC shall not be allowed to begin
9 construction in Missouri on the proposed transmission line until it makes a
10 filing with the Commission making a showing that it has secured sufficient
11 contracted capacity to service the projected amount of debt needed to complete
12 the construction of the line;

13
14 2. ZAM Ventures shall guarantee Clean Line Investor Corp.'s obligations
15 as it relates to its investment in Grain Belt Express Clean Line LLC through its
16 equity interest in Clean Line Energy Partners LLC.
17

18 **The following conditions are sponsored by Staff witness Michael L.**
19 **Stahlman:**

20
21 Staff recommends that if the Commission grants Grain Belt Express' request
22 for a Certificate of Convenience and Necessity, the grant be conditioned on the
23 completion and making public of all RTO interconnection studies with the
24 Missouri converter station at 1000 MW and with the potential for exporting
25 energy from the MISO and the PJM, and importing energy into the SPP with
26 an opportunity for parties to review the studies and bring issues before the
27 Commission, prior to Grain Belt Express commencing any eminent domain
28 proceedings in Missouri.
29

30 Staff recommends that the Commission condition any grant of a CCN on Grain
31 Belt Express not commencing any eminent domain proceedings until after the
32 actual construction of at least 25% of the completed cost, excluding
33 engineering, planning, and land purchase costs, of the Missouri converter
34 station.
35

36 Q. Does this complete your testimony?

37 A. Yes it does.

Daniel I. Beck, P.E.

Manager of Engineering Analysis Section
Tariff, Safety, Economic and Engineering Analysis Department
Regulatory Review Division

Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

I graduated with a Bachelor of Science Degree in Industrial Engineering from the University of Missouri at Columbia. Upon graduation, I was employed by the Navy Plant Representative Office in St. Louis, Missouri as an Industrial Engineer. I began my employment at the Commission in November, 1987, in the Research and Planning Department of the Utility Division (later renamed the Economic Analysis Department of the Policy and Planning Division) where my duties consisted of weather normalization, load forecasting, integrated resource planning, cost-of-service and rate design. In December, 1997, I was transferred to the Tariffs/Rate Design Section of the Commission's Gas Department where my duties include weather normalization, annualization, tariff review, cost-of-service and rate design. Since June 2001, I have been in the Engineering Analysis Section of the Energy Department, which was created by combining the Gas and Electric Departments. I became the Supervisor of the Engineering Analysis Section, Energy Department, Utility Operations Division in November 2005 and my current title is Manager of Engineering Analysis.

I am a Registered Professional Engineer in the State of Missouri. My registration number is E-26953.

**List of Cases in which prepared testimony was presented by:
DANIEL I. BECK**

<u>Company Name</u>	<u>Case No.</u>
Union Electric Company	EO-87-175
The Empire District Electric Company	EO-91-74
Missouri Public Service	ER-93-37
St. Joseph Power & Light Company	ER-93-41
The Empire District Electric Company	ER-94-174
Union Electric Company	EM-96-149
Laclede Gas Company	GR-96-193
Missouri Gas Energy	GR-96-285
Kansas City Power & Light Company	ET-97-113
Associated Natural Gas Company	GR-97-272
Union Electric Company	GR-97-393
Missouri Gas Energy	GR-98-140
Missouri Gas Energy	GT-98-237
Ozark Natural Gas Company, Inc.	GA-98-227
Laclede Gas Company	GR-98-374
St. Joseph Power & Light Company	GR-99-246
Laclede Gas Company	GR-99-315
Utilicorp United Inc. & St. Joseph Light & Power Co.	EM-2000-292
Union Electric Company d/b/a AmerenUE	GR-2000-512
Missouri Gas Energy	GR-2001-292
Laclede Gas Company	GR-2001-629
Union Electric Company d/b/a AmerenUE	GT-2002-70
Laclede Gas Company	GR-2001-629
Laclede Gas Company	GR-2002-356
Union Electric Company d/b/a AmerenUE	GR-2003-0517
Missouri Gas Energy	GR-2004-0209
Atmos Energy Corporation	GR-2006-0387
Missouri Gas Energy	GR-2006-0422
Union Electric Company d/b/a AmerenUE	GR-2007-0003
The Empire District Electric Company	EO-2007-0029/EE-2007-0030
Laclede Gas Company	GR-2007-0208
The Empire District Electric Company	EO-2008-0043
Missouri Gas Utility, Inc.	GR-2008-0060

The Empire District Electric Company	ER-2008-0093
Trigen Kansas City Energy Corporation	HR-2008-0300
Union Electric Company d/b/a AmerenUE	ER-2008-0318
Kansas City Power & Light Company	ER-2009-0089
KCP&L Greater Missouri Operations Company	ER-2009-0090
Missouri Gas Energy	GR-2009-0355
The Empire District Gas Company	GR-2009-0434
Union Electric Company d/b/a AmerenUE	ER-2010-0036
Laclede Gas Company	GR-2010-0171
Atmos Energy Corporation	GR-2010-0192
Kansas City Power & Light Company	ER-2010-0355
KCP&L Greater Missouri Operations Company	ER-2010-0356
Union Electric Company d/b/a Ameren Missouri	GR-2010-0363
Kansas City Power & Light Company	ER-2012-0174
KCP&L Greater Missouri Operations Company	ER-2012-0175
Chaney vs. Union Electric Company	EO-2011-0391
Veach vs. The Empire District Electric Company	EC-2012-0406
The Empire District Electric Company	ER-2012-0345
KCP&L Greater Missouri Operations Company	ET-2014-0059
Kansas City Power & Light Company	ET-2014-0071
Union Electric Company d/b/a Ameren Missouri	ET-2014-0085
Missouri Gas Energy	GR-2014-0007
Union Electric Company d/b/a Ameren Missouri	EA-2012-0281
Union Electric Company d/b/a Ameren Missouri	EA-2014-0136
Summit Natural Gas of Missouri, Inc.	GR-2014-0086

Schedule DB-2
Case No: EA-2014-0207

Construction and Clearing

1. Prior to construction, Grain Belt Express will notify all landowners in writing of the name and telephone number of Grain Belt Express's Construction Supervisor so that they may contact the Construction Supervisor with questions or concerns before, during, or after construction. Such notice will also advise the landowners of the expected start and end dates of construction on their properties.
2. Prior to construction, Grain Belt Express's Construction Supervisor will personally contact each landowner (or at least one owner of any parcel with multiple owners) to discuss access to the right-of-way on their parcel and any special concerns or requests about which the landowner desires to make Grain Belt Express aware.
3. From the beginning of construction until end of construction and clean-up of the right-of-way is complete, Grain Belt Express's Construction Supervisor will be on-site, meaning at or in the vicinity of the route, or on-call, to respond to landowner questions or concerns.
4. If requested by the landowner, Grain Belt Express will cut logs 12" in diameter or more into 10 to 20 foot lengths and stack them just outside the right-of-way for handling by the landowner.
5. Stumps will be cut as close to the ground as practical, but in any event will be left no more than 4" above grade.
6. Unless otherwise directed by the landowner, stumps will be treated to prevent regrowth.
7. Unless the landowner does not want the area seeded, disturbed areas will be reseeded with a blend of K31 fescue, perennial rye, and wheat grasses, fertilized, and mulched with straw.
8. Best management practices will be followed to minimize erosion, with the particular practice employed at a given location depending upon terrain, soil, and other relevant factors.
9. Gates will be securely closed after use.
10. Should Grain Belt Express damage a gate, Grain Belt Express will repair that damage.

11. If Grain Belt Express installs a new gate, Grain Belt Express will either remove it after construction and repair the fence to its pre-construction condition, or will maintain the gate so that it is secure against the escape of livestock.
12. Grain Belt Express will utilize design techniques intended to minimize corona.
13. Should a landowner experience radio or tv interference issues believed by the landowner to be attributed to Grain Belt Express's line, Grain Belt Express will work with the landowner in good faith to attempt to solve the problem.
14. Grain Belt Express will clearly mark guy wires.

Maintenance and Repair

1. With regard to future maintenance or repair and right-of-way maintenance after construction is completed, Grain Belt Express will make reasonable efforts to contact landowners prior to entry onto the right-of-way on their property to advise the landowners of Grain Belt Express's presence, particularly if access is near their residence.
2. All Grain Belt Express contractors will be required to carry and maintain a minimum of one million dollars of liability insurance available to respond to damage claims of landowners. All contractors will be required to respond to any landowner damage claims within 24 hours. All contractors will be required to have all licenses required by state, federal, or local law.
3. All right-of-way maintenance contractors will employ foremen that are certified arborists.
4. If herbicides are used, only herbicides approved by the EPA and any applicable state authorities will be used, and herbicides will be used in strict compliance with all labeling directions.
5. Routine maintenance will not occur during wet conditions so as to prevent rutting.
6. Existing access roads will be used to access the right-of-way wherever available.
7. Prior to commencing any vegetation management on the right-of-way, Grain Belt Express will meet personally with all landowners to discuss Grain Belt Express's vegetation management program and plans for their property, and to determine if the landowner does or does not want herbicides used on their property. If the landowner does not want herbicides used, they will not be used.

Right-of-Way Acquisition

1. Every landowner from whom Grain Belt Express requires an easement will be contacted personally, and Grain Belt Express will negotiate with each such landowner in good faith on the terms and conditions of the easement, its location, and compensation therefor. They will be shown a specific, surveyed location for the easement and be given specific easement terms.
2. After construction is completed, every landowner will be contacted personally to ensure construction and clean-up was done properly, to discuss any concerns, and to settle any damages that may have occurred.
3. If a landowner so desires, Grain Belt Express will give the landowner a reasonable period of time in advance of construction to harvest any timber the landowner desires to harvest and sell.
4. Grain Belt Express's right-of-way acquisition policies and practices will not change regardless of whether Grain Belt Express does or does not yet possess a Certificate of Convenience or Necessity from the Commission.

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Mark Sievers, Chairman
 Ward Loyd
 Thomas E. Wright

In the Matter of the Application of Grain Belt)
Express Clean Line LLC for a Limited)
Certificate of Public Convenience to Transact) Docket No: 11-GBEE-624-COC
the Business of a Public Utility in the State of)
Kansas.)

**ORDER APPROVING STIPULATION & AGREEMENT
AND GRANTING CERTIFICATE**

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The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being fully advised of all matters of record, the Commission summarizes the arguments of the parties and finds and concludes as follows:

I. Clean Line Application

1. On March 7, 2011, Grain Belt Express Clean Line LLC (Clean Line) filed an Application pursuant to K.S.A. 66-131, requesting the Commission grant it “a limited certificate of public convenience and necessity to site, construct, own, operate and maintain bulk electric transmission facilities located in the State of Kansas,” that is, for a Transmission Only certificate.¹ Application, March 7, 2011 (Application). Clean Line is a limited liability company organized under the laws of Delaware, and is qualified to conduct business in Kansas for the purpose of carrying on any lawful business, purpose or activity allowed under Kansas law, including the siting, constructing, owning, operating, and maintaining of bulk electric transmission facilities in Kansas. Application, ¶ 1. Clean Line stated that it is a wholly-owned subsidiary of Grain Belt Express Holding LLC, a Delaware LLC, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC (Clean Line Energy Partners), also a Delaware LLC. Application, ¶ 2.

2. Clean Line Energy Partners’ stated mission is to construct and operate high voltage transmission lines and facilities to connect renewable resources in the United States with load and population centers that have an increasing demand for electricity generated by renewable resources. Clean Line has three other transmission projects underway in the U.S. Application, ¶ 4. The Application stated that one of the projects under development is the Grain Belt Express Clean Line (Grain Belt Express or Project), which will be a 500 to 600 kV high-voltage direct-current (HVDC) transmission line capable of delivering 3,500 MW of power from Kansas to other load centers. The Project will originate in western Kansas near Sunflower’s

¹ Clean Line requested a “Transmission Rights Only” certificate in its Application. At the hearing, Staff corrected testimony to indicate that Clean Line is actually applying for a “Transmission Only” certificate, since the company is building only transmission and not generation, and will not have any retail customers in Kansas. Transcript of Proceedings, October 10, 2011, page 114 (testimony of Michael Wegner) (Tr., p. 114 (Wegner)).

Spearville substation and traverse east across Kansas into Missouri, and possibly into Illinois and Indiana.² The Grain Belt Express will be approximately 550 miles long³ with approximately 300 miles located in Kansas, and will deliver renewable energy to the PJM Interconnection, LLC (PJM) market and/or the Midwest Independent System Operator (MISO) market.⁴ Application, ¶¶ 5-6.

3. Clean Line stated the project includes gathering lines, which are a series of high voltage alternating current (AC Collector System) lines that will deliver energy from wind farms to the converter station near Spearville, Kansas. Direct Testimony of Michael Peter Skelly, March 7, 2011, page 4 (Skelly Direct, p. 4). This AC Collector System will gather power from the converter station to connect wind generators in western Kansas. Application, ¶ 29, footnote 8; Skelly Direct, p. 4; Initial Brief of Grain Belt Express Clean Line LLC, October 21, 2011, paragraph 4 (Clean Line Initial Brief, ¶ 4). Associated facilities of the Project include these converter stations at the western and eastern ends of the line to convert AC electricity delivered to Clean Line into direct current (DC), and convert DC electricity transmitted by the line into AC for delivery back into the grid. As noted, the associated facilities will also include AC lines from wind farms to the western converter station and related substation equipment. The AC lines are needed to gather the generation and deliver it to Clean Line for transmission farther east. Direct Testimony of Anthony Wayne Galli, March 7, 2011, page 4 (Galli Direct, p. 4).

² Clean Line's Application stated the line will cross through Kansas and Missouri. At the hearing and in the Stipulation and Agreement (S&A), Clean Line noted that the line is expected to terminate in Illinois or Indiana. Tr., pp. 9, 98-99; Initial Brief of Grain Belt Express Clean Line LLC, October 21, 2011, paragraph 1 (Clean Line Initial Brief, ¶ 1).

³ The line may be longer should it continue into Illinois and Indiana. Stipulation and Agreement, October 10, 2011, paragraph 1 (S&A, ¶ 1).

⁴ At the hearing, Clean Line stated the line is expected to terminate at the PJM System. Tr., p. 9.

4. Clean Line stated that the Project is anticipated to be financed through private funds, with a projected cost of roughly \$1.7 billion and a projected in-service date of 2016. Application, ¶ 6. Clean Line plans to request negotiated rate authority from the Federal Energy Regulatory Commission (FERC) to negotiate contract rates with transmission capacity customers. Clean Line plans to use an anchor-tenant model to sell a portion of transmission capacity, and will sell uncommitted capacity not secured by anchor tenants to customers through an “open season” process. Application, ¶ 17. Clean Line expects its customers will consist of: (1) wind energy producers located on the western end of the line, an area with favorable wind conditions to produce electricity, and (2) buyers, located on the eastern end of the line, of electricity generated from renewable resources. Application, ¶ 16.

5. Clean Line formally introduced the Project to Southwest Power Pool’s (SPP) Transmission Working Group (TWG) in August 2010, and has held several meetings with SPP staff to provide information to include the Project in the Transmission Interconnection Review Process outlined by SPP criteria. In November 2010, the SPP sent Clean Line a letter outlining what studies needed to be completed to ensure reliable operation of the grid and to assess the impact of the Project on the SPP system, and Clean Line stated the process for scoping those studies has begun. Clean Line stated it will design the project in accordance with good utility practice, all applicable laws, and North American Electric Reliability Corporation (NERC) and SPP criteria, to protect the reliability of the SPP system and comply with technical requirements. Application, ¶ 8. Clean Line became a member of the SPP in February 2011. Application, ¶ 8.

6. In its Application and Direct Testimony, Clean Line laid out its business objectives and projects, and the managerial, financial and technical resources and capabilities it has available to support its operations. Clean Line stated it includes executive, professional and

technical personnel who have managed, built and financed projects in both renewable and traditional energy sectors, and who have been involved in the development of energy policy at both state and national levels, and included information about the experience and qualifications of the management team. Application, ¶¶ 38-40 and Exhibit D; Skelly Direct, pp. 37-45. Clean Line plans to contract with an experienced project management, engineering, land acquisition and electrical construction firm or firms to design, develop and construct the Grain Belt Express project and associated facilities, as well as with firms experienced in operating and maintaining transmission facilities. Application, ¶ 41.

7. The Commission has jurisdiction over this proceeding pursuant to K.S.A. 66-131.

II. Procedural Background

8. The following parties have been granted leave to intervene in this proceeding: the Citizens' Utility Ratepayer Board (CURB); Westar Energy, Inc. and Kansas Gas and Electric Company (Westar); ITC Great Plains, LLC (ITC Great Plains); Mid-Kansas Electric Company, LLC (MKEC); Sunflower Electric Power Corporation (Sunflower); and Energy for Generations, LLC (E4G).

A. Prefiled Testimony

9. The Commission approved a procedural schedule that set deadlines in this docket, including deadlines for prefiling testimony. Order Adopting Report and Recommendations of Prehearing Officer, June 22, 2011 (June 22, 2011 Order). Clean Line prefiled direct testimony with its Application on March 7, 2011, from five witnesses: (1) Michael Peter Skelly (Skelly), chief executive officer of Clean Line Energy Partners and president of Clean Line, provided an overview of business objectives and projects and the managerial, financial and technical resources and capabilities, as well as the need for long-distance multi-state transmission projects

and the benefits of the Grain Belt Express to Kansas and other areas of the country; (2) James Walter Glotfelty (Glotfelty), executive vice president of external affairs of Clean Line Energy Partners, provided information on the transmission services Clean Line will provide and the need for Clean Line's transmission line to connect wind generation areas to load and population centers; (3) David Allen Berry (Berry), vice president of strategy and finance of Clean Line Energy Partners, addressed Clean Line's financial resources; (4) Anthony Wayne Galli (Galli), vice president of transmission and technical services of Clean Line Energy Partners, addressed Clean Line's managerial and technical capabilities and the benefits of HVDC technology for the Grain Belt Express transmission project; and (5) Bryan Begley (Begley), managing director of ZBI Ventures, L.L.C. and limited partner in ZAM Ventures, L.P., addressed Clean Line's application from the perspective of a majority owner of Clean Line Energy Partners.

10. On August 19, 2011, Commission Staff prefiled direct testimony of: (1) Michael J. Wegner (Wegner), chief of energy operations; (2) Thomas B. DeBaun (DeBaun), senior energy engineer; (3) Adam H. Gatewood (Gatewood), managing financial analyst; (4) Elena E. Larson (Larson), energy analyst; and (5) Andy Fry (Fry), energy engineer. DeBaun filed cross-answering testimony on September 1, 2011. Larson filed supplemental testimony on September 27, 2011.

11. As noted above, Westar and ITC Great Plains were granted intervention in this docket. Westar filed direct testimony of Kelly B. Harrison (Harrison), vice president of transmission operations, on August 19, 2011. ITC Great Plains also filed direct testimony on that date, through Alan K. Myers (Myers), vice president of technical services. Although CURB, Sunflower, MKEC and E4G were granted intervention, none filed testimony in this docket.

12. Rebuttal testimony was filed on behalf of Clean Line by Skelly, Glotfelty and Galli on September 19, 2011.

13. Additionally, 153 separate comments from members of the public were filed with the Commission's Office of Public Affairs and Consumer Protection (PACP Office) in this docket. The Commission has reviewed and considered all such comments.

B. Hearing and Post-Hearing Briefs

14. On September 30, 2011, Clean Line, Staff, Westar, and E4G each filed a list of disputed or contested issues for the Commission's consideration at the hearing. ITC Great Plains, Sunflower, and MKEC filed a Joint Disputed Issues List on the same date. CURB did not identify contested issues.

15. A hearing was conducted in this proceeding on October 10, 2011, with the Commission presiding. Appearances at the hearing were as follows: Glenda Cafer (Cafer), Terri Pemberton and Kathy Patton on behalf of Clean Line; Andrew Schulte (Schulte) and Ray Bergmeier on behalf of the Commission Staff and the public generally; David Springe (Springe) on behalf of CURB; Cathy Dinges (Dinges) and Marty Bregman on behalf of Westar; Susan Cunningham (Cunningham) and Brett Leopold on behalf of ITC Great Plains; Mark Calcara (Calcara) on behalf of Sunflower and MKEC; and Robert Eye (Eye) on behalf of E4G. Transcript of Proceedings, October 10, 2011, pages 5-6 (Tr., pp. 5-6). Staff reported that notice was contained in the Order Adopting Report and Recommendations of Prehearing Officer on June 22, 2011. No objections were made to notice as described by Staff, and the Commission found that notice of the hearing was proper and the Commission had jurisdiction to hear the matter. Tr., p. 6.

16. At the start of the hearing, Clean Line and Staff addressed two preliminary matters. The first was the Joint Motion (Joint Motion) to Approve Stipulation and Agreement and an attached Stipulation and Agreement (S&A), filed with the Commission on October 10, 2011, prior to the hearing. The signatory parties to the nonunanimous S&A included Clean Line, Staff, CURB and E4G (Joint Movants), which is discussed in more detail below. Tr., pp. 7-15. Westar stated it took no position with respect to the S&A. Tr., p. 15. Sunflower and MKEC stated they did not object to the S&A. Tr., p. 42. ITC Great Plains stated it opposed the S&A, but only on the issue of inclusion of the AC Collector System in the grant of the certificate, which is discussed in more detail below. Tr., pp. 15, 20-21.

17. As a second preliminary matter, Staff asked the Commission to take administrative notice of the Order Approving Contested Settlement Agreement in Docket No. 08-ATMG-280-RTS, which lays out the five-factor test that the Commission has utilized to review settlement agreements. The Commission took administrative notice of the identified docket and articulated five factors the Commission must consider in evaluating settlement agreements. Tr., pp. 24-26.

18. The parties presented brief Opening Statements as follows: Cafer on behalf of Clean Line, Tr., pp. 26-34; Springe on behalf of CURB, Tr., pp. 34-36; Cunningham on behalf of ITC Great Plains, Tr., pp. 36-41; Calcara on behalf of Sunflower/MKEC, Tr., pp. 41-46; Eye on behalf of E4G, Tr., pp. 46-49; and Schulte on behalf of Staff, Tr., pp. 49-52. Dinges waived an opening statement on behalf of Westar. Clean Line witnesses testifying at the hearing included Glotfelty, Tr., pp. 53-111; and Galli, Tr., pp. 132-134. Staff witnesses testifying at the hearing included Wegner, Tr., pp. 113-130; DeBaun, Tr., pp. 137-140; and Larson, Tr., pp. 140-143.⁵

⁵ Larson was offered as a witness to make corrections to testimony.

Testimony of the following witnesses was proffered by the parties and admitted into the record by the Commission: Skelly, Tr., p. 131; Berry, Tr., p. 135; Begley, Tr., p. 135; Myers, Tr., p. 136; Harrison, Tr., p. 136; Fry, Tr., p. 137; and Gatewood, Tr., p. 137.

19. The Commission modified the briefing schedule at the hearing to allow the parties to file initial briefs on October 21, 2011, and reply briefs on October 28, 2011. Initial briefs were filed by Clean Line, Staff, E4G and ITC Great Plains. Reply briefs were filed by Clean Line and ITC Great Plains.

20. At the hearing, ITC Great Plains objected to the S&A, and additionally filed written Objection to the Stipulation and Agreement on October 20, 2011, pursuant to K.A.R. 82-1-230a(c). ITC Great Plains stated its support for the Objection in both its Initial and Reply Briefs, which is discussed in more detail below. Clean Line filed a response to ITC Great Plains' Objection in its Reply Brief.

III. Provisions of the Stipulation and Agreement

21. The S&A attached to the Joint Motion resulted from discussions among all parties to the docket. Although ITC Great Plains, Westar, Sunflower and MKEC intervened in this proceeding, none of these parties signed the agreement. As noted above, Westar took no position with respect to the S&A, Sunflower and MKEC did not object to the S&A, and ITC Great Plains stated it opposed the S&A in only the identified limited respect. Tr., pp. 15, 20-21, 42.

22. The provisions of the S&A are summarized as follows:

(a) Transmission Only Certificate for HVDC transmission line with AC Collector System: Clean Line should be granted a Transmission Only Certificate of Public Convenience and Necessity pursuant to K.S.A. 66-131, to operate as a public utility in Kansas and construct and operate a HVDC transmission line, and associated facilities as contemplated by its Application, including converter stations, lines to connect the converter stations to the SPP, and an AC Collector System comprised of AC gathering lines needed to connect generators in western Kansas.

(b) Authority to construct and operate AC Collector System: The certificate should clearly include authority to construct and operate the AC Collector System, without Clean Line having to seek further certification, or amendments to the certificate, in order to construct or operate the AC Collector System or the Project. Clean Line shall make all filings under the Kansas Transmission Line Siting Act (Kansas Siting Act), K.S.A. 66-1,177 *et seq.*, and the Wire Stringing Rules, K.A.R. 82-12-1 *et seq.*

(c) Conditioned on cost recovery other than through the SPP or Kansas ratepayers: The cost of the Project and AC Collector System owned by Clean Line shall not be recovered through the SPP cost allocation process or from Kansas ratepayers. The granting of the certificate should be conditioned upon Clean Line's representation that there will be no Project or AC Collector System cost allocation to the SPP or recovery of costs from Kansas ratepayers, other than de minimis costs ancillary to any needed interconnection to the SPP. If Clean Line decides to modify the cost recovery process in a way inconsistent with this condition, Clean Line shall file an Application with the Commission to amend its certificate, and include evidence supporting the amendment in accordance with applicable public convenience standards.

(d) SPP studies and approval from SPP TWG: Clean Line shall cooperate with the SPP as appropriate, and shall complete all studies required by the SPP for both the Project and the AC Collector System prior to the completion of any connection. This process shall include obtaining approval from the SPP TWG for interconnection request for either the Project or the AC Collector System to the SPP system. Clean Line agrees to make the results of the SPP studies available to Staff for review.

(e) Quarterly progress reports: Clean Line shall submit quarterly progress reports to the Executive Director, General Counsel and Director of Utilities of the Commission. Clean Line shall file in this docket a Notice of Submittal upon submitting these reports. The reports shall include:

- (1) Percent completion of project;
- (2) Amount spent to date;
- (3) Amount previously expected to have been spent to date;
- (4) Total budget of project (and explanations of increases/decreases);
- (5) SPP agreements and invoices;
- (6) Agreements with other Kansas jurisdictional public utilities; and
- (7) FERC filings.

In addition, if the Application for siting approval is not filed by Clean Line under the Kansas Siting Act, K.S.A. 66-1,177 *et seq.*, the reports shall include:

- (8) Status of routing;
- (9) Status of public outreach/public meetings; and
- (10) Status of right-of-way and real estate acquisition in Kansas.

(f) Withdraw request for waiver of certain statutes: Clean Line shall withdraw its request for waiver of K.S.A. 66-101b through 66-101f, K.S.A. 66-117, K.S.A. 66-128 through 66-128p, and K.S.A. 66-1403. The Joint Movants agreed that the FERC preempts the Commission unless Clean Line acts outside the conduct covered by FERC jurisdiction, at which time the Commission shall decide the applicability of the above-referenced statutes. Clean Line also agrees to withdraw its request for waiver of K.S.A. 66-122.

(g) Waiver of K.S.A. 66-1402: The Joint Movants support Clean Line's request for waiver of K.S.A. 66-1402, which shall be effective only as long as Clean Line continues to utilize a cost recovery mechanism consistent with subsection (c) above.

(h) EL filings: Clean Line shall make all required "EL" filings in accordance with K.A.R. 82-12-1 *et seq.*, as amended, for any transmission line it builds. S&A, ¶ 4.

23. The Joint Movants agreed to be bound by the terms of the S&A and the Commission's Order incorporating its terms to all issues addressed, if the Commission accepted it in its entirety, and to waive any right to appeal the Commission's Order on these issues. S&A, ¶ 5. The Joint Movants also agree that the Application of Clean Line, as modified by the S&A, is in the public interest. S&A, ¶ 6.

IV. ITC Great Plains' Objection and Arguments

24. ITC Great Plains filed an Objection to the S&A with the Commission within 10 days after the filing of the S&A in accordance with K.A.R. 82-1-230a(c), and served parties to the docket, with the exception of Staff, on the same day. ITC Great Plains, LLC's Objection to the Stipulation and Agreement, October 20, 2011 (ITC Great Plains Objection). Staff stated it was not aware the written objection was filed within the 10-day limit due to a deficiency in service by ITC Great Plains, but that Staff did not oppose the Commission's acceptance of ITC Great Plains' Objection. Staff's Response to ITC Great Plains, LLC's Objection to the Stipulation and Agreement, October 28, 2011, paragraphs 3-5 (Staff Response, ¶¶ 3-5).

25. For its objection, ITC Great Plains stated its intent is to ensure a reliable and coordinated transmission system in the state, and to maintain a level regulatory playing field for all transmission-only utilities. ITC Great Plains, LLC's Post Hearing Initial Brief, October 21, 2011, page 1 (ITC Great Plains Initial Brief, p. 1). ITC Great Plains stated it does not oppose the grant to Clean Line of a certificate of public convenience and necessity for the HDVC line, as contemplated by the S&A, but asserts that only a limited certificate be granted for the AC Collector System as referenced in Clean Line's Application. ITC Great Plains stated that the AC Collector System lines (hereinafter also referred to as "lead lines") should not be included in the authority granted, without providing some reasonable and specific level of definition surrounding the generator lead lines Clean Line intends to build. ITC Great Plains Objection, ¶ 2. In particular, ITC Great Plains argued that each time Clean Line has identified wind developer partners and wind farm locations, Clean Line should be required to return to the Commission and seek an amendment to its certificate describing with some level of specificity the parameters of the generator lead line, and their locations, length, and voltage. ITC Great Plains Initial Brief, pp. 6-8.

26. ITC Great Plains argued that if the Commission does not require Clean Line to amend its certificate when it identifies where generator lead lines are to be located, the Commission may not have another opportunity to evaluate interests of landowners, environmental organizations, or other interested parties to assure some level of coordination with utilities operating in Kansas. As support for this statement, ITC Great Plains stated that Clean Line could choose to utilize the federal siting process available to it through the National Environmental Policy Act (NEPA), rather than the Kansas Siting Act, to obtain approval to build the Project. ITC Great Plains Initial Brief, pp. 9-11.

V. Findings and Conclusions

27. As noted above, the Joint Movants have filed a S&A that reflects resolution of numerous issues and otherwise addresses questions raised in this proceeding. The Commission has evaluated the evidence in the record as a whole regarding the proposed S&A in light of the following standard of review. The Commission has previously recognized its authority to approve settlements containing final terms that have been agreed to by the parties, but that do not reveal how these terms were reached. Docket No. 08-ATMG-280-RTS, Order Approving Contested Settlement Agreement, May 12, 2008, paragraphs 9-10 (Atmos Settlement Order, ¶¶ 9-10). Generally, the law favors compromise and settlement of disputes when parties enter into an agreement settling and adjusting a dispute. *Krantz v. University of Kansas*, 271 Kan. 234, 241-242, 21 P.3d 561, 567 (2001). Given the uncertainty inherent in litigation and the strong preference in the law for an amicable resolution of disputes, the Commission generally supports settlement of issues. *Bright v. LSI Corp.*, 254 Kan. 853, 858, 869 P.2d 686, 690 (1994); *Farmland Industries, Inc. v. State Corp. Comm'n*, 24 Kan.App.2d 172, 186-87, 943 P.2d 470, rev. denied 263 Kan. 885 (1997).

28. When adopting a settlement, the Commission must make an independent judgment of whether the settlement is supported by substantial competent evidence in the record as a whole. *Citizens' Utility Ratepayer Board v. State Corp. Comm'n*, 28 Kan.App.2d 313, 316, 16 P.3d 319, 323 (2000), rev. denied March 20, 2001. To meet this requirement, the Commission has articulated five factors it will consider in evaluating settlement agreements. First, has each party had an opportunity to be heard on its reasons for opposing the settlement? Second, is the settlement supported by substantial competent evidence in the record as a whole? Third, does the settlement conform with applicable law? Fourth, will the settlement result in just

and reasonable rates? Fifth, are the results of the settlement in the public interest, including the interests of those parties not consenting to the settlement agreement? Atmos Settlement Order, ¶

11. The Commission will consider each factor in deciding whether the settlement in this proceeding should be approved.

A. Evaluation of the S&A

29. The Commission has reviewed the provisions in the S&A, and finds it to be a reasonable resolution of the issues and in the public interest. In this Order, the Commission will discuss the issues set forth in the S&A, and will also address the objection set forth by ITC Great Plains. The Commission will first consider the S&A by reviewing the five criteria identified for evaluating whether a specific settlement reached by the parties should be approved. Each criterion will be considered separately.

1. Has each party had an opportunity to be heard on its reasons for opposing the settlement?

30. Clean Line, Staff, CURB and E4G all support the S&A. ITC Great Plains participated in the hearing before the Commission, and filed an objection to the S&A. Westar stated it took no position to the S&A, and Sunflower and MKEC stated they do not object to the S&A. Tr., pp. 15, 20-21, 42, 55-56. The record shows that no parties were denied any opportunity to be heard on the Application or on reasons for opposing or not supporting the S&A. The procedural schedule set forth a full opportunity for all parties to present evidence on the issues raised in the Application, including participation in a settlement conference.

31. At the hearing, ITC Great Plains explained its opposition to the settlement in opening statements. All parties were provided with the opportunity to conduct cross-examination of witnesses tendered in support of the S&A, as well as all witnesses tendered to the Commission for questioning. Both Clean Line and Staff pointed out that all of the parties that

intervened in the docket were present during the settlement conferences and participated in negotiation of the issues. Tr., p. 116 (Wegner)

32. The Commission finds that there was an opportunity for all parties, even those opposing or not supporting the S&A, to be heard on reasons for opposition to the S&A.

2. *Whether the S&A is supported by substantial competent evidence?*

33. Substantial competent evidence is that which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved. *Kansas Gas and Electric v. State Corp. Comm'n*, 14 Kan.App.2d 527, 532 (quoting *Southwestern Bell Tel. Co. v. State Corp. Comm'n*, 4 Kan.App.2d 44, 46, 602 P.2d 131 (1979), *rev. denied* 227 Kan. 927 (1980)). Whether another trier of fact or another party could have reached a different conclusion given the same facts is irrelevant; a decision of the Commission is considered not to be supported by substantial competent evidence “only when the evidence shows the [Commission’s] determination is so wide of a mark as to be outside the realm of fair debate.” *Zinke & Trumbo, Ltd. v. State Corp. Comm'n*, 242 Kan. 470, 474 (1988).

34. This Order has listed names of witnesses submitting prefiled direct, cross-answering, and rebuttal testimony. In this case, two witnesses, Glotfelty for Clean Line and Wegner for Staff, offered testimony in support of the S&A through their testimony at the hearing. Both Glotfelty and Wegner outlined the elements of the S&A and the five-factor test the Commission utilizes to evaluate settlement agreements, and supported the S&A as a whole in light of their respective and independent litigation risks. Tr., pp. 56-57 (Glotfelty), 115-118 (Wegner). All prefiled testimony was admitted as a part of the record, and the Commission has reviewed and considered all such testimony, including materials referenced and incorporated in

such testimony. In addition to reviewing prefiled testimony and questioning witnesses who testified during the hearing, the Commission notes that it has considered statements made by members of the public who filed comments with the Commission's PACP Office.

35. Clean Line stated that when constructed, the Grain Belt Express will have an interconnect with the SPP system from the Clean Line converter station, which is expected to only take power from the SPP system to run the converters, but is not intended to take any power from Clean Line to flow into the SPP system. Tr., p. 10. Clean Line stated that its interconnect to the SPP system will be subject to all of the SPP studies and requirements evaluating the impact of its connection. Tr., p. 20.

36. As set forth in the project description that Clean Line provided to the SPP TWG, there are significant and substantial economic benefits that the project will provide to Kansas. Galli Direct, Exhibit AWG-7, page 11. As noted, the benefits include royalties to landowners who contract with generators, new jobs associated with construction and operation of both the lines and wind generating facilities, and additional tax revenue. Skelly Direct, pp. 7, 30. As laid out fully in Clean Line's Application and supporting testimony, these economic benefits will provide a tremendous stimulus to the United States economy by facilitating a great deal of new investment in renewable energy projects that would not be possible if the Project did not occur. Some of the economic benefits include: (1) creation of transmission facility jobs, including over 4,700 full-time equivalent (FTE) jobs in Kansas over a three-year construction period, and over 120 permanent jobs to operate and maintain the transmission facilities; (2) creation of wind generation facility jobs, including over 16,500 FTE jobs over a one-year construction period, and over 480 permanent jobs to operate and maintain the wind generation facilities; (3) royalties and other income related to the expansion of wind generation projects to Kansas landowners; (4)

approximately \$7 billion in new renewable power generation in western Kansas; and (5) generation of tax revenues for state and local governments, estimated at over \$15 million in additional tax revenue from sales, property, and income tax during the three-year construction cycle. Application, ¶¶ 25, 32-43; Skelly Direct, pp. 5-7.

37. The Commission has weighed the testimony and pleadings of all parties, and after reviewing the record as a whole, finds that substantial competent evidence exists and supports the finding that the S&A is reasonable and should be approved in its entirety. The Commission finds that Clean Line has provided substantial competent evidence through its Application and testimony for the Commission to approve a Transmission-Only certificate for the HVDC transmission line including the construction and operation of the AC Collector System, with the cost-recovery condition as set forth in the S&A and recommended by Staff. Clean Line has agreed to conduct any SPP studies and obtain approval from the SPP TWG as needed, and to provide quarterly progress reports to the Commission concerning the Project. Clean Line has agreed to withdraw its request for waiver of certain statutes requested in its Application, and the Joint Movants agreed to waive K.S.A. 66-1402. Clean Line has acknowledged it must make the EL filings with the Commission concerning the lines in the Project.

3. *Whether the S&A conforms with applicable law?*

38. No public utility may transact business in Kansas unless it obtains a certificate from the Commission that “public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a ... public utility in this state.” K.S.A. 66-131. In its Application, and also in the S&A, Clean Line requests the Commission limit its certificate to allow the certificated authority to include only the ability to build and operate the Grain Belt Express transmission line and the AC Collector System.

39. The terms “public convenience” and “public necessity” are not defined in Kansas statutes, but in *Central Kansas Power Co. v. State Corp. Comm’n*, 206 Kan. 670, 676, 482 P.2d 1, 6-7 (1971), the Kansas Supreme Court has stated:

[P]ublic convenience and necessity will be promoted by authorization of the plan for electric facilities envisioned in the application. Public convenience means the convenience of the public, not the convenience of particular individuals. [Citations omitted.] Public necessity does not necessarily mean there must be a showing of absolute need. As used, the word “necessity” means a public need without which the public is inconvenienced to the extent of being handicapped.

See also, *General Communications Systems, Inc. v. State Corp. Comm’n*, 216 Kan. 410, 418, 532 P.2d 1341, 1348 (1975); *Atchison, Topeka & Santa Fe Railway Co. v. Public Service Commission*, 130 Kan. 777, 288 P.2d 755 (1930). Public convenience is a relative term, established by proof of the conditions existing in the territory to be served. *Atchison* at 781. “The requirement that an entity receive a certificate prior to commencing public utility business is for the protection and welfare of the people.” *Wycoff v. Quick Way Homes, Inc.*, 201 Kan. 442, 446-47 (1968).

40. In *Central Kansas Power Co.* at 677, citing *Kansas Gas & Electric Co. v. Public Service Comm’n*, 122 Kan. 462, 251 P.2d 1097, 1099, the Court stated:

In determining whether such certificate of convenience should be granted, the public convenience ought to be the Commission’s primary concern, the interest of public utility companies already serving the territory secondary, and the desires and solicitations of the applicant a relatively minor consideration.

41. The Commission has examined the statutory requirements and directions set forth by the Kansas Supreme Court in evaluating this factor. At the hearing, Clean Line witness Glotfelty testified the S&A conforms to applicable law. Tr., p. 37 (Glotfelty). Staff witness Wegner also testified at the hearing that Staff counsel advised that Clean Line does conform to the applicable law. Tr., p. 117 (Wegner).

42. The Commission considers the public convenience to be the primary concern in granting this certificate. The Commission finds no provision in the S&A is in violation of applicable laws. Currently, considering the planned capacity for alternative energy in the SPP system, only limited additional wind generation can be constructed in Kansas. Without the construction of the Grain Belt Express, as to the interests of public utility companies already serving the territory, the Commission finds that the service that Clean Line seeks to provide is not being provided by any other Kansas utility, as Clean Line only intends to export wind energy resources outside Kansas and the SPP footprint. The Commission has general authority over public utilities in the state, and finds that it is within the Commission's authority to acknowledge that the export of Kansas' abundant wind energy resources is in the public's interest.

43. ITC Great Plains raises no challenge of illegality in the sense that the S&A should be rejected. ITC Great Plains' Objection to inclusion of the AC Collector System is not legally supported, and if it were, it would be a secondary consideration of the Commission's, since the public convenience standard as set forth by Kansas courts is the Commission's primary concern. The Commission concludes that the S&A conforms with applicable law.

4. Whether the S&A results in just and reasonable rates?

44. Glotfelty testified at the hearing that the S&A confirms that Clean Line will request negotiated rate authority from the FERC. This will ensure that the costs for the project are paid by those who purchase capacity on the line, which are either utilities on the eastern end of the line or wind generators in Kansas seeking access to markets, and should not have any impact on Kansas ratepayers. Tr., pp. 57-58 (Glotfelty).

45. Wegner testified at the hearing that since Kansas ratepayers are not paying for the line, there are no rates to be set. Tr., p. 117 (Wegner). Clean Line's business plan does not have

Kansas ratepayers paying for this project, and the project will not go through the cost allocation procedures of the SPP as the project is financed through private investment. Tr., p. 11.

46. The Commission finds that Clean Line does not seek to recover rates or costs for its Project from Kansas ratepayers or through the SPP, while noting that such finding is not a factor material in this docket under the five-factor test the Commission uses to evaluate settlement agreements. The finding that recovery of costs of the Project will not be borne by Kansas ratepayers is nonetheless material to the Commission's ultimate determination of Clean Line's Application, as more fully discussed in the public interest section below.

5. Whether the results of the S&A are in the public interest, including the interest of those parties not consenting to the agreement?

47. A nonunanimous S&A would fail this test if the objecting party was not provided an opportunity to be heard on its objections; if the S&A was not supported by substantial competent evidence; if it was not in conformance with applicable law; or if it did not result in just and reasonable rates. Therefore, the findings and conclusions supporting these factors are also relevant to this factor. Atmos Settlement Order, ¶ 29.

48. Staff stated that the Commission should grant the certificate as agreed to by the parties in the S&A because it encourages wind development in Kansas while protecting Kansas ratepayers, which protects the public's interest. Tr., p. 52. Wegner testified that Kansas ratepayers will not be responsible for the cost of the line, and that the Project provides an opportunity for wind developers to develop wind projects in western Kansas, including providing a market for Kansas manufacturers of wind turbines and components. Tr., p. 118 (Wegner). Granting Clean Line a certificate of public convenience allows Kansas to both receive benefits and to provide benefits to other areas of the country at no cost to Kansas ratepayers.

49. Glotfelty testified at the hearing that the public interest is clearly served since Kansas ratepayers are not paying for the line, but will still obtain the economic development benefits associated with wind generation. Tr., pp. 57-58 (Glotfelty). Glotfelty stated that there is value at the local and state levels as wind farms are built. Moreover, Kansas ratepayers will not pay or be at risk for the inclusion of the AC Collector System. Tr., pp. 58-59 (Glotfelty).

50. The Commission finds that the need for long-distance, multi-state transmission projects such as the Grain Belt Express proposed by Clean Line in this proceeding will promote the development of wind generation facilities in Kansas, which will provide benefits to Kansas and other areas of the country. These benefits are certainly in the public's interest and Kansas' interest, especially since Clean Line's merchant model for cost recovery does not charge Kansas ratepayers to execute the proposed Project. Public comments indicate significant support for the approval of Clean Line's Application, to help connect Kansas' wind energy to larger markets farther east, to generate more jobs and greater revenues to local jurisdictions, and to strengthen Kansas' reputation as an attractive place to do business.

51. Clean Line demonstrated that construction of its project in Kansas will promote economic development and provide benefits to local communities, which include: construction of wind farms that could not otherwise be built due to insufficient transmission, construction and permanent maintenance jobs, and growth of turbine and related manufacturing employment.

52. The project will also generate tax revenues for state and local governments in Kansas. Application, ¶ 33. Kansas landowners will benefit from royalties resulting from expansion of wind generation projects. Application, ¶ 34.

53. After balancing all the interests represented by the parties to this proceeding, including those objections represented by ITC Great Plains and other intervenors who did not

voice support or opposition to the S&A, the Commission finds that approval of the S&A is in the public interest, as it provides the opportunity for wind energy resources to be further developed in Kansas and exported to other areas of the country. The Commission finds that it is in the public's interest to promote the development of wind energy resources, which is vital to economic growth in the state. Clean Line's Project promotes both Kansas' wind energy resources and introduces diversity in the transmission line system with the construction of its HVDC transmission lines and AC Collector System. The S&A also yields other additional benefits to all parties' interests. There is a benefit of stemming potentially protracted litigation, thereby promoting administrative efficiency, a well-settled public policy goal.

B. Other Factors for Consideration

54. The Commission has previously examined several issues regarding whether a certificate should be granted for an entity to build transmission in or through Kansas. Wegner testified at the hearing that the elements of the public convenience standard were covered in DeBaun's testimony and Wegner's testimony. These issues include: (1) Whether the S&A will result in unnecessary duplication of utility service? (2) The impact on wholesale competition? (3) The effect of the S&A on the Commission's jurisdiction to effectively regulate and audit public utility operations and transmission operations, including the effect of the S&A on ongoing authority to regulate, review, and oversee the Applicants' transmission operations in Kansas? (4) Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area affected by the resulting public utility operations in the state? (5) The effect of the transaction on reliability of service? (6) Whether the S&A will promote adequate and efficient service? (7) Whether the S&A reduces the possibility of economic waste? (8) What impact, if any, the S&A has on the public safety? (9) The effect of

the transaction on customers? (10) The effect of the transaction on the environment? (11) The effect of the transaction on public utility shareholders? (12) Whether the transaction maximizes the use of Kansas energy resources?⁶

55. In addition to having considered each of the foregoing issues, the Commission has also evaluated whether the Applicant possesses the necessary managerial, technical, and other experience necessary to operate and own a transmission line. Clean Line Initial Brief, ¶ 11.

56. The Commission has also stated that it should consider the impact of a transmission line on neighboring states, due to the regional nature of the transmission system. Order, Docket No. 08-KMOE-028-COC, August 12, 2008, paragraph 40.

57. Clean Line, by and through its witnesses Skelly and Glotfelty, and in its Application, has demonstrated that it has considered and addressed in its Application and supporting testimony the above stated issues for whether a certificate should be granted for an entity to build transmission in or through Kansas. Clean Line's project facilitates the export of wind energy resources out of the state and region; there is not another public utility that is providing this service. Thus it would not be duplicating the transmission services being offered by other public utilities in Kansas. Clean Line Initial Brief, ¶ 17. Clean Line's project would also benefit wholesale competition in the market, and would not have any negative impact on Kansas customers or public utility shareholders. Skelly Direct, pp. 33-36. Clean Line stated that using renewable energy facilitated by the Grain Belt Express will avoid construction of carbon-based fuel generation, and accordingly will reduce emissions of carbon dioxide, nitrogen oxides, and sulfur dioxide, as well as reduce water consumption used to cool thermal power plants. Application, ¶ 31.

⁶ See Docket Nos. 06-SPPE-202-COC, 06-WSEE-203-MIS, 07-ITCE-380-COC, 08-KMOE-028-COC, 08-PWTE-1022-COC, 08-ITCE-936-COC/08-ITCE-937-COC/08-ITCE-938-COC.

58. Staff thoroughly evaluated the standards the Commission has set forth in previous applications for certificates of convenience. *See* Testimony of Thomas B. DeBaun, August 19, 2011, pages 5-7 (DeBaun Direct, pp. 5-7 (summary)). Staff reviewed prior Commission orders that have interpreted public convenience standards, as set forth in the testimony of Staff witness DeBaun, and concluded that Clean Line has met those factors and the public convenience standard and should be granted the certificate for its Project as proposed.

C. Commission's Continuing Regulatory Oversight

59. Glotfelty testified at the hearing that the S&A is clear that Clean Line will use Kansas statutes when applicable to build this line, which would give the Commission as much oversight over the process as legally authorized. Tr., p. 73 (Glotfelty). Approving a certificate of convenience and necessity for Clean Line gives the Commission continuing regulatory oversight over Clean Line. Additionally, Clean Line, by and through its agreement to the S&A, has agreed to submit quarterly reports detailing the progress of its project in Kansas. Clean Line has stated that it will comply with the Wire Stringing Act, K.S.A. 66-183, and the Kansas Siting Act, K.S.A. 66-1,177 *et seq.* Application, ¶¶ 44-45.

60. Staff stated that the reporting requirements are in the public interest, providing the Commission with the oversight necessary to ensure Clean Line adheres to the conditions of its certificate, and creates the mechanism for the Commission to monitor the progress of the project, track Clean Line's agreements with the SPP and other utilities, and stay informed about the siting process. Staff's Post Hearing Brief, October 21, 2011, paragraph 14 (Staff Brief, ¶ 14).

61. The Commission will have continuing jurisdiction over Clean Line's certificate, including the ability to open an investigation at any time if there is a question about whether certification is in the public interest for Kansas. *See* Reply Brief of Grain Belt Express Clean

Line LLC, October 28, 2011, paragraph 4 (Clean Line Reply Brief, ¶ 4). ITC Great Plains is correct in its assertion that there is no guarantee that the Commission will have jurisdiction over a future siting proceeding in Kansas. ITC Great Plains Reply Brief, p. 11. ITC Great Plains argues that the Commission will not necessarily be provided with future opportunities or jurisdiction to evaluate other interests, but the Commission finds that to be incorrect. ITC Great Plains, LLC's Post Hearing Reply Brief, October 28, 2011, page 6 (ITC Great Plains Reply Brief, p. 6).

D. Intervention Issues

62. In this docket, the Commission has discovered issues with the application of the intervention rules of the Commission, and how those rules are applied to parties interested in intervening in matters before the Commission, particularly where intervention may serve to unduly prolong the final action upon an application. The Commission will be carefully examining petitions to intervene in future proceedings to determine if parties are articulating facts determining how legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by a proceeding, and thus justify or warrant the right of intervention, and the terms upon which intervention is to be permitted. K.A.R. 82-1-225.

E. Conclusion

63. The Commission concludes that Clean Line has fulfilled the standard applied in Kansas for certification under K.S.A. 66-131. The Commission finds there is sufficient competent evidence demonstrating that Clean Line has the managerial, financial and technical experience to construct, operate and maintain the line. Skelly Direct, pp. 37-45; Wegner Direct, pp. 3-8; Gatewood Direct, pp. 2-5. Based on the findings and conclusions stated above, and considering the entire record as a whole, the Commission approves the Joint Motion to Approve

Stipulation and Agreement. The Commission finds that Clean Line should be issued a certificate of public convenience and necessity in accordance with the provisions of K.S.A. 66-131, to transact the business of a public utility in the state, and limits the certificate right to Transmission Only, upon the terms and conditions as set forth in the Stipulation and Agreement.

64. The Commission finds that by granting the certificate of public convenience and necessity, Clean Line will be permitted to develop its plans to improve the transmission system in Kansas as well as aid in the development of Kansas' wind resources, which allows a new entrant into the business of electric transmission with a primary focus on electric transmission. This action by the Commission does not pre-judge approval of the actual siting of the Project, as that process would occur as part of a specific site application, pursuant to K.S.A. 66-1,177 *et seq.*, and related proceedings which concern the proposed line's operating characteristics, physical properties and location.

65. The Commission finds that granting the certificate to Clean Line will help expand renewable generation resources and transmission infrastructure in Kansas through the use of HVDC technology, which allows for better control when variable wind generation is injected into the grid and for the transfer of significantly more power with less power lost over long distances when compared to AC lines. Clean Line Initial Brief, ¶ 16; Skelly Direct, p. 9; DeBaun Direct, p. 18; Direct Testimony of Elena E. Larson, August 19, 2011, pages 11-12 (Larson Direct, pp. 11-12).

66. Clean Line's stated purpose is to construct and operate high voltage transmission lines to connect renewable resources in Kansas with load and population centers in eastern markets that have an increasing demand for electricity generated by renewable resources. Application, ¶ 4. The Commission finds it would make little sense to approve the certificate for

construction of the HVDC line without the AC Collector System. As stated by Clean Line in its Application, “Developers will not invest capital in wind generation facilities in western Kansas without reasonable assurances and expectations that transmission infrastructure will be in place on a timely basis to bring their output to market centers.” Application, ¶ 26. If the Commission were to approve the certificate only for the HVDC line portion of the project, and not include or limit its approval of the AC Collector System, potential investors would be less likely to provide funding for the Project, and the Project might not move forward and thus might not provide significant economic benefits and opportunities in the state that are in the public’s interest. The Commission finds that this would be a significant and unnecessary handicap to the development of Clean Line’s Grain Belt Express.

67. The Commission has reviewed ITC Great Plains’ Objection, and finds that there is no basis under the five-factor test, or under a consideration of the additional related issues identified in paragraph 54, or under other applicable law, to reject the S&A. The Commission has considered the public at large and balanced the competing interests in arriving at its decision.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission finds and concludes that the Joint Motion to Approve Stipulation and Agreement (S&A) is reasonable and should be granted, and by attaching the Stipulation and Agreement, the terms and conditions are incorporated into this Order. All parties had an opportunity to be heard as to reasons for opposing the S&A, the S&A is in the public interest, does not impact rates for Kansas consumers, is supported by substantial competent evidence, and conforms with applicable law.

B. The Commission concludes that Grain Belt Express Clean Line LLC has satisfied the requirements of K.S.A. 66-131 and is therefore granted a certificate of public convenience limited to Transmission Only.

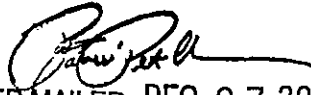
C. This Order shall be served electronically on the parties. Parties have 15 days from the date of service of this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529(a)(1).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chairman; Loyd, Commissioner; Wright, Commissioner

Dated: DEC 07 2011


ORDER MAILED DEC 07 2011
ELECTRONIC

Patrice Petersen-Klein
Executive Director

mrd

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Application of Grain)
Belt Express Clean Line LLC for a Limited)
Certificate of Public Convenience to Transact) Docket No. 11-GBEE-624-COC
the Business of an Electric Public Utility in the)
State of Kansas.)

STIPULATION AND AGREEMENT

COME NOW Grain Belt Express Clean Line LLC ("Clean Line"), the Staff of the Kansas Corporation Commission ("Staff"), the Citizens' Utility Ratepayer Board ("CURB"), and Energy for Generations, LLC ("E4G"), (referred to collectively as the "Signatories"), and hereby submit to the Kansas Corporation Commission ("Commission") for consideration and approval the following Stipulation and Agreement ("Stipulation").

I. BACKGROUND

1. On March 7, 2011, Clean Line filed an Application for a limited certificate of public convenience and necessity ("Certificate") to site, construct, own, operate and maintain bulk electric transmission facilities located in the State of Kansas, and requested a Transmission Only Certificate under K.S.A. 66-131. The Certificate requested would allow Clean Line to develop the Grain Belt Express Clean Line ("Grain Belt Express"), which will be a ±500 or ±600 KV high-voltage direct-current ("HVDC") transmission line capable of delivering 3,500 MW of power from Kansas to other load centers. The Grain Belt Express will originate in western Kansas near Spearville, Kansas and traverse east across Kansas into Missouri and possibly through Illinois into Indiana. The Grain Belt Express will be approximately 550 miles long (or

longer should it continue into Illinois and Indiana) and will deliver renewable energy to the Midwest Independent System Operator (“MISO”) markets and/or PJM Interconnection, LLC (“PJM”) markets.

2. Because Clean Line’s rates and services will be regulated under the jurisdiction of the Federal Energy Regulatory Commission (“FERC”), the Application also requested the Commission declare Clean Line exempt from, or in the alternative, waive certain statutory requirements as follows:

K.S.A. 66-101b	Rates and Service
K.S.A. 66-101c-f	Publication & Regulation of Rates
K.S.A. 66-117	Rates and Schedules
K.S.A. 66-122	Accounts and Reports
K.S.A. 66-128 through 128p	Valuation of Property for Ratemaking Purposes
K.S.A. 66-1402 and 1403	Submission of Affiliate Contracts and Fixing Rates Impacted by Affiliate Contracts

3. On June 22, 2011, the Commission issued an Order adopting the report and recommendations of the prehearing officer, establishing a procedural schedule for this docket which included, in part, discovery between the parties, the filing of direct, cross-answering and rebuttal testimony, a settlement conference and an evidentiary hearing. The settlement conference was held on September 26, 2011 at the Commission’s offices in Topeka, Kansas. All parties attended, and based upon discussions held at that meeting and thereafter, an agreement for resolution of the issues involved in this docket was reached between Staff, CURB, E4G and Clean Line.

II. TERMS OF THE STIPULATION AND AGREEMENT

4. The Signatories hereby agree that the following terms, if adopted by the Commission as its Order in this docket, are a reasonable and fair settlement of the issues herein and promote the public interest in the State of Kansas:

- a. Clean Line should be granted a Transmission Only Certificate of Public Convenience and Necessity pursuant to K.S.A. 66-131 to operate as a public utility in Kansas for the purpose of constructing and operating a HVDC transmission line and associated facilities as contemplated by its Application, including converter stations, lines to connect the converter station to SPP and a collector system comprised of AC gathering lines needed to connect generators in western Kansas to the Project ("AC Collector System") (collectively, "the Project").
- b. The Certificate granted to Clean Line for this Project should clearly include the authority to construct and operate the AC Collector System, which is an integral part of the overall Project. Clean Line does not have to seek further certification, or any amendments to this Certificate, in order to construct or operate the AC Collector System or the Project. Clean Line will make all filings required under the Kansas Transmission Line Siting Act, K.S.A. 66-1,177 *et seq.*, and the Wire Stringing rules, K.A.R. 82-12-1 *et seq.*
- c. It is the intent of the Signatories that the cost of the Project and any AC Collector System owned by Clean Line will not be recovered through the SPP cost allocation process or from Kansas ratepayers. As such, the Signatories recommend that the Commission's Order condition the granting of the Certificate upon Clean Line's representation that there will be no Project or AC Collector System cost allocation to SPP or recovery of Project

or AC Collector System costs from Kansas ratepayers, other than de minimis costs ancillary to any needed interconnection to SPP. If, after the Commission grants Clean Line a Certificate with the noted condition, Clean Line determines that it will modify this cost recovery process in a way that is inconsistent with this condition, Clean Line will file an application with the Commission to amend its Certificate, including evidence supporting such amendment in accordance with applicable public convenience standards.

- d. Clean Line will cooperate with the SPP as appropriate. If the Project or any portion of the AC Collector system owned by Clean Line is to be connected with the SPP system, Clean Line will complete all studies required by SPP for both the Project and the AC Collector System owned by Clean Line prior to the completion of any such connection. This process will include obtaining approval by the SPP Transmission Working Group ("TWG") of any interconnection request for either the Project or any portion of the Clean Line owned AC Collector System to the SPP system. Clean Line agrees to make the results of the SPP studies available to the Staff for its review.
- e. Upon being granted a Certificate by the Commission, Clean Line agrees to submit quarterly progress reports thereafter to the Executive Director, General Counsel and Director of Utilities of the Commission. Upon submitting the reports, Clean Line will also file in the docket a Notice of Submittal. Such reports shall include the following information:

- (1) Percent completion of project
- (2) Amount spent to date
- (3) Amount previously expected to have been spent to date
- (4) Total budget of project (and explanations of increases/decreases)

- (5) SPP Agreements and Invoices
- (6) Agreements with other Kansas jurisdictional public utilities
- (7) FERC Filings

In addition, if an application for siting approval is not filed under K.S.A. 66-1,177 *et seq.* the reports will include:

- (8) Status of routing.
 - (9) Status of public outreach/public meetings.
 - (10) Status of right-of-way and real estate acquisition in Kansas.
- f. Clean Line agrees to withdraw its request for waiver of K.S.A. 66-101b through 66-101f, K.S.A. 66-117, K.S.A. 66-128 through 66-128p, and K.S.A. 66-1403. The Signatories agree that the FERC preempts the Kansas Commission unless Clean Line acts outside the conduct covered by FERC jurisdiction, at which time the Kansas Commission will decide the applicability of these statutes. In addition, Clean Line agrees to withdraw its request for waiver of K.S.A. 66-122.
- g. The Signatories agree to support Clean Line's request for waiver of K.S.A. 66-1402. The waiver of K.S.A. 66-1402 will be effective only as long as Clean Line continues to utilize a cost recovery mechanism consistent with section 4.c. above.
- h. Clean Line will make all required "EL" filings in accordance with K.A.R. 82-12-1 *et seq.*, as amended, for any transmission line that it builds.

III. OTHER PROVISIONS


5. If the Commission accepts this Stipulation in its entirety and incorporates the same into a final order without material modifications, the Signatories shall be bound by its

terms and the Commission's Order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's Order on these issues.


6. The Signatories agree that the Application of Clean Line, as modified by this Stipulation, can be found by the Commission to be consistent with the public interest, and accordingly recommend that the Commission so find and that this Stipulation be approved.

7. No Signatory shall be deemed to have approved, accepted, agreed, or consented to any principle or precedential determination, or be prejudiced or bound thereby in any other current or future proceeding before the Commission except as provided for herein.

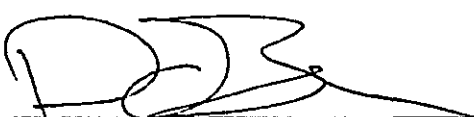
IN WITNESS WHEREOF, the Signatories have executed and approved this Stipulation and Agreement, effective as of the 10th day of October, 2011, by subscribing their signatures below.


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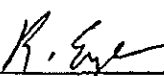
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GENERATIONS

CERTIFICATE OF SERVICE

DEC 07 2011

11-GBEE-624-COC

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Approving Stipulation and Agreement and Granting Certificate was served by electronic service on this 7th day of December, 2011, to the following parties who have waived receipt of follow-up hard copies.

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11-GBEE-624-COC



Pamela Griffith
Administrative Specialist

ORDER MAILED DEC 07 2011
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**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Mark Sievers, Chairman
Thomas E. Wright
Shari Feist Albrecht

In the Matter of the Application of Grain)
Belt Express Clean Line LLC for a Siting)
Permit for the Construction of a High)
Voltage Direct Current Transmission Line in) Docket No. 13-GBEE-803-MIS
Ford, Hodgeman, Edwards, Pawnee, Barton,)
Russell, Osborne, Mitchell, Cloud, Washington,)
Marshall, Nemaha, Brown, and Doniphan)
Counties Pursuant to K.S.A. 66-1,177, et seq.)

ORDER GRANTING SITING PERMIT

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, the Commission finds and concludes as follows:

1. On July 15, 2013, Grain Belt Express Clean Line LLC (Grain Belt Express) filed an Application with the Commission pursuant to the Kansas Electric Transmission Siting Act (Siting Act), K.S.A. 66-1,177 *et seq.* The Application is for a siting permit conferring on Grain Belt Express the right to construct the Kansas portion of a multi-terminal ±600 kilovolt (kV) high voltage direct current (HVDC) transmission line, and an HVDC converter station and associated transmission facilities, running from near the Spearville 345 kV substation in Ford County, Kansas, to a delivery point near the Sullivan 765 kV substation in Sullivan County, Indiana.¹ The line proposed by Grain Belt Express will go through Ford, Hodgeman, Edwards, Pawnee, Barton, Russell, Osborne, Mitchell, Cloud, Washington, Marshall, Nemaha, Brown, and Doniphan Counties in Kansas.

¹ See Application, p. 1 (July 15, 2013).

2. The Commission has jurisdiction over the Application under the Siting Act. The Commission has full power, authority, and jurisdiction to supervise and control electric public utilities doing business in Kansas and is empowered to do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.²

3. The following parties were granted intervention in this docket: Thomas and Deborah Stallbaumer, *pro se*; Matthew Stallbaumer, *pro se*; Cynthia Dettke Thoreson, *pro se*; Nancy Vogelsberg-Busch, *pro se*; Donald Miller and Jana Reed, *pro se*; the Irene Miller Family Trust; Mai Oil Operations, Inc.; ITC Great Plains, LLC; Mid-Kansas Electric Company, LLC; Sunflower Electric Power Corporation; Westar Energy, Inc. and Kansas Gas and Electric Company (Westar); Nemaha-Marshall County Electric Cooperative; the Board of Marshall County Commissioners; and the Coalition for Landowners, the Environment, and Natural Resources (CLEANR).

4. In issuing or withholding a siting permit, the Commission must decide the necessity and reasonableness of the location of the proposed electric transmission line, taking into consideration the benefit to consumers in and outside Kansas as well as economic development benefits in Kansas. The Commission may condition the permit as it deems just and reasonable and to best protect the rights of all interested parties and the general public.³

5. Grain Belt Express estimates it will cost approximately \$900,000,000 to construct the Kansas DC Facilities. The Grain Belt Express Project is a merchant transmission line, and its cost will not be recovered through the SPP cost allocation process. The cost of the Project will be

² K.S.A. 66-101; K.S.A. 66-101a; K.S.A. 66-104.

³ K.S.A. 66-1,180.

borne by the investors in Clean Line and Grain Belt Express's transmission customers, and not by the electricity consumers of Kansas.⁴

6. Grain Belt Express engaged the services of Louis Berger to assist in selecting the Proposed Route. Louis Berger is a privately held consulting firm providing engineering, architecture, program and construction management, environmental planning and science, and economic development services on an international scale.⁵

7. In collaboration with Louis Berger, Grain Belt Express conducted a series of community roundtable meetings to obtain proactive input on routing opportunities and constraints, as well as a series of public open house meetings designed to elicit input from residents and landowners along several potential routes. Grain Belt Express also obtained feedback from state and federal agencies, as well as public interest groups. Grain Belt Express conducted the open houses and obtained stakeholder participation in hopes of minimizing and mitigating potential adverse impacts of the Project. Grain Belt Express carefully considered all inputs received when selecting the Proposed Route.⁶

8. Grain Belt Express plans to use both lattice structures and tubular steel monopole structures for the Project, based on specific conditions at particular locations or in particular segments of the line. Most structures are expected to be between 100 to 175 feet tall, with taller structures potentially required at river crossings and in certain other situations such as where longer span lengths are required. The foundation piers of the typical structure will be 3 feet to 6 feet in diameter for lattice structures and 7 feet to 11 feet in diameter for monopoles. The transmission line will be bipolar with two bundles of three conductors. Typical span lengths will

⁴ Application at ¶ 8.

⁵ *Id.* at ¶ 9.

⁶ *Id.* at ¶ 10.

be 1,500 feet between structures where lattice structures are used and 1,200 feet between structures where monopoles are used, with shorter or longer span lengths where warranted by conditions in specific locations. The ±600 kV converter stations will be rated at approximately 3,756 MW in Kansas.⁷

9. The nominal width of the DC Line right-of-way will be 150 to 200 feet. Landowners will be able to use the DC Line right-of-way for any agricultural purpose, provided said purpose does not interfere with the use of the Project by Grain Belt Express, and is not hazardous to the landowner, the Project, or to the public generally. No structures will be allowed in any portion of the right-of-way. Trees and brush in the right-of-way will be trimmed or removed as necessary. Except in the case of certificated organic farms, or upon request by the landowner or by neighboring landowners, herbicides may be used to control vegetation in the right-of-way.⁸

10. Easements will be procured from landowners prior to construction. Landowners will be compensated for damages related to crop losses that are directly attributable to construction of the Project. In its transmission line easements, Grain Belt Express will provide landowners with indemnification protections and with certain releases of liability.⁹

11. Construction of the proposed route is scheduled to start as early as 2016 with completion as early as 2018.¹⁰

12. The Commission entered into the record the following testimony:

- a. Grain Belt Express: Direct testimony of Michael Skelly, Mark Lawlor, David Berry, Wayne Galli, and Timothy Gaul; Rebuttal testimony of

⁷ *Id.* at ¶ 13.

⁸ *Id.* at ¶¶ 18, 19.

⁹ *Id.* at ¶ 20.

¹⁰ *Id.* at ¶ 21.

Mark Lawlor and Wayne Galli; Testimony in Response to Written and Public Hearing Comments of Wayne Galli, Timothy Gaul, Mark Lawlor and John McBeath; and Rebuttal Testimony in Response to Staff's Response to Public Comments of Mark Lawlor.

- b. Commission Staff: Direct testimony of Michael Wegner and Thomas DeBaun; Testimony in Response to Public Comments of Michael Wegner and Thomas DeBaun; and Supplemental testimony of Michael Wegner.
- c. Westar: Direct testimony of David Benak.
- d. Matthew Stallbaumer: Direct testimony.

13. With their Application, Grain Belt Express submitted a list of landowners of record whose land or interest therein was: (1) proposed to be acquired to construct the proposed line, or (2) located within 1,000 feet of the center line of the easement where the line is proposed to be located, exceeding the 660-foot statutory requirement.¹¹

14. The Commission conducted four public hearings in this docket pursuant to K.S.A. 66-1,178: on August 12, 2013, in Seneca, Kansas, on August 14, 2013, in Beloit, Kansas, on August 20, 2013, in Russell, Kansas, and on August 22, 2013, in Kinsley, Kansas. At each of the public hearings, any member of the public who indicated a desire to speak before the Commission was granted an opportunity to ask questions of Grain Belt Express and Commission Staff prior to entering sworn testimony into the record in this case. No one was barred from entering sworn testimony at any of the four public hearings. Staff estimates more than 700 people attended the public hearings and the Commission received 56 sworn statements from the

¹¹ *Id.* at ¶ 23 and Exhibit D (landowner list).

public. In response to comments made at the public hearings, Staff filed testimony addressing concerns raised as well as route modifications proposed by several affected landowners.

15. In an affidavit filed August 9, 2013, Grain Belt Express explained they delivered by certified mail, return receipt requested, to owners of record of property located within 1,000 feet of the center line of its proposed HVDC transmission line: notice of the Application for a siting permit, a copy of a map of the proposed route, written notice of the dates, times, and locations of the four public hearings to be held before the Commission, and detailed information on how to submit a public comment directly with the Commission's Public Affairs and Consumer Protection Division within the established comment period.¹² The Commission received and entered into the record over 2,600 public comments in this docket, including petitions, telephoned comments, emailed comments, and letters.

16. The Commission finds Grain Belt Express complied with the requirement to send notice to all landowners of record whose land or interest therein is proposed to be acquired in connection with the construction of the line.¹³ The Applicant exceeded the requirements of K.S.A. 66-1,178(a)(2) by including landowners within 1,000 feet of the center line of the easement of the proposed line. The Commission finds Grain Belt Express complied with the publication notice requirement and agrees with Staff's assessment that the Applicant provided adequate notice to landowners.

17. Mai Oil argues it was not properly notified of the proposed line as an oil and gas mineral rights owner, citing K.S.A. 66-1,178(a)(2). "Ordinary words are to be given their ordinary meanings without adding something that is not readily found in the statute or

¹² See Affidavit of Publication and Notice to Landowners, pp. 1-2 and 35-75 (Aug. 9, 2013).

¹³ K.S.A. 66-1,179.

eliminating that which is readily found therein.”¹⁴ In construing a statute, the intent of legislature governs, when it can be ascertained from the statute.¹⁵ Ordinary words are interpreted without adding something not found in the statute or eliminating language found in the statute.¹⁶ The ordinary words contained in K.S.A. 66-1,178(a)(2) indicate only “the names and addresses of *the landowners of record* whose land or interest therein is proposed to be acquired in connection with the construction of or is located within 660 feet of the center line of the easement where the line is proposed to be located” are required to be listed in a utility’s line siting application and given notice of the proposed line. (Emphasis added). Any contention by Mai Oil that the notice requirement of K.S.A. 66-1,178(a)(2) includes owners of oil and gas interests thus fails. Moreover, Mai Oil’s attorney testified at the public hearing held in Russell, Kansas.¹⁷ Mai Oil therefore had constructive notice of the proposed line and the public hearings in this case.

18. The Commission held an evidentiary hearing on October 8, 2013. Grain Belt Express, Staff, ITC Great Plains, Nemaha-Marshall County Electric Cooperative, and CLEANR appeared by counsel. The Irene Miller Family Trust, Mai Oil, and the Board of Marshall County Commissioners did not appear by counsel, and Westar, Mid-Kansas, and Sunflower all waived their appearances at the hearing. Eight witnesses appeared at the hearing, five on behalf of the Applicant, two on behalf of Staff, and Matthew Stallbaumer. Testimony of Westar’s witness was admitted into the record without objection. The Commission limited several intervenors’ participation in the proceedings to making opening statements and filing post-hearing briefs.

¹⁴ *Bluestem Tel. Co. v. Kansas Corp. Comm’n*, 33 Kan. App. 2d 817, 109 P.3d 194, 196 (2005).

¹⁵ *Bluestem*, 33 Kan. App. 2d at 824.

¹⁶ *Id.* at 824-25.

¹⁷ Transcript of Proceedings, Russell, Kansas Public Hearing, August 20, 2013, Testimony of Dennis Davidson, pp. 30-33.

Necessity of the Proposed Line

19. In issuing a siting permit, the Commission must determine the necessity of the proposed transmission line. In deciding necessity, the Commission considers “the benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas.”¹⁸ The Commission is required to “issue or withhold the permit applied for and may condition such permit as the commission may deem just and reasonable and as may, in its judgment, best protect the rights of all interested parties and those of the general public.”¹⁹

20. While the Kansas Legislature did not define the criteria to determine necessity of a proposed electric transmission line, the Commission considers whether the line promotes the public interest.²⁰

21. Addressing the purpose of the proposed line, Grain Belt Express explained:

- a. “The proposed Project is designed to facilitate the development and export of wind resources from western Kansas to load and population centers in Missouri, Illinois, Indiana, and states farther east. By connecting Kansas’ abundant supply of wind with large and growing markets for wind power, the Grain Belt Express Project will facilitate construction of thousands of megawatts (‘MW’) of new wind power generation facilities in Kansas.”²¹

22. Grain Belt Express also asserts the proposed line will expand renewable generation resources and transmission infrastructure in Kansas, while using HVDC technology which allows for better control when injecting variable wind generation into the grid. Compared with AC lines, HVDC technology allows the transfer of significantly more power with less power loss over long distances, and utilizes narrower rights of way, shorter structures, and fewer

¹⁸ K.S.A. 66-1,180.

¹⁹ *Id.*

²⁰ See Order Granting Siting Permit, Docket No. 09-ITCE-729-MIS, ¶ 39 (July 13, 2009).

²¹ Application at ¶ 4; Direct Testimony of Michael Peter Skelly, p. 6 (July 15, 2013) (Skelly Direct); Direct Testimony of David A. Berry, p. 5 (July 15, 2013) (Berry Direct).

conductors.²² Grain Belt Express argues the proposed project will make possible more wind generation that would displace other, less environmentally friendly sources of energy, and would provide economic benefits to Kansas in the form of landowner contracts with generators for royalties and construction of wind farms that would not otherwise be built due to insufficient transmission facilities.²³ In Kansas, the proposed project is estimated to result in approximately 2,340 jobs annually during the three-year construction period, and an estimated 135 jobs to operate and maintain the project on an ongoing basis.²⁴ Additionally, construction of the associated wind facilities in Kansas is estimated to generate between 15,542 and 19,656 Kansas jobs, while operating and maintaining the wind farms is expected to generate 528 Kansas jobs.²⁵ Estimates are that during construction, the project would add \$131.5 million to salaries and wages spent in Kansas, \$371 million to Kansas's aggregate economic product, and \$6.76 million a year to state income and sales tax revenues.²⁶

23. The construction of wind farms and manufacture of wind turbine components facilitated by this project are estimated to result in between \$779 million and \$1.026 billion of salaries and earnings for those employed in that industry in Kansas. The economic impact of those earnings in the Kansas economy is estimated to be between \$2.284 billion and \$3.268 billion. The operations of these wind farms were estimated to generate 528 jobs, \$25 million in earnings

²² Initial Brief of Grain Belt Express Clean Line LLC, p. 6 (October 17, 2013) (Grain Belt Express Initial Brief); Direct Testimony of Mark Owen Lawlor, Exhibit MOL-5 (July 15, 2013) (Lawlor Direct).

²³ Grain Belt Express Initial Brief, pp. 6, 16; Skelly Direct, p. 6; Berry Direct, pp. 12, 19-20, 23-24; Transcript of Proceedings, Testimony of Thomas DeBaun, pp. 212-213 (October 8, 2013) (Transcript).

²⁴ Berry Direct, p. 11.

²⁵ *Id.* at pp. 10-11.

²⁶ David Loomis and J. Lon Carlson, Economic Impact Study of the Proposed Grain Belt Express Clean Line Project (June 10, 2013), Exhibit DAB-2 Berry Direct (hereinafter cited as "*Economic Development Study*").

and add \$73 million to the aggregate economy in Kansas.²⁷ The project and new wind farms will also provide additional tax revenue for local and State government authorities.²⁸

24. Grain Belt Express further posits the proposed project will not duplicate the transmission services being provided by other public utilities in Kansas.²⁹ It explains the Southwest Power Pool (SPP) projects are developed to meet the intraregional needs of the SPP member utilities, whereas the Grain Belt Express project will provide interregional transmission, making Kansas wind exports to other Regional Transmission Organization (RTO) markets possible³⁰ without adding costs to Kansas ratepayers.³¹ Furthermore, the potential wind generation in Kansas is substantially greater than the transmission capacity available on the SPP system.³² Grain Belt Express also argues its project will benefit wholesale competition in the electricity market,³³ and will not have any negative impact on Kansas electric customers or public utility shareholders.³⁴ Finally, Grain Belt Express argues the economic benefits of the proposed project established in its uncontroverted testimony amount to hundreds of millions of dollars for Kansas citizens and businesses.

25. Grain Belt committed to landowner compensation that would pay the market value of the land for an easement to cross land, plus compensation for structures that could be taken as a one-time payment or as an annual payment for as long as the transmission structures

²⁷ Berry Direct, p. 11.

²⁸ *Id.* at p. 8.

²⁹ *Id.* at pp. 4-5.

³⁰ Transcript, DeBaun, p. 215.

³¹ Skelly Direct, p. 5.

³² Transcript, DeBaun, p. 213.

³³ Skelly Direct, p.6; Berry Direct, pp. 12-13, Exhibit DAB-3.

³⁴ Skelly Direct, p.6; Berry Direct, p. 22.

are in place.³⁵ Thus, landowners would receive the market value of their land over which the lines pass while continuing to use the land so long as the use did not interfere with the lines.

26. In addition, because Kansas statutes exempt transmission lines from paying property taxes for the first 10 years of their operation,³⁶ Grain Belt committed to pay local governments a one-time Construction Mitigation Payment fee of \$7,500 per mile prior to the commencement of construction.³⁷ Since the Kansas portion of the project is about 370 miles long, this commitment amounts to \$2.8 million in payments to local governments in Kansas.

27. Grain Belt provided evidence it is capable of undertaking this project. One of Grain Belt's investors is National Grid, a major utility with headquarters in the UK.³⁸ Also, the project in Kansas is not the only transmission project being undertaken by Grain Belt. Grain Belt's affiliates are also developing three other high voltage long distance DC transmission projects and an AC transmission line.³⁹

28. Staff recommends the Commission find Grain Belt Express's proposed project is necessary on the grounds the project has the potential to benefit Kansas directly and to produce economic development benefits for both Kansas and the SPP region.⁴⁰ Staff witnesses testified the project is necessary to further wind development in Kansas,⁴¹ would promote current and past Kansas Governors' initiatives which support wind development in Kansas,⁴² furthers the Kansas Electric Transmission Authority's (KETA) mission to build electric transmission

³⁵ Testimony of Mark Lawlor in Response of Written and Public Hearing Comments, p. 20 (Sept. 10, 2013) (Lawlor Response).

³⁶ See K.S.A. 79-259.

³⁷ Lawlor Response, pp. 14-15.

³⁸ Skelly Direct, p. 17.

³⁹ Skelly Direct p. 11.

⁴⁰ Direct Testimony of Thomas B. DeBaun p. 11 (Aug. 9, 2013) (DeBaun Direct).

⁴¹ Transcript, Cross-Examination of DeBaun, p. 212; DeBaun Direct, p. 6.

⁴² *Id.* at, p. 213; DeBaun Direct, pp. 6-7.

facilities in Kansas for the exportation of wind energy into other states,⁴³ and addresses an SPP goal to develop transmission systems to export wind energy.⁴⁴ An additional benefit Staff identifies is the “merchant” nature of the proposed project, based on the fact the “cost causer” or the end users of the demand, rather than Kansas ratepayers, will pay for the costs of the project.⁴⁵

29. In this case, the evidence presented indicated that the project was being undertaken to incent the construction of wind farms in southwestern Kansas and carry wind generated electric energy to eastern markets. Thus, the commercial premise of the project is that but for the transmission line, the wind farms in southwestern Kansas would not be built.

30. Testimony indicated markets to the west, north and south were not economically feasible.⁴⁶ Thus, the testimony suggested that the route from southwestern Kansas to the east presented the only route to access economically feasible markets.

31. Testimony also indicated the demand for renewable energy from the states in the Midcontinent Independent System Operator, Inc. (MISO) and the Pennsylvania-New Jersey-Maryland Interconnection, L.L.C. (PJM) grids would be 99.7 million MWh in 2015, 157.3 million MWh in 2020 and 194.8 million MWh in 2025.⁴⁷ This demand greatly exceeds the renewable generation capacity of the MISO and PJM states, which testimony estimated to be 83.1 million MWh in 2010.⁴⁸ Thus, the evidence shows Grain Belt Express has a ready market for Kansas wind generated power carried east over its proposed transmission facilities.

⁴³ *Id.*; DeBaun Direct, p. 7.

⁴⁴ *Id.* at p. 214; DeBaun Direct, p. 6.

⁴⁵ *Id.* at p. 224; DeBaun Direct, p. 9.

⁴⁶ Transcript, Lawlor, pp. 106-108.

⁴⁷ Berry Direct, p. 21, Exhibit DAB-4.

⁴⁸ *Id.* at p. 21.

32. The Commission finds it is physically necessary to build a transmission facility that runs between southwest Kansas to eastern Kansas if one wishes to sell wind energy from southwestern Kansas to markets east of Kansas.

33. Testimony indicated the project would enable about 15 million MWhs annually of electricity generated by Kansas wind farms to be delivered and sold into the MISO and PJM grids.⁴⁹ As described above and contained in the Economic Development Study, testimony indicated the construction and operation of the wind farms and manufacture of wind turbine components in Kansas would add between \$2.3 and \$3.3 billion to the Kansas economy.

34. Grain Belt Express's Executive Vice President of Strategy and Finance, David Berry, sponsored a study of the benefits of the project to consumers in and outside of Kansas.⁵⁰ The general approach taken was to develop a simulation model of electric demand in the MISO and PJM states, to make assumptions about future demand in those states in 2019 and to simulate how the sale of Kansas wind energy into these markets would affect aggregate electric generation costs and emissions levels of various pollutants.

35. Grain Belt Express's analysis of consumer benefits is that consumers – largely outside of Kansas in the PJM and MISO states – benefit by a reduction in the cost of electric power generation ranging between \$354 million annually to \$546 million annually depending on the assumptions made about 2019 demand levels. Grain Belt Express also asserts that consumers would benefit by reductions in emissions levels.

36. After reviewing the record, the Commission finds substantial evidence in the record as a whole to support a finding of necessity to build Grain Belt Express's proposed 600

⁴⁹ *Id.* at p. 13.

⁵⁰ Bob Cleveland and Gary Moland, Grain Belt Express Project Benefits Study (Oct. 30, 2012), Exhibit DAB-3, Berry Direct (hereinafter cited as "*Benefits Study*").

kV transmission line. The Commission finds that the evidence in the record establishes the need for this line to address wind energy development in Kansas. Without this project, hundreds of millions of economic development dollars would not be spent in Kansas, and the potential for large scale wind farm development would be lost. The Commission finds that this project will have significant short- and long-term economic development benefits for the state of Kansas.

37. The Commission finds and concludes that the proposed transmission line provides benefits to electric customers both inside and outside of Kansas and economic development benefits in Kansas. The Kansas economy will benefit from construction activities which will require food, fuel, lodging and other local supplies and services. In addition, the proposed line and associated economic activity will have the long-term lasting impact of added Kansas jobs and will achieve the transmission and wind development goals of SPP, KETA, and current and past Kansas Governors.

Reasonableness of the Proposed Line's Route

38. In determining whether to issue a siting permit, the Commission must also determine the reasonableness of the location of the proposed electric transmission line.⁵¹ The Commission may condition a siting permit as it “may deem just and reasonable, and as may, in its judgment, best protect the rights of all interested parties and those of the general public.”⁵² Kansas courts have held that a condition is reasonable if it is based on substantial, competent evidence.⁵³

39. The proposed route is supported by an exhaustive routing effort documented in the Kansas Route Selection Study (Routing Study) prepared by Louis Berger and sponsored by

⁵¹ K.S.A. 66-1,180.

⁵² *Id.*

⁵³ See *Kansas Electric Power Coop., Inc. v. State Corporation Comm'n*, 235 Kan. 661, 665, 683 (1984).

Grain Belt Express witness Timothy Gaul. This effort included a three-stage public outreach campaign to gather information relevant to the routing process from state and local officials, community leaders, landowners, agencies, conservation focused non-governmental organizations, and other stakeholders.⁵⁴ Grain Belt Express recorded the information gathered through the public outreach effort and integrated it into the process of route development, refinement, and ultimately, the selection of the proposed route.⁵⁵

40. In developing the Routing Study, the Routing Team⁵⁶ identified a range of routing constraints and opportunities through the use of Digital Aerial Photography, GIS data sources, outreach efforts, and route reconnaissance. The Routing Team used this information in combination with General and Technical Guidelines to develop routes that attempted to minimize the overall effect of the line on natural and human environments while avoiding unreasonable and circuitous routes and unreasonable costs.⁵⁷ The General Guidelines in the Routing Study consist of a series of ten principles, including maximizing the length of the route, avoiding impacts to public resource lands and critical habitats, and minimizing substantial visual impacts, among others.⁵⁸ The Technical Guidelines in the Routing Study address the physical limitations, design, right-of-way requirements, and reliability concerns of the project infrastructure.⁵⁹ These guidelines consist of eight technical principles that addressed issues such as placement of structures, the crossing of existing transmission lines, and separation distances when paralleling existing transmission lines.⁶⁰

⁵⁴ Lawlor Direct, pp. 6-15.

⁵⁵ Direct Testimony of Timothy B. Gaul, Exhibit TBG-1, pp. 2-2 through 2-4 (July 15, 2013) (Gaul Direct); Lawlor Direct, pp. 6-15; Transcript, Wegner, p. 243.

⁵⁶ For members of the Routing Team, see Gaul Direct, Exhibit TBG-1, Appendix A; Transcript, Gaul, p. 158.

⁵⁷ Gaul Direct, Exhibit TBG-1, pp. 2-6 through 2-9.

⁵⁸ *Id.*, p. 2-4.

⁵⁹ *Id.*

⁶⁰ *Id.*, pp. 2-5 through 2-6.

41. Staff reviewed the Applicant's process to route the line and found both the process utilized and the preferred route to be reasonable.⁶¹ Staff based its determination of reasonableness on both the Route Selection Study and Staff's own reconnaissance of the proposed route.⁶²

42. The Commission finds and concludes the process to determine the route of Grain Belt Express's proposed transmission line and the route proposed by the Applicant are reasonable.

Modifications to the Route

43. Landowners presented several route modifications to Grain Belt Express and Staff during the pendency of this proceeding. Staff and Grain Belt Express agreed four alternative routes were reasonable. Those four alternative routes are as follows:

- a. Swenson/Johnson Alternative Route: This proposal moves the line approximately ½ mile to the north and provides for a greater distance away from the Swenson's home, saving their shelterbelt, routing through the Johnson's pasture land and spanning the edge of the Johnson's center pivot.
- b. Steele Alternative Route: This proposal moves the line ½ mile north instead of moving through the middle of the section and would begin in the northeast corner of the Blau property.
- c. Schmitt/Huffman Alternative Route: This proposal routes the line parallel to the existing electric line located around the Schmitt's feedlot. Staff recommended the Commission approve an alternative wherein Grain Belt Express makes its line crossing as requested and then continues in a parallel manner, thus avoiding the Schmitt's farm buildings.
- d. Dockendorf Alternative Route: This proposal suggests moving the line approximately ¼ to ½ mile east in Sections 23 and 13 of Township 24

⁶¹ Staff's Post Hearing Brief, pp. 18-20 (Oct. 24, 2013); Transcript, Wegner, pp. 221-235.

⁶² Direct Testimony of Michael J. Wegner, P.E., pp. 7, 9, 10-13, (Aug. 9, 2013) (Wegner Direct); Transcript, Wegner, pp. 243-244.

South, Range 20 West. Grain Belt Express has sent notice to other landowners that would be affected by this alternative.

44. In deciding whether an alternative route is reasonable, the Commission has traditionally considered the additional cost directly attributable to the alternative route. However, the mere fact that an alternative route is estimated to cost more than the filed route does not preclude a finding that an alternative route is reasonable and should be adopted. Other factors to consider include benefits gained by choosing the alternative route and the harm avoided by moving the filed route.⁶³

45. The Commission has evaluated each proposed route modification. The Commission has an obligation to balance the interests of landowners in minimizing the impact on their property with the costs associated with the project. As discussed above, Staff found Grain Belt Express's proposed route to be reasonable, as well as several proposed route modifications.

46. The Commission finds the route proposed in the Application is reasonable. After considering comments from landowners and the responses of Grain Belt Express and Staff, the Commission finds the modifications to the proposed route spelled out in paragraph 43 are also reasonable and are in the public interest.

47. During the pendency of this proceeding, several individuals or parties have argued Grain Belt Express should be required to bury the proposed transmission line in whole or in part. Grain Belt Express witness Galli testified numerous times that burying the line is not only technically impracticable but economically infeasible.⁶⁴ Staff witness DeBaun also concluded

⁶³ See Order Granting Siting Permit, Docket No. 10-ITCE-557-MIS, ¶ 58 (June 30, 2010).

⁶⁴ Testimony of Dr. Wayne Galli in Response to Written and Public Hearing Comments, pp. 7-8 (Sept. 10, 2013) (Galli Response); Direct Testimony of Dr. Anothony Wayne Galli, P.E., pp. 7-8 (July 15, 2013) (Galli Direct); Transcript, Galli, pp. 179-181.

underground construction of the Grain Belt Express project is not a viable alternative.⁶⁵ Grain Belt Express presented further testimony and exhibits demonstrating the technical and economic barriers to burying the line.⁶⁶ The Commission finds the record evidence demonstrates burying Grain Belt Express's proposed transmission line would be both technically impracticable and economically infeasible.

48. Several parties also raised concerns regarding the proposed line's impact on oil and gas facilities and potential future drilling sites. Grain Belt Express has stated it "recognize[s] the value of oil and gas production in the state and . . . [does] not want to negatively impact that. So we are of a position that we will make routing and engineering adjustments to provide the appropriate amount of setback and space in order . . . to work with those facilities."⁶⁷ Staff's position is these concerns are micro-siting issues which should be addressed during Grain Belt Express's final planning and engineering stages of the project. The Commission agrees. Grain Belt Express is directed to work with owners of oil and gas facilities along the proposed route and develop adjustments to the route as necessary to minimize impact to such facilities.

49. Other concerns raised by individuals or parties in this proceeding include the following: concerns over the subsidization of wind generation, complaints about the 120-day statutory deadline for a Commission order in line siting cases, concerns about Grain Belt Express's lack of experience and ability to build the project, concerns about the potential for creating a utility corridor, concerns that the power generated and transmitted will not be used in Kansas, visual impacts, impact on land value, impact on aerial spraying of crops, impact on

⁶⁵ Testimony of Thomas B. DeBaun in Response to Public Comments, pp. 12-15 (Sept. 12, 2013) (DeBaun Response).

⁶⁶ Galli Response, pp. 4, 8; Galli Direct, p. 7; Transcript, Galli, pp. 196, 199-200; Transcript, Lawlor, p. 127; Transcript, Skelly, pp. 137, 140; Galli Direct, pp. 7-8; Grain Belt Express Exhibit 3.

⁶⁷ Transcript, Cross-Examination of Lawlor, p. 92.

farming global positioning systems, eminent domain issues, health impacts on humans and livestock due to electromagnetic fields and lightning, concerns regarding potential crossing of existing electric facilities, concern over the 10-year tax exemption for line siting projects granted in K.S.A. 79-259, and inverse condemnation concerns. The Commission understands from the public comments and materials presented by certain parties in this case that these are issues of great concern to them. However, the Commission finds most of these issues are either best addressed in separate proceedings before the district courts of Kansas or do not fall within the Commission's jurisdiction to grant or withhold line siting applications under the statutory standard expressed above. Specifically, these concerns do not address the necessity of the line, the reasonableness of the proposed route, economic development benefits, benefits to consumers, or conditions that should be imposed on the line.

Conditions

50. Staff recommended the Commission make any order approving the Application contingent on the following:

- a. Grain Belt Express must also obtain requisite approval from Missouri, Illinois, and Indiana to construct the project;
- b. A sunset provision allowing Grain Belt Express five years from the date of the Commission's Order to begin construction of the project in Kansas or otherwise be required to reapply;
- c. A requirement Grain Belt Express continue providing quarterly project updates to the Commission until the project has been completed or otherwise abandoned;
- d. The project remains a "merchant" transmission line only and not become subject to funding by Kansas ratepayers as provided in the Order Approving Stipulation and Agreement in Docket No. 11-GBEE-624-COC.

51. Grain Belt Express did not object to the conditions proposed by Staff, but offered alternative language for two of the conditions which Staff witnesses did not object to at the evidentiary hearing.⁶⁸ The proposed alternative language is as follows:

- a. The cost of the Project and any AC Collector System owned by Grain Belt Express will not be recovered through the SPP cost allocation process or from Kansas ratepayers.
- b. Prior to commencing construction of the DC component of the Grain Belt Project in Kansas, Grain Belt Express will obtain the state or federal siting approvals required by law to begin construction on the entirety of the direct current portion of the Grain Belt Project outside the state of Kansas. For the avoidance of doubt, transmission line siting approvals from the Missouri, Illinois, and Indiana state utility commissions shall be sufficient to satisfy this condition.

52. The Commission finds the conditions as recommended by Staff and modified by Grain Belt Express are reasonable and should be adopted.

53. Prior to commencing construction of the direct current component of the Grain Belt Project in Kansas, Grain Belt Express will obtain the state or federal siting approvals required by law to begin construction on the entirety of the direct current portion of the Grain Belt Project outside the state of Kansas. For the avoidance of doubt, transmission line siting approvals from the Missouri, Illinois, and Indiana state utility commissions shall be sufficient to satisfy this condition.

54. The cost of the Project and any AC Collector System owned by Grain Belt Express will not be recovered through the SPP cost allocation process or from Kansas ratepayers.

55. Grain Belt Express is allowed five years from the date of the Commission's Order to begin construction of the project in Kansas or otherwise be required to reapply.

⁶⁸ Transcript, DeBaun, pp. 220-221; Transcript, Wegner, pp. 239-240.

56. Finally, Grain Belt Express shall continue providing quarterly project updates to the Executive Director, General Counsel and Director of Utilities of the Commission as directed in Docket No. 11-GBEE-624-COC until the project has been completed or otherwise abandoned. The requirement to file such quarterly reports is hereby transferred from Docket No. 11-GBEE-624-COC to the present docket.

Conclusion

57. The Commission finds the Grain Belt Express line will make possible the utilization of heretofore undeveloped wind energy potential in Kansas and will have significant short- and long-term economic development benefits for Kansas and the SPP region. Therefore, based upon a review of the record as a whole, the Commission concludes the proposed electric transmission line is necessary and the proposed route is reasonable. The Commission approves certain route modifications as discussed above.

58. Approval of the siting permit is expressly conditioned on Grain Belt Express's continued flexibility in working with all affected landowners. The Commission approves minor adjustments to the location of the line as necessary to minimize landowner impact but requires material, major adjustments, and any such adjustment for which landowners would not have received notice, be approved by the Commission before implementation.

59. Finally, the Commission emphasizes the duty of Grain Belt Express to restore affected land to the condition which existed prior to the construction once construction of the line is complete, to the extent reasonably possible.⁶⁹

⁶⁹ See K.S.A. 66-1,183.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission finds the proposed electric transmission line is necessary and proposed route is reasonable. Certain modifications to the proposed route are also reasonable. The Commission grants Grain Belt Express's Application for a siting permit to construct an electric transmission line with certain proposed route modifications approved in this Order.

B. The Commission approves of minor adjustments to the location of the line as necessary to minimize landowner impact, but requires material, major adjustments, and any such adjustment for which landowners would not have received notice, be approved by the Commission before implementation.

C. Prior to commencing construction of the direct current component of the Grain Belt Project in Kansas, Grain Belt Express will obtain the state or federal siting approvals required by law to begin construction on the entirety of the direct current portion of the Grain Belt Project outside the state of Kansas. For the avoidance of doubt, transmission line siting approvals from the Missouri, Illinois, and Indiana state utility commissions shall be sufficient to satisfy this condition.

D. This Order is conditional upon the cost of the Project and any AC Collector System owned by Grain Belt Express not being recovered through the SPP cost allocation process or from Kansas ratepayers.

E. Grain Belt Express is allowed five years from the date of the Commission's Order to begin construction of the project in Kansas or otherwise be required to reapply.

C. The Commission requires the Applicant to submit quarterly reports detailing the progress and costs of the project and a final report once construction is complete.

D. This Order will be served by electronic mail. Parties have 15 days from the date of service of this Order in which to petition the Commission for reconsideration.⁷⁰

E. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chairman; Wright, Commissioner; Albrecht, Commissioner.

Dated: 11-7-2013



Kim Christiansen
Executive Director

ORDER MAILED NOV 07 2013
Electronic

JV

⁷⁰ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

NOV 07 2013

I. BACKGROUND

At a high level, this application by Grain Belt Clean Line Express, LLC ("*Grain Belt*") represents a \$2.2 billion transmission line project (about \$900 million in Kansas) that is intended to enable \$7 billion of investment in the development and sale of wind energy produced in southwestern Kansas for sale at points east of Kansas. It will cross 14 counties in Kansas, then on through Missouri, Illinois and Indiana. It will be more than 750 miles long (370 miles in Kansas) and deliver Kansas wind-generated electric energy into eastern power grids operated by the Midcontinent Interconnection Operator ("*MISO*") and the PJM Interconnection that operates the grid in eastern United States (originally the Pennsylvania-New Jersey-Maryland (PJM) Interconnection).

The western end of the line will have an AC/DC converter station near Spearville, Kansas. The eastern end will have converter stations in Sullivan, Indiana connecting to Indiana Michigan Power Company and the PJM Interconnection. There will also be a midpoint converter in Missouri to connect to Ameren Missouri and MISO's grid.¹

Grain Belt's application and business model is a "merchant model" in the sense that its costs will be recovered from the wind farms that generate energy in southwestern Kansas and from the eastern consumers who buy the Kansas power.² Thus, unlike utility transmission projects the Commission has reviewed and approved in the past, this project will have no impact on Kansas' electric utility rates.

The high level estimated economic impacts of the project are that it would create 2,340 jobs in Kansas during the 3 year construction period; 135 jobs in Kansas during the operations of the line; and between 15,000 and 19,000 jobs in the wind industry depending on assumptions regarding the percentage of wind turbine components built. Estimates are that during construction the project would add \$131.5 million to salaries and wages spent in Kansas, \$371 million to Kansas' aggregate economic product, and \$6.76 million a year to state income and sales tax revenues.³

The construction of wind farms and manufacture of wind turbine components facilitated by this project are estimated to result in between \$779 million and \$1.026 billion of salaries and earnings for those employed in that industry in Kansas. The economic impact of those earnings in the Kansas economy is estimated to between \$2.284 billion and \$3.268 billion. The

¹ David Berry Direct Testimony, p. 7 (July 15, 2013).

² Michael Skelly Direct Testimony pp. 7-8 (July 15, 2013).

³ David Loomis and J. Lon Carlson, *Economic Impact Study of the Proposed Grain Belt Express Clean Line Project*, (June 10, 2013) (attached as Exhibit DAB-2 to the prefiled testimony of David Berry (hereinafter cited as "*Economic Development Study*")).

operations of these wind farms were estimated to generate 528 jobs, \$25 million in earnings and add \$73 million to the aggregate economy in Kansas.⁴

Unlike other transmission line cases heard by the Commission where the general level of landowner compensation was not presented, Grain Belt committed to landowner compensation that would pay the market value of the land for an easement to cross land, plus compensation for structures that could be taken as a one-time payment or as an annual payment for as long as the transmission structures are in place.⁵ Thus, landowners would receive the market value of their land over which the lines pass while continuing to use the land so long as the use did not interfere with the lines. Also, unlike other transmission projects that have come before the Commission, Grain Belt has also established a written code of conduct for its property managers charged with negotiating agreements with landowners.⁶

The value of this proposed compensation to Kansas is hard to estimate as it depends on local property values. The US Department of Agriculture's most recent survey of farmland property reports that the average farm real estate value per acre in Kansas is about \$1,900/acre; somewhat more for cropland, less for pastureland.⁷ Since the Kansas portion of the project is 370 miles long and assuming that landowner compensation will be made for a 200 foot strip along the line,⁸ that represents about 8,970 acres for which right-of-way compensation would be made. Thus, this commitment represents roughly \$17 million in easement payments to Kansas landowners. Payments for crop damages, field repair, and impacts to center pivot irrigators that will reduce the effective area of the irrigation equipment or require new equipment would be in addition to this amount, as well as payments for transmission line structures (towers).

In addition, because Kansas statutes exempt transmission lines from paying property taxes for the first 10 years of their operation,⁹ Grain Belt committed to pay local governments a one-time Construction Mitigation Payment fee of \$7,500 per mile prior to the commencement of construction.¹⁰ Since the Kansas portion of the project is about 370 miles long, this commitment amounts to \$2.8 million in payments to local governments in Kansas.

⁴ David Berry Direct Testimony, p. 11 (July 15, 2013).

⁵ Mark Lawlor, Responsive Testimony, p. 20 (Sept. 10, 2013). ("Grain Belt Express is offering a payment to the landowner for the transmission easement itself, a payment per structure, and additional payments as compensation for crop damages, field repair, and impacts to center pivot irrigators that will reduce the effective area of the irrigation equipment or require new equipment. The landowner will retain the ability to continue agricultural production on the entirety of the easement except for the relatively small footprint of the structures. During our public outreach process, landowners expressed a desire to have the option for a recurring annual payment. As a result, Grain Belt Express is offering the landowner, at his or her option, either a one-time payment or a recurring annual payment for the structures on their property. If elected by the landowner, the annual structure payment will be made as long as the above-ground transmission structures are present on the property and Grain Belt Express retains an easement. Total compensation to landowners with structures on their property will exceed 100% of the fair market value of the easement area.").

⁶ Mark Lawlor Direct Testimony, Exhibit MOL-8 (July 15, 2013).

⁷ US Department of Agriculture, Land Values 2013 Summary (August 2013).

⁸ Application, C. Right of Way, ¶18 (July 15, 2013).

⁹ K.S.A. 79-259.

¹⁰ Mark Lawlor, Responsive Testimony, pp. 14-15 (Sept. 10, 2013).

Grain Belt provided sufficient evidence it is capable of taking on this project. Testimony in this case was that one of Grain Belt's investors is National Grid, a major utility with headquarters in the UK.¹¹ Also, the project in Kansas is not the only transmission project being undertaken by Grain Belt. Grain Belt's affiliates are also developing three other high voltage long distance DC transmission projects and one AC transmission line.¹²

A. Studies

The record in this matter is very large. Several significant studies were submitted in support of the project, including:

1. **Route Selection Study.** This study described the process and data used by the applicant to iterate from early conceptual routes, to potential routes, to alternative routes and, finally, to the proposed route presented to the Commission.¹³
2. **Economic Development Study.** This study quantified and estimated the economic development impacts of the project to Kansas.¹⁴
3. **Benefits Study.** This study quantified and estimated the benefits of the project to consumers in and outside of Kansas.¹⁵
4. **Burial Study.** This study quantified and estimated the costs of burying the line rather than stringing it on overhead facilities.¹⁶
5. **HVDC Environmental Issues Study.** This study analyzed the issues surrounding high voltage direct current transmission lines.¹⁷
6. **Transmission Line Design Study.** This study analyzed the general design of the transmission line.¹⁸

¹¹ Michael Skelly Direct Testimony, p. 17 (July 15, 2013).

¹² *Id.* at p. 11.

¹³ Louis Berger Group, Inc., Kansas Route Selection Study (July 8, 2013) (attached as Exhibit TBG-1 to the prefiled direct testimony of Timothy Gaul (hereinafter cited as "*Route Selection Study*")).

¹⁴ Economic Development Study.

¹⁵ Bob Cleveland and Gary Moland, Grain Belt Express Project Benefits Study (Oct. 30, 2012) (Exhibit DAB-3 attached to the prefiled direct testimony of David Berry (hereinafter cited as "*Benefits Study*")).

¹⁶ Grain Belt Exhibit 3, Power Engineers, 500kv DC White Paper Project, Underground DC Feasibility Report (Nov. 11, 2010) (hereinafter cited as "*Burial Study*").

¹⁷ Oak Ridge National Laboratories, HVDC Power Transmission Environmental Issues Review (April 1997) (Exhibit AWG-6 attached to the prefiled direct testimony of Dr. Anthony Galli (hereinafter cited as "*HVDC Environmental Issues Study*")).

¹⁸ Power Engineers, Grain Belt Express HVDC Line Preliminary Design Criteria (Jan. 27, 2011) (Exhibit AWG-3 attached to the prefiled direct testimony of Dr. Anthony Galli (hereinafter cited as "*Line Design Study*")).

B. Public Comments

While the volume of public comments received by the Commission was quite large and many opinions were expressed, the project is generally supported by many in southwestern Kansas and opposed by groups in northeastern Kansas.

As part of its filing in this matter, Grain Belt included letters of support from more than 260 individuals and officials representing 12 counties, 6 cities, 8 economic development agencies, 4 colleges or universities, 4 utilities (including the largest municipal utility, the Kansas City Board of Public Utilities), and also numerous businesses, farmers and associations that would be affected by the project.¹⁹

As described in its prefiled testimony supporting its application,²⁰ Grain Belt conducted three rounds of public outreach before the public hearings were scheduled. Those public outreach efforts that preceded the public hearings included:

1. *Stage 1 Meetings.* These were meetings with Kansas state agencies (e.g., Kansas Chamber of Commerce, Department of Wildlife and Parks), local utilities, legislators, economic development agencies, county commissioners and other community leaders. The intent was to develop information about local communities, wildlife habitats, existing infrastructure, pipelines, transmission lines, etc. About 100 of those meetings were held.
2. *Roundtables.* These were larger group meetings to include anyone suggested by county commissioners as having a broad understanding of the local community and geography. A total of 19 roundtable meetings were held with attendance of slightly more than 300 individuals.²¹
3. *Open Houses.* Once the alternative routes were identified, Grain Belt mailed invitations to landowners of record with property within about 1½ miles from the center lines of each potential route segment to attend an open house to describe and discuss the project. Invitations were sent to more than 11,200 people and advertisements were placed in 24 local newspapers to publicize the open house in addition to the mailed invitations.²²

The table below summarizes the on-the-record public testimony/comments heard by the Commission at public hearings in Seneca, Beloit, Russell and Kinsley.

¹⁹ Mark Lawlor Direct Testimony Exhibit MOL-8 (July 15, 2013).

²⁰ Mark Lawlor Direct Testimony pp. 6-15 (July 15, 2013).

²¹ Mark Lawlor Direct Testimony, Exhibit MOL-1 (July 15, 2013).

²² Mark Lawlor Direct Testimony, Exhibit MOL-3 (July 15, 2013).

Testimony About the Proposed Route			
<i>Public Hearing Location</i>	<i>Approximate # of Attendees</i>	<i>Favorable</i>	<i>Opposition</i>
Seneca	400	6	11 1 conditional
Beloit	225	7	4 1 conditional
Russell	150	4	1 2 conditional
Kinsley	175	15	2 1 conditional
Total	950	32	18 5 conditional

More than 2,500 written comments concerning the proposed project were received by the Commission's Public Affairs and Consumer Protection ("PACP") group. A large majority of those comments came in the form of an on-line electronic petition in opposition to the project posted on change.org, a web site that facilitates posting and gathering petition signatures. Among the written comments received, about 470 (about 18%) did not live in Kansas.

II. RECOMMENDATIONS

I support approval of the Grain Belt proposal. This statement and the materials that follow outline the reasons for my vote, the record and reasoning I relied on in forming my opinion, and generally the reasons I did not agree with the arguments made by opponents to the proposal. Based on the evidence in the record, I believe the proposed route with the modifications presented in this proceeding meets the mandatory statutory standards that it is necessary and reasonable, benefits consumers in and outside of Kansas, and has significant economic development benefits.

My support also comes with the following recommended conditions to best protect the rights of all interested parties and those of the general public:

1. The routing proposals made by Staff should be approved.
2. The approval should allow for minor adjustments to facilitate to-date unforeseen conditions or mutually agreeable adjustments made by the affected landowner and Grain Belt.
3. The approval should be conditioned on the landowner compensation methodology and Construction Mitigation Payment plan proposed by Grain Belt.

4. Construction of the facilities should comply with the standards described in the Transmission Line Design Study.
5. As recommended by Staff, the transmission line shall be operated as a merchant model free of the subsidies inherent in large transmission facilities built at the direction of the Southwest Power Pool (“SPP”).
6. As recommended by Staff, the authority to construct this line should sunset if Grain Belt has not commenced construction prior to the sunset date. I recommend a sunset date of five years in recognition of the complexity of this project and its construction over four states.

III. LAW GOVERNING TRANSMISSION LINE SITING

I am an economist and a lawyer, which colors how I analyzed the comments and facts of this case. Law involves a determination of what is required by statute and case law. Economics often involves an assessment of public policy and normative analyses (*i.e.*, what ought to be).

As an economist, I believe line siting cases present an application of the economic issues surrounding conflicting property rights and the rights of others to control someone else’s property use. There are three major questions on this issue, generally. First, should a landowner or any other property rights holder be empowered to prevent a utility company from acquiring an easement through eminent domain? Second, should a utility be empowered to acquire an easement through eminent domain over the objections of a landowner or any property rights holders? Lastly, should an adjacent landowner or interested party who objects to transmission lines because they spoil their view be empowered to restrict a utility and landowner from mutually agreeing to place a transmission line on the landowner’s property?

To an economist, line siting presents an application of the Coase Theorem and the allocation and resolution of conflicting property rights. The overarching public policy of the Coase Theorem is that issues surrounding conflicting property rights are best addressed by institutions that facilitate private negotiations between the affected parties, such as landowners and transmission developers.²³ In Kansas, the mechanisms of public meetings, open houses and notice to affected parties can be considered such institutions.

As a lawyer, as a starting point, I view line siting cases (and most utility rate cases for that matter) as an application of the takings and due process clauses of the 5th and 14th Amendments to the U.S. Constitution which provides that “nor [shall anyone] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” It is important to note that the 5th Amendment does *not* prohibit private property from being taken for public purposes; just that there must be due

²³ Docket No. 11-ITCE-644-MIS, Order Granting Siting Permit (July 12, 2011) (containing a description of the Coase Theorem and the allocation of competing property rights in a docket siting a 345 kV transmission line).

process and just compensation.²⁴ Due process includes notice and a fair opportunity to be heard; such as in a public or evidentiary hearing. Just compensation includes the process whereby “fair” payment is determined; that includes, payment for land in cases of eminent domain or rates in the case of utility rate making cases. Also, note the US Supreme Court has held that “public use” under the takings clause can include economic development projects with private sector benefits.²⁵

The starting point of any analysis in line siting is the Kansas statutes and laws governing electric transmission lines. These statutes reflect the public policies enacted by the elected officials who represent Kansans and bind the Commission in the exercise of its authority.

The process set out in Kansas transmission statutes go to the heart of many of the public comments made. I note that the Commission is not a “super legislature” that may override the laws passed by the legislature (or the Supreme Court). Likewise, the Commission is not a “super zoning authority” that regulates local land use policies and aesthetics. For example, many commenters complained about inadequate notice to landowners and the short (120 day) review period. Both the mechanics of notice and the review period are explicitly defined by the statutes enacted by the legislature which the Commission cannot change. If the public is dissatisfied with the statutes, then it is the responsibility of elected officials to make the necessary changes. The Commission cannot change or override the statutes enacted by the Kansas legislature.

K.S.A. 66-1,178 and 66-1,179 generally specify the statutory *process* by which the Commission reviews transmission line siting applications.²⁶ They require that:

1. All electric utilities must obtain a transmission siting permit before beginning construction of an electric transmission line or exercising eminent domain to acquire any interest in land in connection with such construction.
2. An application must be made with the Commission specifying the proposed location and the names and addresses of landowners whose land or interest lies *within 660 feet* of the center line of the proposed route.
3. The Commission *must* hold a public hearing within 90 days of the filing of the application in one of the counties where the proposed line is located.

²⁴ There is no 5th Amendment equivalent in the Kansas Constitution, but Article 12, Sec 4 of the Kansas Constitution provides that “No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation.” Eminent domain in Kansas is performed subject to the Eminent Domain Procedure Act at K.S.A. 26-501 *et seq.*

²⁵ *Kelo v. City of New London*, 545 U.S. 469, 478-80 (2005) (In *Kelo*, the city of New London sought to directly condemn 115 privately owned properties and transfer them to a private non-profit as part of plan to build a new “village.” This development was projected to create in excess of 1,000 jobs, increase tax and other revenues, and to revitalize an economically distressed area.” Opponents generally argued that such a “taking” was not permissible because it was not a “public use” under the 5th Amendment, but rather a transfer of private property for the developer’s private use.).

²⁶ K.S.A. 66-1,178 and 66-1,179.

4. There be publication of notice of a public hearing in the newspaper of public record and written notice to the affected landowners.
5. The Commission *may* hold an evidentiary hearing.
6. The Commission must issue a final decision no later than 120 days after the application is filed.

It is worth noting that the requirement of notice to landowners within 660 feet of the transmission line and the requirement that the Commission issue a final decision in 120 days were added by the Kansas legislature in 2000.²⁷ In that respect, they represent a relatively recent judgment of and policy adopted by the Kansas legislature that transmission proceedings must be completed in 120 days and that the critical landowner interests are those located within a 1,320 foot path centered on the transmission line.

The *legal standard* to be applied by the Commission in reviewing a transmission siting application and deciding whether to grant a permit is specified in K.S.A 66-1,180, as follows:

The commission *shall* make its decision with respect to the *necessity for* and the *reasonableness of* the location of the proposed electric transmission line, *taking into consideration the benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas.* The commission shall issue or withhold the permit applied for and may condition such permit as the commission may deem just and reasonable and as may, in its judgment, best protect the rights of all interested parties and those of the general public.²⁸

The statutory standard “taking into consideration the benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas” was added by the Kansas legislature in 2003 reflecting a legislative intent and policy that consumer and economic development be considered in an analysis of the necessity and reasonableness of a line. Said differently, the *mandatory* statutory standard (“the Commission shall”) to be applied is consideration of the *necessity* of the line and the *reasonableness* of the line based on consideration of the “benefit to both consumers in Kansas and consumers outside the state and economic development benefits in Kansas.” Thus, the Commission may do one of three things: (1) issue the permit for the proposed line; (2) deny the permit; or (3) issue the permit conditioned on what the Commission concludes would best protect the rights of interested parties and the general public.

The Kansas Constitution includes a provision that strictly limits use of state money to invest in infrastructure projects, reflecting a public policy that private, not public money be used

²⁷ S.B. 257, Ch. 85, (2000).

²⁸ K.S.A. 66-1,180 (emphasis added).

for such facilities and that economic development is a legitimate public policy goal for infrastructure investments.²⁹

In 2001, the Kansas Legislature enacted K.S.A. 79-259 which exempted transmission lines from property taxes for the first 10 years of operations. I interpret this as an expression of legislative intent to promote investment in and deployment of electric transmission facilities in Kansas. In 2005, the Kansas Legislature enacted the Kansas Electric Transmission Authority Act, which created the Kansas Electric Transmission Authority (“KETA”). KETA is a public agency generally empowered to plan, secure financing, and build transmission lines when private entities and public utilities decline to build transmission facilities in Kansas. The purpose of KETA is a reflection of the public policies the Kansas Legislature enacted with respect to electric transmission lines.³⁰

I interpret the Kansas Constitution, K.S.A. 79-259 exempting transmission lines from property taxes for 10 years, and the KETA statutes to express an explicit legislative desire and public policy to promote economic development and facilitate the consumption of Kansas energy through investment in transmission facilities (the KETA statutes and K.S.A. 79-259) and that such investment should be made by private not public entities (the Kansas Constitutional provisions).

Granting a transmission line siting permit does not give a utility *carte blanche* to acquire property through eminent domain or general authority to destroy private property. For example, K.S.A. 66-1,183 specifies that “[i]t shall be the duty of every electric utility which constructs an electric transmission line to restore the land upon which such line is constructed to its condition which existed prior to such construction.”

Exercise of the power of eminent domain is explicitly authorized for public utilities and the procedure by which that power *may* be exercised is specified in the Kansas Eminent Domain Procedure Act.³¹ Knowing that, it is important to emphasize two facts. First, the Commission is *not* involved in eminent domain proceedings that set the price of property acquired – the Commission’s line siting proceeding simply determines the necessity and reasonableness of the proposed route. Second, overwhelmingly, property acquisition along a transmission line does *not* require the parties to resort to eminent domain. The affected parties (*i.e.*, the utility and the landowners) have powerful private economic incentives to reach voluntary agreements rather than resort to court-driven eminent domain proceedings where a judge rather than the parties

²⁹ KAN. CONST. art IX, § 9 (The state shall *never* be a party in carrying on any work of internal improvement except that ... it may, for the purpose of stimulating economic development and private sector job creation in all areas of the state, participate in the development of a capital formation system and have a limited role in such system through investment of state funds authorized in accordance with law.) (emphasis added).

³⁰ K.S.A. 74-99d01(b) (“The purpose for which the Kansas electric transmission authority is created is to further ensure reliable operation of the integrated electrical transmission system, diversify and expand the Kansas economy and facilitate the consumption of Kansas energy through improvements in the state’s electric transmission infrastructure.”).

³¹ K.S.A. 26-501 *et seq.*

determines the value of property. Testimony in this case indicated that eminent domain is rarely used in transmission siting negotiations with landowners.³²

IV. THE PROPOSED ROUTE IS NECESSARY

In past siting decisions, the Commission has interpreted "necessity" consistent with the meaning of "necessity" as used in the phrase "public convenience and necessity." Generally, I understand that standard to be summarized as follows: a project is considered necessary if the public would be significantly disadvantaged, inconvenienced or handicapped by its absence.³³

In this case, the evidence presented indicated that the project was being undertaken to incent the construction of wind farms in southwestern Kansas and carry wind-generated electric energy to eastern markets. Thus, the commercial premise of the project is that but for the transmission line, the wind farms in southwestern Kansas would not be built.

Testimony was presented that indicated that markets to the west, north and south were not economically feasible.³⁴ Thus, the testimony suggested that the route from southwestern Kansas to the east presented the only route to access economically feasible markets.

³² Grain Belt's President and CEO, Michael Skelly testified (Tr. pp 153-155) as follows:

CHAIRMAN SIEVERS: Did you propose this model because as a public utility you would have the power of eminent domain and could condemn property if you had a hold out?

MR. SKELLY: So we do not want to use eminent domain. We want to and are trying to negotiate fair prices with affected landowners and we have -- we are in the process of doing that right now, and when I say fair process, what we are doing, are going to pay 100 percent of the fee value and then we are going to make annual payments for the structures on the land which is sort of a page from the wind notebook where wind farm owners typically pay on an annual basis for each turbine that's located on someone's land. With respect to eminent domain, again, we don't want to use it, but we do have a hard time imagining that you could go from around Dodge City, Kansas, to Southern Indiana without running into a landowner who was opposed and then you would end up with a project that you either couldn't build or it zigged and zagged so much that it would be prohibitively expensive.

CHAIRMAN SIEVERS: Do you have any estimate as to how often you think you might have to utilize eminent domain?

MR. SKELLY: So we looked to examples with other projects at condemnation rates in the low single digits and that's what we aspire to, if not lower than that. I mean, the best would be zero.

³³ See, e.g., In the Matter of the Application of ITC Great Plains, LLC for a Siting Permit for the Construction of a 345 kV Transmission Line in Edwards, Ellis, Ford, Hodgeman, Pawnee and Rush Counties, Kansas, Order Granting Siting Permit, Docket 09-ITCE-729-MIS ¶39 (July 13, 2009)

³⁴ Tr. pp. 106-108. The testimony was as follows:

CHAIRMAN SIEVERS: Okay. Why didn't you go west?

MR. LAWLOR: The short answer is, is probably length to the, you know, to the significant supply, the band centers. There are -- you know, closest, you know, appreciable market would be Colorado, and they have significant wind resources in that state. So beyond that you're talking about, you know, California, Phoenix and Las Vegas. And so we, we acknowledge there is a need for that, but we have a sister project that would actually start farther west, New Mexico in this case, and move power that direction. So it's really a proximity question. Kansas wind resources closer proximity to eastern markets.

CHAIRMAN SIEVERS: Okay. Why didn't you go south, sell into the Dallas market?

Testimony was also presented that indicated that the demand for renewable energy from the states in the MISO and PJM grids would be 99.7 million MWh in 2015, 157.3 million MWh in 2020 and 194.8 million MWh in 2025.³⁵ This demand greatly exceeds the renewable generation capacity of the MISO and PJM states, which testimony estimated to be 83.1 million MWh in 2010.³⁶ Thus, Grain Belt believes it has a ready market for Kansas wind generated power carried east over its transmission facilities.

Testimony in this case was that the project would enable about 15 million MWhs annually of electricity generated by Kansas wind farms to be delivered and sold into the Midcontinent Interconnection Operator ("MISO") and PJM grids.³⁷ As described below and contained in the Economic Development Study, testimony was presented that indicates that the construction and operations of the wind farms and manufacture of wind turbine components in Kansas would add between \$2.3 and \$3.3 billion to the Kansas economy.³⁸

Based on the record, it seems obvious that if the project is not built, Kansas will not realize the benefits of the wind farm construction described in the application and that would disadvantage, inconvenience or handicap the public.

V. THE PROPOSED ROUTE IS REASONABLE

In past transmission cases, the Commission has defined a condition as reasonable simply if it is based on substantial, competent evidence.³⁹ But I believe an inquiry into reasonableness is broader than simply asking whether the evidence is substantial and competent. In my view, reasonableness includes an inquiry into whether the condition is just or fair, rational, appropriate under the circumstances, ordinary, customary or usual.

In this matter, the evidence supports a conclusion that the process by which the proposed route was selected and modified was just or fair, rational and appropriate under the

MR. LAWLOR: Similar -- well, Texas has a fairly significant wind resource. They have their own RTO, they have their own grid, as you know, and they are on track to, to meet their demand in the State of Texas with resources in that state.

CHAIRMAN SIEVERS: Okay. Why didn't you go to New Orleans?

MR. LAWLOR: There is, in short, not, not a significant enough market for, you know, a project of this size. We view -- New Orleans is part of the Southeast, where we have yet again a sister project in Oklahoma, the Panhandle, that would feed into that particular region.

CHAIRMAN SIEVERS: Okay. And why didn't you go to Minnesota?

MR. LAWLOR: Again, Minnesota has enough wind resource in their state to meet their relatively small load.

CHAIRMAN SIEVERS: So is it your testimony that the only economically feasible market to sell Kansas wind generated in the southwest is into the MISO and the PJM markets?

MR. LAWLOR: That, that is accurate.

³⁵ David Berry Direct Testimony at pg 21 and Exhibit DAB-4 (July 15, 2013).

³⁶ David Berry Direct Testimony at pg 21 (July 15, 2013).

³⁷ *Id.* at p. 13.

³⁸ *Id.* at p. 11.

circumstances. It was developed through an iterative analysis of various transmission routes seeking public input and analyzing alternative routes until the proposed route was selected.

The process by which the proposed route was selected was described in detail in the Route Selection Study attached to Mr. Gaul's direct testimony. The route selection process sought and received considerable public input and feedback to iterate to the final proposed route. Those public outreach efforts that preceded the public hearings included the meetings described above.

At a high level, Figure 4.5 in the Route Selection Study best illustrates why the northern route is preferable to central or southern routes through Kansas. Simply put, if the line were placed through a southern or central route it would be forced to pass through areas of high population density making the project economically infeasible.

Considerable public comment urged the Commission to require that the line be buried. However, the evidence in the record does not support such a proposal as a reasonable condition. Grain Belt Exhibit 3 presents a comprehensive study of the issues and costs associated with burying 500 kV DC line. The conclusions of that study are that compared to overhead construction, the costs of burying such a line would increase costs between 10 and 20 times the costs of an overhead line.⁴⁰

There was also public comment that focused on the aesthetics of the line and urging the Commission to find that the proposed line is unreasonable because it interferes with the views and nature of life in rural Kansas. In the public hearings, testimony from David Blau, a Kansas farmer, at the Kinsley public hearing stood out to me.

Visual esthetics. While this man-made structure that impedes our ability to see across the vast Kansas landscape is a bit of an eyesore, with progress comes sacrifice. At one time, this land wasn't cluttered with center pivot irrigations either, but now it's a part of our everyday landscape and is essential to the farming industry in this region. I bet not many would be willing to give up the center pivots now.⁴¹

Moreover, the Commission is not a zoning authority and aesthetic considerations are not included in the statutory criteria the Commission must consider in evaluating line siting applications. I found no legal authority that suggests that the Commission must make such an evaluation as part of its decision making in these cases.

VI. BENEFITS TO CONSUMERS INSIDE AND OUTSIDE OF KANSAS

Grain Belt's Executive Vice President of Strategy and Finance, David Barry, sponsored a study of the benefits of the project to consumers in and outside of Kansas.⁴² The general approach taken was to develop a simulation model of electric demand in the MISO and PJM

⁴⁰ Burial Study, pg. 28.

⁴¹ Blau Testimony, Kinsley, pg. 49.

⁴² Bob Cleveland and Gary Moland, Grain Belt Express Project Benefits Study (Oct. 30, 2012) (Exhibit DAB-3 attached to David Barry's prefiled direct testimony (hereinafter cited as "*Benefits Study*")).

states, to make assumptions about future demand in those states in 2019, and to simulate how the sale of Kansas wind energy into these markets would affect aggregate electric generation costs (which drive the prices consumers pay) and emissions levels of various pollutants (which affect health). Four future scenarios were assumed for the analysis:

Business As Usual - Energy demand grows under a moderate economic recovery with no major changes to existing environmental policy, generating technologies, fuel commodity prices, or other key energy market assumptions.

Slow Growth - Continuation of depressed economic conditions characterized by slow demand growth, continued low fuel commodity prices, and minimal transmission/generation expansion.

Robust Economy - Strong recovery in economic activity characterized by accelerated growth in electrical demand, higher fuel prices and emission allowances prices, and increased activity in new generation and transmission projects.

Green Economy - Expansion in environmental policy including carbon regulation and a federal renewable portfolio standard under robust economic conditions including high demand growth, an increase in fuel prices, and increased activity in new generation and transmission projects.⁴³

Using PRODMOD software, the impacts of selling Kansas wind energy into the PJM and MISO markets were simulated and the following results were reported:

2019 DEMAND COST SAVINGS IN \$ MILLIONS				
Area/Region	Business as Usual	Slow Growth	Robust Economy	Green Economy
Indiana	13	14	79	89
PJM	421	310	830	379
Midwest ISO	119	30	370	78

Environmental Benefits of Grain Belt Express Project				
Environmental Improvement	Business as Usual	Slow Growth	Robust Economy	Green Economy
Reduction in NO _x (tons)	15,538	7,254	3,504	3,556
Reduction in SO _x (tons)	9,868	9,730	6,374	7,841
Reduction in CO ₂ (tons)	7,434,958	10,345,743	5,704,144	5,402,264
Reduction in Hg (lbs)	83	110	46	96
Reduction in Water (Mgal)	3,150	3,915	2,556	2,800

Thus, Grain Belt's analysis of consumer benefits is that consumers—largely in the PJM and MISO states—benefit by reducing the cost of electric power ranging between \$354 million

⁴³ Benefits Study pg 1.

annually to \$546 million annually depending on the assumption one makes about demand levels in 2019. Grain Belt also asserts that consumers also benefit by reductions in emissions levels.

The Commission is not an environmental regulator and estimating the economic benefits with any precision based on assumptions six years from now over many states included in the PJM and MISO footprints seems questionable to me. However, there was no competing evidence in the record to suggest that consumers would not benefit in some manner. Certainly, the simulation model does provide some indication of the range and magnitude of benefits.

At a conceptual level, Grain Belt does not have the power to force anyone to purchase its power. Thus, if utilities in the MISO and PJM markets purchase power from Grain Belt, they must believe that the purchase makes them better off in some manner—either by reducing emissions mandates, meeting a state renewable portfolio standard, or reducing costs. In my view, if there is a viable market for Kansas wind energy in eastern states—the business premise upon which this project is based – then there must be some benefit to be gained in eastern states.

VII. ECONOMIC DEVELOPMENT BENEFITS IN KANSAS

Grain Belt’s Executive Vice President of Strategy and Finance, David Barry sponsored a study of the economic development benefits of the project in Kansas.⁴⁴ The study used the Jobs and Economic Development Impact (“*JEDI*”) model developed by the National Renewable Energy Laboratory (“*NREL*”), which, in turn used the IMPLAN input-output economic model to estimate macro-economic development impacts of the project.

Estimates of the economic development impacts were presented separately for the construction and operation of the transmission facility, construction and operation of the wind farms, and the manufacture of wind turbine components in Kansas.

The table below summarizes the economic development impacts associated with the construction process of the Grain Belt line in Kansas (\$ figures are in millions of \$):⁴⁵

Estimated State-Level Economic Development Impacts Associated with Construction Activities		
Component		Impact
Installation of Structures	Jobs	4,149
	Salaries	\$235.1
	Output	\$594.6
Manufacture of Structures	Jobs	592
	Salaries	\$36.5
	Output	\$134.0
Manufacture of Wire	Jobs	176

⁴⁴ Economic Development Study.

⁴⁵ *Id.* at Table 3.3.

Estimated State-Level Economic Development Impacts Associated with Construction Activities		
Component		Impact
	Salaries	\$12.2
	Output	\$67.5
Architectural Services	Jobs	438
	Salaries	\$29.2
	Output	\$61.6
Rights of Way	Jobs	313
	Salaries	\$6.8
	Output	\$47.4
Financial	Jobs	108
	Salaries	\$3.7
	Output	\$22.8
Electric Power	Jobs	23
	Salaries	\$1.8
	Output	\$9.9
Installation of Converters	Jobs	1,221
	Salaries	\$69.2
	Output	\$174.9
Totals	Jobs	7,021
	Salaries	\$394.4
	Output	\$1,113.0

At a high level and taken at face value, these estimates mean that the construction phase will add about 7,000 jobs to the Kansas economy, grow wages and benefits paid into the Kansas workforce by about \$394 million and as the money spent flows through the Kansas economy, total economic output will grow by about \$1.1 billion. When the line is operational, the Economic Development Study reports that the operations and maintenance will add 135 jobs to the Kansas economy, grow annual wages/salaries by \$7.6 million, and increase aggregate state output by \$17.7 million.⁴⁶

In addition to economic development benefits associated with the Grain Belt transmission line, estimates were presented of the economic development impacts of wind generation built in response to the availability of the Grain Belt transmission line. To develop those estimates, the Economic Development Study identified impacts based on assumptions about the proportion of wind turbine components that were made in Kansas. The Economic Development Study identified seven companies that manufacture wind turbine components⁴⁷ and modeled two scenarios; one where 30% of the wind turbine components used in the wind farms connected to the Grain Belt line were manufactured in Kansas and another where 90% of the wind turbine

⁴⁶ *Id.* at p. 2, Table ES-2.

⁴⁷ *Id.* at p. 30, Table 4.1.

components were manufactured in Kansas. The Economic Development Study assumed that 4,000 MW of wind turbine capacity would be built and connected to the Grain Belt line.

The table below summarizes the Kansas impacts of wind farm construction and operations associated with the Grain Belt line:

Reported Economic Development Impacts of Wind Farm Construction and Operations			
		30% Scenario	90% Scenario
During Construction	Jobs	15,542	19,656
	Salaries	\$778.8	\$1,026.1
	Output	\$2,283.5	\$3,267.7
During Operational Years (annual figures)	Jobs	528	528
	Salaries	\$25.0	\$25.0
	Output	\$73.3	\$73.3

Thus, at a high level and taking the figures at face value, the Economic Development Study reports that the wind farm construction induced by the Grain Belt line would create between 15,000 and 19,000 jobs during the construction phase, grow Kansas wages and salaries by between \$778 million and \$1 billion, and add between \$2.3 and \$3.3 billion to the Kansas economy.

Certainly, input-output models have their critics, and they are only as good as the inputs into and assumptions of the model, but the JEDI and IMPLAN models are widely used as mechanisms to assess economic development impacts. I find the results to be a credible assessment of the general magnitude of the economic development impacts of the proposed line.

CERTIFICATE OF SERVICE

NOV 07 2013

13-GBEE-803-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Granting Siting Permit was served by electronic mail this 7th day of November, 2013, to the following parties who have waived receipt of follow-up hard copies:

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[Handwritten signatures]

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF GRAIN BELT EXPRESS CLEAN LINE)
LLC FOR: (1) A DETERMINATION OF ITS STATUS AS A)
"PUBLIC UTILITY" UNDER INDIANA LAW; (2) A)
DETERMINATION THAT IT HAS THE TECHNICAL,)
MANAGERIAL, AND FINANCIAL CAPABILITY TO)
OPERATE AS A PUBLIC UTILITY IN INDIANA; (3))
AUTHORITY TO OPERATE AS A PUBLIC UTILITY IN)
INDIANA, INCLUDING AUTHORITY TO EXERCISE ALL)
RIGHTS AND PRIVILEGES OF A PUBLIC UTILITY)
ACCORDED BY INDIANA LAW; (4) AUTHORITY TO)
TRANSFER FUNCTIONAL CONTROL OF OPERATION)
OF ITS TRANSMISSION FACILITIES TO BE)
CONSTRUCTED IN INDIANA TO A FULLY)
FUNCTIONING REGIONAL TRANSMISSION)
ORGANIZATION; (5) A DETERMINATION THAT THE)
COMMISSION SHOULD DECLINE TO EXERCISE)
CERTAIN ASPECTS OF ITS JURISDICTION OVER)
PETITIONER CLEAN LINE LLC; (6) AUTHORITY TO)
LOCATE ITS BOOKS AND RECORDS OUTSIDE THE)
STATE OF INDIANA; (7) CONSENT BY THE)
COMMISSION TO BOARDS OF COUNTY)
COMMISSIONERS FOR PETITIONER CLEAN LINE LLC)
TO OCCUPY PUBLIC RIGHTS OF WAY, TO THE)
EXTENT IT MAY BE NECESSARY; AND (8) ALL OTHER)
APPROPRIATE RELIEF)

CAUSE NO. 44264

APPROVED:

MAY 22 2013

ORDER OF THE COMMISSION

Presiding Officers:
David E. Ziegner, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

On November 2, 2012, Grain Belt Express Clean Line LLC ("Petitioner") filed its Petition with the Indiana Utility Regulatory Commission ("Commission") initiating this matter. On December 3, 2012, Petitioner filed its prepared testimony and exhibits constituting its case-in-chief.

On January 2, 2013, the Commission issued a Prehearing Conference Order that, among other things, established a procedural schedule for this Cause. On January 30, 2013, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its prefiled testimony. Pursuant to the Commission's Docket Entry on March 6, 2013, Petitioner filed its Amended Petition and

Amended Testimony to denote a change in corporate status on March 14, 2013. On March 13, 2013, the parties filed a Settlement Agreement and supporting testimony.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record of this Cause by reference and placed in the official files of the Commission, a public hearing was held on March 27, 2013, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Petitioner and the OUCC appeared by counsel. The parties' evidence was admitted into evidence without objection. No members of the general public participated.

The Commission, based upon the applicable law and the evidence of record, now finds as follows:

1. Notice and Jurisdiction. Proper notice of the public hearing in this Cause was published as provided by law. Petitioner plans to engage in providing electric transmission service and facilities and to own, operate, manage and control plant and equipment within Indiana for the transmission of electricity at wholesale, and thus is a "public utility" under Ind. Code § 8-1-2-1. Therefore, Petitioner is subject to the jurisdiction of this Commission in the manner and to the extent provided by the Public Service Commission Act, as amended. The Commission has jurisdiction over Petitioner and the subject matter of this proceeding in the manner and to the extent provided by the law of the State of Indiana.

2. Petitioner's Characteristics. Petitioner is a limited liability company organized under the laws of the state of Indiana, with its principal office at 1001 McKinney St., Suite 700, Houston, Texas 77002. Petitioner is a wholly owned subsidiary of Grain Belt Express Holding LLC, a Delaware limited liability company, which in turn is a wholly owned subsidiary of Clean Line Energy Partners LLC ("Clean Line"), a Delaware limited liability company, with its principal office located at 1001 McKinney St., Suite 700, Houston, Texas 77002. Petitioner was initially incorporated in Delaware but was converted to an Indiana company as of February 6, 2013, in accordance with Ind. Code § 8-1-2-91.

3. The Proposed Project. The Grain Belt Express Clean Line project (the "Grain Belt Project" or the "Project") is an approximately 700-mile overhead, high voltage direct current ("HVDC") transmission line that is proposed to be built to deliver up to 3,500 megawatts ("MW") of wind power from western Kansas to communities in Missouri, Illinois, Indiana, and states farther east. Specifically, the Project as currently planned will originate in western Kansas (the "Resource Area"), will travel east to an interconnection with Ameren Missouri near the Palmyra Tap 345 kilovolt ("kV") substation, and will continue east to an interconnection with Indiana Michigan Power Company ("American Electric Power" or "AEP") at its Sullivan 765 kV substation near Sullivan, Indiana. At Sullivan, the line will interconnect with existing extra high voltage transmission lines for distribution to Indiana and customers served by utilities in the Midwest Independent Transmission System Operator, Inc. ("MISO"), and PJM Interconnection LLC ("PJM") markets. Petitioner will not provide retail services to customers within Indiana. Petitioner's wholesale transmission service is subject to regulatory oversight by the Federal Energy Regulatory Commission ("FERC").

4. **Relief Sought.** Petitioner requests that the Commission find, to the extent necessary, that: (1) Petitioner will be a transmission-only public utility; (2) Petitioner possesses sufficient technical, managerial, and financial capability and expertise to operate as a transmission utility in Indiana; (3) Petitioner should be granted authority to operate as a public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law; (4) Petitioner should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM or MISO; (5) the Commission should decline to exercise a limited portion of its jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial and financial capability) and certain public utility annual reporting requirements; (6) Petitioner should have the authority to maintain its books and records outside the State of Indiana; (7) the Commission should consent to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits or franchises as may be necessary for Petitioner to use county roads, highways or other property and public right-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23; (8) certain of the information submitted in support of this Cause constitutes confidential and proprietary trade secret information under Indiana law, and should be excepted from public disclosure; and (9) all other just and reasonable relief.

5. **Petitioner's Case-In-Chief.**

A. **Direct Testimony of Michael Skelly, President and Chief Executive Officer ("CEO") of Clean Line, and President and CEO of Petitioner.** Mr. Skelly testified his experience in the renewable energy business includes 20 years of diverse experience: first, developing thermal, hydroelectric, biomass and wind energy projects in Central America with Energia Global, and then subsequently, joining Horizon Wind Energy ("Horizon"), which he led from a two-person company to one of the leading wind energy companies in the United States. Mr. Skelly testified that Clean Line's objective is to develop, build, and operate HVDC transmission lines to facilitate the development of renewable energy resources, particularly wind generation resources, in the country's best wind regions, and facilitate the delivery of that energy to load and population centers.

Mr. Skelly stated that the Petitioner is developing the Grain Belt Project because there are cost-competitive wind resources available in the Resource Area, there is a demand for renewable wind energy in midwestern states including Indiana and eastern portions of the United States, and there is a lack of adequate transmission infrastructure by which to transport such renewable wind power to the areas of the country that have such demand. Mr. Skelly noted that the country needs long-haul transmission lines to move America's vast renewable energy resources to market. The transmission projects being developed by Clean Line will facilitate billions of dollars of investments in new renewable energy projects; create thousands of new construction and operations jobs; support jobs in manufacturing of wind turbines and components; spur rural economic development; increase property tax revenue for local communities and schools; and reduce carbon pollution by millions of tons. Mr. Skelly verified that Clean Line will sell transmission capacity to renewable energy generators and to the buyers of the power from these wind energy projects.

Mr. Skelly testified that Petitioner will not provide any retail electric utility services in Indiana. Petitioner will provide only wholesale-level transmission services to generators and wholesale purchasers. More specifically, Petitioner will offer transmission service on the Grain Belt Project through an open access transmission tariff ("OATT"), which will be filed with, and subject to the jurisdiction of FERC under the Federal Power Act and FERC's regulations. Petitioner expects that its customers will consist principally of (1) wind energy producers located in the wind-rich Resource Area at the western end of the Grain Belt Project, and (2) buyers of electricity – particularly buyers seeking to purchase electricity generated from renewable resources – located in Indiana or connected to the eastern end of the Project through the existing, interconnected transmission grid. Buyers of electricity are expected to be principally wholesale buyers, such as utilities, competitive retail electricity suppliers, including certified alternative retail electricity suppliers, brokers, and marketers.

Mr. Skelly explained that Petitioner has the managerial and technical capabilities to operate as a public utility in Indiana and to construct and operate the Grain Belt Project and provide transmission services as proposed. Clean Line and Petitioner have the financial capabilities to finance the construction of the Grain Belt Project and for Petitioner to operate as a public utility in Indiana. Clean Line's existing investors will continue to fund the development activities for the Grain Belt Project and the other transmission projects under development by Clean Line's subsidiaries. Clean Line also has workable plans for raising the additional capital needed to finance the major engineering and construction expenditures for these projects. Clean Line's principal equity owners, ZAM Ventures, Mr. Michael Zilkha, and National Grid have deep experience in the energy field, including electric power and renewable energy. Mr. Skelly emphasized that with the backing of these investors, Clean Line has secured capital to: (1) perform the work to obtain the necessary permits and approvals for its proposed projects, including the Grain Belt Project; acquire appropriate land options; (2) conduct extensive public outreach; (3) conduct interconnection and other technical studies; and (4) otherwise aggressively conduct development activities for the Grain Belt Project and Clean Line's other transmission projects up to the point that specific project financing agreements can be negotiated and executed.

B. Direct Testimony of James Glotfelty, Executive Vice President of Clean Line. Mr. Glotfelty testified that he has nearly two decades of experience in the public and private sectors in electric transmission and distribution, generation, energy policy, and energy security. He is the former Vice President, Energy Markets, for ICF Consulting, where he worked with MISO, PJM, the North American Electric Reliability Corporation ("NERC") and the United States Department of Energy ("DOE"), and many transmission utilities on various projects related to transmission expansion, power system reliability, power market optimization, and the development of renewable and other generation resources. Mr. Glotfelty also testified that he served as a presidential appointee in the U.S. DOE, where he founded and served as the first Director of the Office of Electric Transmission and Distribution, and also led the administration's electricity policy efforts, which included acting as lead negotiator with the United States Congress on the Electricity Title of the Energy Policy Act of 2005. Mr. Glotfelty's testimony provided an overview of federal transmission policy objectives and supports the conclusion that the construction of the Project is consistent with federal transmission priorities.

Mr. Glotfelty explained the ratemaking for the transmission rates for the Project, specifically, that Petitioner expects to sell all or a portion of the transmission capacity on the Project through bilateral, negotiated agreements. As a transmission service provider, Petitioner will seek negotiated rate authority from FERC, which will allow Petitioner to negotiate agreements with transmission capacity customers and to recover its costs through such agreements. The agreements will be subject to the requirements of an OATT similar to those used for interstate natural gas pipelines, and are governed by FERC rules and regulations.

Mr. Glotfelty noted that transmission owners in a regional transmission organization (“RTO”), such as PJM, typically recover their transmission investment costs by submitting a cost-based annual revenue requirement to PJM. This annual revenue requirement is the amount needed to recover their operations and transmission investment costs and earn a return on their transmission. In contrast, as noted above, Petitioner intends to collect its costs and earn a return on its investment by selling transmission capacity to customers that specifically contract to purchase the transmission capacity. Mr. Glotfelty also noted that there could be circumstances under which the Grain Belt Project could find it necessary to depart from the cost recovery model described and instead seek cost recovery through regional or inter-regional cost allocation mechanisms. He noted that there are currently no mechanisms in place for interregional cost allocation for a transmission facility such as the Grain Belt Project. However, if a mechanism for interregional cost allocation were to be developed and implemented and were to be widely used by transmission developers and their customers, then for competitive reasons, Petitioner could find it necessary to seek to utilize this mechanism as well.

Mr. Glotfelty emphasized that several leading industry experts have discussed the critical need for transmission investment. Several FERC Commissioners have emphasized the importance of increasing transmission investment. Industry groups and authorities articulated a need to construct additional transmission to support the demand for and development of renewable energy resources. Mr. Glotfelty pointed out in his testimony that the U.S. DOE published a report that highlighted the importance of expanding and strengthening the U.S. transmission infrastructure in order to accommodate greater reliance on wind generation as a source of supply. He also noted that NERC concluded that “[a]dditional transmission infrastructure is vital to accommodate large amounts of wind resources.” He stated that these studies indicate that substantial transmission investment is needed to continue the growth of the U.S. wind power industry. Moreover, in many cases these studies specifically identify long-haul HVDC lines originating in the windiest areas of the central United States as a technically desirable and cost effective solution.

Mr. Glotfelty concluded that independent transmission companies, such as Petitioner, should be certificated as public utilities to build and operate new transmission facilities in Indiana. He noted that unless independent transmission companies are proactive in developing long-distance, interstate transmission lines and are able to obtain the necessary certifications and authorizations from (multiple) state commissions, these much needed facilities may not get built.

C. Direct Testimony of David Berry, Executive Vice President – Strategy and Finance for Clean Line. Mr. Berry described his background, which includes working at Horizon Wind Energy as Finance Director, where he was responsible for financing transactions,

investment analysis and acquisitions. He testified that he worked on and led over \$2 billion of project finance transactions, including a non-recourse debt financing. Mr. Berry further testified that he oversees and is responsible for the financing activities, accounting, transaction structuring, and market analysis for Clean Line and its subsidiaries. He stated that he is responsible for developing the transmission capacity products offered to Petitioner's potential customers, and for raising the capital necessary to fund the development and construction of Clean Line's projects.

Mr. Berry noted that he was testifying in support of Petitioner's request to operate as a public utility in the State of Indiana, including to exercise all the rights and privileges of a public utility under Indiana law, for the Commission to decline to exercise certain aspects of its jurisdiction over Petitioner, and for the Commission to authorize Petitioner to keep its books and records outside the state of Indiana.

Mr. Berry also explained the benefits of Project, which will deliver approximately 15 million megawatt-hours ("MWh") of renewable energy per year. The economic benefits of the Project include cost effectively meeting growing demand for renewable energy, and increasing generator competition, which will exert downward pressure on wholesale energy prices in the MISO and PJM markets. The Project will also provide a substantial opportunity for economic development in the manufacturing, installation, and operation of the transmission line and associated wind turbines. The Project will also have a positive impact on the environment by reducing the need for energy from other sources that will therefore reduce emissions of carbon dioxide, SO₂, NO_x, and mercury. The Project will also reduce water withdrawal and evaporation required for cooling thermal power plants. Mr. Berry noted that the Project will create geographical diversity in the wind projects that deliver into the MISO and PJM transmission systems, thereby reducing variability, facilitating wind integration, and improving reliability.

Mr. Berry discussed the wind variability between Indiana and Kansas to explain that the Project will not adversely impact Hoosier wind farms. He explained that Indiana exhibits good wind power potential yet, in general, the wind resources in the Resource Area are stronger than those in Indiana due to higher wind speeds, which lead to higher capacity factors. Also, dispersing the locations of wind farms is a very effective way of reducing the variability of their energy output. Because the wind does not blow heavily at the same time in all places, a diversified group of wind plants generates electricity in a more consistent manner than a geographically concentrated group.

Mr. Berry testified that the Project will support Renewable Portfolio Standard ("RPS") requirements and Renewable Energy Credits ("RECs"). He noted that several states in the PJM and MISO footprints have RPS requirements, while several additional states, such as Indiana, have RPS targets or goals. Indiana currently has a voluntary, non-binding clean energy portfolio goal that allows participating utilities to earn financial incentives if they achieve clean energy goals, such as having 10% of their electricity requirements for Indiana customers come from renewable sources by 2025. Though each state has a separate RPS requirement, the markets for renewable energy and renewable energy credits are highly linked across states, similar to the manner in which markets for wholesale electricity are highly linked in different states. RECs, together with multistate wholesale electricity markets like PJM and MISO, allow utilities to

purchase renewable energy without being limited to buying from facilities located within their service territory.

Mr. Berry explained why RPS and RECs matter in Indiana. He noted that Indiana has an interest in other states having adequate resources available to meet their state RPS and goals because if there is a shortfall in other states in renewable energy resources to meet RPS requirements, it will increase REC prices throughout the region, and therefore increase the cost of meeting Indiana's voluntary goal for renewable energy purchases. Second, Indiana is a major player in the wind energy supply chain and Indiana businesses could benefit from manufacturing jobs driven by the construction of wind projects made possible by the Project. Third, environmental benefits are regional or global due to the public nature of clean air and the ability of emissions from fossil-fueled generation sources in one area to migrate to another area.

Mr. Berry further explained that new environmental standards will drive the demand for renewable energy with the retirement of coal plants, and wind has become a cost-effective resource. Because of technological innovations, such as taller towers and longer blades, some wind power purchase agreements ("PPA") are below \$30 per MWh. The Project will enable delivery of 3,500 MW of new, low-cost renewable energy generation into the MISO and PJM markets. These generation resources should increase wholesale competition and reduce wholesale electricity prices.

Mr. Berry also testified about perceived impacts on rates. He explained that because Petitioner is only providing transmission services and participating in wholesale markets, it has not performed an analysis to determine the impact on Indiana's retail rates. However, Mr. Berry noted that because Petitioner does not intend to cost allocate the Project, and because it is privately funded, it will not increase retail rates. Rather, he noted that the Project will bring low-cost wind resources into the area, putting downward pressure on wholesale power prices and benefiting retail customers in Indiana and elsewhere.

Mr. Berry explained that Clean Line has equity investors, including National Grid USA, through its wholly owned subsidiary, GridAmerica Holdings Inc. National Grid USA is a wholly owned U.S. subsidiary of National Grid plc, a major multinational holding company whose principal activities are owning and operating regulated networks for the transmission and distribution of electricity and natural gas. Michael Zilkha is another equity investor, and ZAM Ventures is the majority owner of Clean Line, and is one of the principal investment vehicles for ZBI Ventures, L.L.C. ("ZBI Ventures"), which focuses on long-term investments in the energy sector.

Mr. Berry explained that the initial equity investors provide capital to enable Clean Line to undertake the initial development and permitting work for its transmission line projects, including the Grain Belt Project. The funding provided by the equity investors will enable Clean Line and its subsidiaries to bring the Project, and the other transmission line projects being developed by other subsidiaries of Clean Line, to a point of development at which long-term transmission service agreements can be signed with transmission customers and, on the basis of these agreements, project-specific financing arrangements can be entered into with lenders and with equity investors and/or other partners. The additional capital obtained through these

financing arrangements will allow Petitioner to construct the Project. Mr. Berry stated that he was confident that the project finance markets will support the construction of the Grain Belt Project, noting that the capital markets have a substantial history of supporting transmission projects, including merchant transmission projects, through debt and equity financings.

Mr. Berry explained that Petitioner plans on first obtaining the major regulatory approvals to proceed with the Project and to sell a majority of the capacity on the Project before obtaining construction financing. The transmission capacity contracts Petitioner will offer are long-term transmission capacity contracts, which will provide for a reservation charge, meaning the transmission customer will pay regardless of what percentage of the time the customer uses the reserved capacity.

Mr. Berry also described why it is necessary and appropriate for Petitioner to be allowed to maintain its books and records at its office in Houston, Texas. Mr. Berry explained that the accounting, financial, and administrative management and staff of Clean Line perform and will continue to perform accounting, financial, treasury and other administrative services for Petitioner, including maintenance of Petitioner's accounting and financial books and records. The management and administrative staff of Clean Line performing these functions will be located at the principal offices in Houston. Petitioner, due to the nature of its business and operations, will be operating in, and potentially will be subject to the jurisdiction of regulators in at least four states, Kansas, Missouri, Illinois, and Indiana. For these reasons, it would be inefficient and unduly expensive, and could necessitate duplicative efforts, for Petitioner to maintain its books and records in Indiana, or at any location other than the principal office of Petitioner and its parent company in Houston, Texas. However, Mr. Berry noted in his testimony that Petitioner commits to produce in Indiana, upon reasonable notice, copies of those portions of its books and records necessary for the OUCC and the Commission to perform their statutory duties. In the event it is not possible for Petitioner to produce the necessary books and records in Indiana, Petitioner commits to reimburse the OUCC and Commission for all reasonable travel expenses, including travel fare, mileage, lodging and meals incurred while inspecting Petitioner's books and records outside of Indiana.

Mr. Berry testified that Petitioner is requesting that the Commission decline to exercise its jurisdiction with respect to: (1) financing approvals; (2) approvals over purchases and/or sales of facilities (except as necessary to ensure that any purchaser of Indiana facilities has the requisite financial, technical and managerial capability); and (3) certain of the public utility annual reporting requirements. Petitioner believes it is unnecessary for the Commission to exercise jurisdiction over these areas, since Petitioner is a wholesale transmission service provider that will sell transmission under negotiated rates regulated by FERC on an ongoing basis. Petitioner will not have retail customers, nor does it intend to utilize a cost of service model where its costs are directly passed through to retail customers. Accordingly, retail customers will not be impacted by Petitioner's financing activities. Also, as a transmission-only utility operating in multiple states, Petitioner will be regulated by the relevant state commission in each state in addition to FERC. Another traditional area of Commission concern is the reliability of retail service. Petitioner's transmission activities will not directly implicate the reliability of retail service or the distribution network owned by other Indiana utilities. The Grain Belt Project's deliveries to PJM and MISO will be strictly controllable due to the use of

HVDC technology, with the RTOs, FERC and NERC monitoring and regulating the reliability of the high voltage grid. Further regulation of these matters by the Commission would be unnecessary, wasteful of the Commission's resources, and burdensome for Petitioner.

Mr. Berry offered in his testimony that while development and construction are ongoing, Petitioner proposed to provide the Commission with annual updates on the Project, summarizing the Project construction and operational status and financing milestones, including: Identification of major construction vendors and contractors hired, identification of major operation and maintenance contractors retained, significant new debt and equity financings completed at the Petitioner level, significant changes in Clean Line or Petitioner senior management, and in-service/commercial operation date of the Project. Once the Project is completed and in service, in lieu of the annual report requirements required by Ind. Code §§ 8-1-2-16; 8-1-2-26; 8-1-2-49, Petitioner proposed to file annually with the Commission its FERC Form 1, which will cover all of Petitioner's assets and revenues. Petitioner also offered to commit to file annually with the Commission information about any affiliates that own or control electric generation resources in the MISO or PJM regions. Mr. Berry also noted that Petitioner will maintain its books and records of account in accordance with FERC's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, 18 C.F.R. Part 101, which should provide appropriate, useful, and sufficient accounting and financial information for this Commission's regulatory purposes.

D. Direct Testimony of Dr. Anthony Wayne Galli, Vice President – Transmission and Technical Services, Clean Line. Dr. Galli testified that he oversees and is responsible for the planning, engineering, design, construction, and other technical activities of Clean Line and its subsidiaries with respect to their transmission projects, and plays a role in Clean Line's long-term strategic planning. Explaining some of his technical and managerial capabilities, Dr. Galli noted that he is a Senior Member of the Institute of Electrical and Electronics Engineers, a member of the International Council on Large Electric Systems, and a registered Professional Engineer in the Commonwealth of Virginia. Dr. Galli explained that he has more than 15 years of experience in the electric transmission industry, in both technical and managerial roles, ranging from power system planning and operations to regulatory matters and project development. He served as Director of Transmission Development for NextEra Energy Resources (formerly FPL Group, Inc.), where he developed transmission projects under the Competitive Renewable Energy Zones ("CREZ") initiative in Texas, concentrating on the development of HVDC transmission solutions. He also worked at the Southwest Power Pool ("SPP") for six years, leading the implementation of several components of the SPP market, and grew the SPP Operations Engineering Group over fourfold to help ensure reliable operations of the SPP grid as it moved toward a market paradigm. He was also the Supervisor of Operations Engineering at SPP, responsible for the real-time and short-term engineering support of the SPP's RTO functions.

Dr. Galli noted that the purpose of his testimony was to describe the status of the interconnection processes underway for the Project, including Petitioner's interactions with PJM, SPP, and MISO to process the interconnection requests, and to obtain the interconnection agreements and other approvals necessary from these RTOs to proceed with the Project. Dr. Galli's testimony also described the reasons for and benefits of Petitioner's proposed use of

HVDC technology for the Project, and addressed Petitioner's managerial and technical capabilities to be certificated as a public utility providing transmission-only services and to construct, own, operate, and maintain the Project.

Dr. Galli explained that the Grain Belt Project will run from a point to be located in or around Ford County in western Kansas ("Resource Area") to the MISO (Ameren Missouri – "Ameren") 345 kV transmission system in Missouri and then on to the PJM (Indiana Michigan Power Company, American Electric Power – "AEP") 765 kV transmission system in Indiana. The Grain Belt Project will be an approximately 700 mile, +/-600 kV HVDC transmission line that will be capable of delivering up to 3,500 MW of power, or approximately 15 million megawatt-hours of energy per year, from its western end to its eastern end. The line will continue through Illinois and traverse less than two miles into Indiana to interconnect with the AEP 765 kV Sullivan substation in Sullivan County, Indiana.

Dr. Galli noted that in developing the specific route of the Project, Petitioner worked with land use and routing experts, landowners, local government officials, state and federal agencies, and other stakeholders to develop and refine potential routes for the transmission line. Further, Petitioner engaged with subject matter experts on topics such as threatened and endangered species, archaeology, and cultural resources to ensure all appropriate considerations are taken into account in the routing decisions.

Dr. Galli explained that facilities located within the state may consist of up to four 345 kV circuits or up to two 765 kV circuits, with the likely scenario being that three 345 kV circuits will be constructed. Other facilities to be constructed in Indiana may include substation equipment, such as transformers to aid in interconnection with the existing Sullivan substation. Precise interconnection requirements will be determined through the PJM interconnection studies that are currently underway in coordination with AEP; these studies will also ultimately determine the robustness and appropriateness of interconnecting at the Sullivan substation.

Dr. Galli noted that Petitioner intends to participate in all of the affected RTO regions, namely, SPP, PJM, and MISO. Petitioner intends to join at least one of these RTOs as a transmission-owning member, and turn over functional control of its facilities to that RTO. Petitioner will participate, as allowed, in SPP's, PJM's and MISO's regional planning and voting processes, and intends to provide only wholesale transmission service and will not participate in any generation-owning or load serving capacity in any RTO.

Dr. Galli explained that all generation and transmission projects that connect to or have an impact on a given RTO will eventually be incorporated into the regional plan. The Grain Belt Project, therefore, will be included in SPP's, MISO's, and PJM's regional transmission expansion plans at some point in the future. While the Project is not yet included in PJM's or MISO's current regional transmission expansion plans, the Project is currently undergoing interconnection studies through the PJM queue. MISO does not include interconnection queue projects in its regional transmission plan (the MISO Transmission Expansion Plan or "MTEP") until interconnection projects have entered the Definitive Planning Phase of the interconnection study process. With the interregional nature of the Project, definitive planning has been delayed until the PJM studies have been completed.

Dr. Galli testified Clean Line and Petitioner have established a management and technical team with significant experience in the relevant project development, technical, and regulatory arenas for projects such as the Grain Belt Project. Dr. Galli further noted that POWER Engineers, Inc. ("POWER") provided preliminary transmission line engineering support for the Project. POWER provides engineering/design, construction, asset management, and other services to the power generation and power delivery industries and other industries. POWER has developed preliminary design criteria for the Project and will provide structure designs and engineering support during the route development process; and Petitioner anticipates utilizing POWER for preliminary engineering on the 345 kV or 765 kV lines from the converter station to the Sullivan substation.

Dr. Galli testified that for operation of the Project, it is premature to determine exactly how and by whom the line will be physically controlled as part of the electric grid; however, there are three options by which Petitioner can effectuate physical control. First, Petitioner may develop an operations center to be manned 24/7 with NERC certified operators; second, Petitioner may, on a contractual basis, have the physical control performed by a local utility with sufficient personnel and computing and telecommunications infrastructure; and third, Petitioner may contract with an entity that specializes in performing such functions on a third party basis. Petitioner expects to turn over functional control of its facilities to an RTO – namely either PJM or MISO – as required by FERC as a condition for authorization to negotiate rates.

He noted that it is premature to determine details of maintenance and operations, but it is likely that Clean Line will contract with a firm or firms experienced in electric transmission maintenance and operations to provide maintenance services and also capital replacements and upgrades as necessary. Clean Line is most likely to employ full-time workers directly for the maintenance of the converter stations, although it is possible some or all of these workers could be employed by a contractor. It is also possible that Clean Line could contract with an interconnected utility for maintenance at interconnection switchyards.

Dr. Galli testified that Petitioner is prepared to comply with all applicable NERC reliability standards in operating the Grain Belt Project. He explained that Petitioner expects to be registered on the NERC Compliance Registry for the reliability functions of a "Transmission Owner," a "Transmission Operator," and a "Transmission Service Provider" (depending on the nature of its arrangements with a third party or parties to operate the Grain Belt Project, which could result in some or all of the Transmission Operator or Transmission Service Provider functions being assigned to the third party). Therefore, Petitioner will be subject to applicable requirements of one or more NERC reliability standards in several categories. Petitioner will be prepared to comply with the requirements of the reliability standards that are applicable to its activities.

Dr. Galli explained why Petitioner decided to utilize HVDC technology for the Project. He noted that HVDC is a more efficient technology for the long-haul transmission of large amounts of electric power because substantially more power can be transmitted with lower losses, narrower right-of-way, and fewer conductors than with an equivalent high voltage Alternating Current ("HVAC") system. The use of HVDC technology is a particularly

appropriate solution for the Grain Belt Project (and Clean Line's other current transmission projects), for moving large amounts of power from variable generation sources (such as wind farms) over long distances, primarily or exclusively in one direction.

Dr. Galli explained how DC technology differs from AC technology. In AC systems, the voltage and current periodically change directions. In most of North America, one cycle of positive to negative is completed in approximately 16.67 milliseconds (or 0.01667 seconds); said another way, in one second, 60 cycles are completed (which is defined at 60 Hertz ("Hz")). AC, of course, is the same type of electricity that is delivered to our houses, offices, commercial and industrial facilities. In DC systems, the voltage and current are not time-varying. That is, they hold a steady value over time. This is the type of electricity that is produced by, for example, a car battery. As stated above, high voltage DC systems are especially suited for moving large amounts of power over long distances. The HVDC technology that Petitioner plans to use for the Project is not an experimental or recently introduced technology. HVDC technology has been used and proven for several decades. In North America, there are over 30 HVDC installations, dating back as far as 1968. Of the 30-plus projects, there are 11 HVDC lines in North America that have a combined capacity of approximately 14,000 MW.

Dr. Galli lastly explained the structures that will be located within the state as a result of the Project. He noted that the two primary structure types have been identified are lattice structures and tubular steel "monopole" structures. Petitioner has not made a determination as to the final structure type. For the portion of the Project within Indiana, depending upon whether the lines are constructed at 765 kV or 345 kV, the structure types and spacing would be similar (designed to carry three phases as opposed to two poles) but would have different height and clearance requirements as dictated by the National Electric Safety Code and any applicable state or local codes; however, the assumed ruling span of 1,500 feet for lattice and 1,200 feet for tubular steel poles are reasonable assumptions at this time.

E. Direct Testimony of Diana (Coggin) Rivera, Project Development Manager of the Grain Belt Project. Ms. Rivera testified as to her education and expertise including obtaining a Bachelor of Science degree in Operations Research and Industrial Engineering from Cornell University, working for General Electric, where she obtained certification as a Lean Six Sigma Black Belt, and earning her Masters of Business Administration from Harvard Business School. Ms. Rivera noted that she is responsible for managing all aspects of the development of the Grain Belt Project, including public outreach, siting, regulatory and environmental permitting, and technical studies. Ms. Rivera testified about the need for the Project, the benefits of the Project, Petitioner's public outreach process, its routing process, and the other regulatory approvals and permits Petitioner needs in order to construct the Grain Belt Project.

Ms. Rivera stated that wind power is most cost effective in regions where average wind speeds are the highest. In the U.S., the highest onshore wind speeds are predominantly located in sparsely populated areas like the Great Plains, where the demand for electricity is relatively low and the existing electrical infrastructure is relatively weak. The lack of robust transmission lines to connect the windiest areas to load centers has limited the growth of wind power in the U.S. In 2011, wind generation supplied only 3.3% of the total electric power demand in the United

States. Other industrialized nations, such as Denmark (29%), Portugal (19%) and Spain (19%), obtain significantly higher percentages of their electricity demand from wind power. The U.S. has more than enough wind to supply even greater percentages of its electricity needs with wind power, but transmission lines are needed to carry that power to market.

Ms. Rivera noted that in many states, utilities are required to procure 15% to 25% of their energy from renewable resources. In the present environment, wind is the least cost option to meet these goals, but reaching the needed levels of wind penetration is not possible at a reasonable cost without a broad transmission build-out to connect the best resources to load centers. The Grain Belt Project can help to fulfill the demand for renewable energy in the MISO and PJM regions by delivering some of the lowest cost renewable energy available in the United States.

Ms. Rivera testified that while recent economic conditions have reduced demand for electricity in general, retirements of significant amounts of fossil-fueled generation capacity is expected over the next ten years in both MISO and PJM. As of October 2011, MISO had received 2,500 MW of retirement requests from coal-fired power plants and estimated that more than 12,000 MW of coal generation capacity are at risk for retirement. Due to Indiana's heavy reliance on coal, the rate impacts of environmental regulations are likely to be more pronounced in Indiana than in many other states. The Grain Belt Project can help Indiana and other PJM and MISO states meet growing demands for electricity with low-cost, clean, and reliable wind energy. The Project will allow thousands of MWs of new, competitively priced wind energy projects to be built to serve consumers in Indiana and throughout the Midwest and the eastern United States, which will help to offset increasing electricity costs from coal retirements and environmental regulations.

Ms. Rivera noted several benefits of the Project, including the fact that customers in the Midwest and states farther east will benefit from lower wholesale electricity prices as a result of increased market competition. The Grain Belt Project will give load serving entities access to abundant, low-cost, renewable energy sources in the Great Plains and facilitate construction of thousands of MW of new wind power generation capacity. Also, the Grain Belt Project will result in substantial economic benefits in Kansas, Missouri, Illinois, and Indiana, and throughout the region. Businesses, communities, and individuals across the Project area will benefit from the construction and operation of the Project and the resulting wind farms. The Project is estimated to create more than 5,000 jobs for the construction of the transmission line and resulting wind farms, and Petitioner intends to use qualified local vendors to construct the transmission line and to provide services like surveying, right-of-way clearing, grading, and many others. Ms. Rivera noted that most of the construction jobs will be located outside of Indiana, but there is a good possibility that components of the wind turbines or transmission line may be manufactured in Indiana. In addition to businesses, local governments across the Project area will also benefit from increased tax revenues from the transmission line during and after construction.

Ms. Rivera testified to the extensive community outreach that Petitioner has performed, including meeting with Kansas, Missouri, Illinois, and Indiana's governing administration, with legislators in every district within the Project study area, and others on energy or utilities

legislative committees. Ms. Rivera testified that the precise route of the Project has not been finalized, but the goal is to identify a route for the Project that minimizes impacts on natural resources, cultural resources, and current and future land uses in the Project area, while avoiding non-standard design requirements and unreasonable costs. Based on the proposed point of interconnection at the Sullivan substation, the land that the Project will traverse in Indiana is owned by Indiana Michigan Power Company, a subsidiary of AEP. Petitioner will require an easement from AEP in order to construct the Project in Indiana.

Ms. Rivera also noted several other approvals that Petitioner will need to secure. Petitioner expects to obtain several environmental approvals, permits, and licenses. The Project team has met with various agencies to introduce the Project and to identify relevant regulatory requirements. Petitioner must also get regulatory approval in all four states that it will traverse. Also, as an interstate transmission owner and operator, Petitioner will be regulated by the FERC and will file an application to FERC for authorization to sell transmission capacity at negotiated rates to interested generators and load serving entities.

6. OUCC's Case-in-Chief Evidence.

A. Direct Testimony of Ronald Keen, Senior Analyst within the Resource Planning and Communications Division at the OUCC. Mr. Keen testified that HVDC is a mature technology, and that the continued development of HVDC technology has led to the construction of an increasing number of point to point ("PTP") connections on almost every continent in the world. The logical next step would be to connect the lines to create a grid network, and then optimize the reliability of the network, enabling the balancing of loads and integration of intermittent renewable energy generation resources, which would lower transmission losses and facilitate energy trading across borders.

Mr. Keen further noted that there are advantages of an HVDC system over an HVAC transmission system. When comparing a bipolar HVDC transmission system to a double-circuit HVAC transmission system, investment costs for HVDC converter stations are higher than for an HVAC substation, but the operation and maintenance ("O&M") costs are lower for HVDC systems. Further, operators have more control over the direction and amount of power flowing through the HVDC system. The costs of infrastructure (overhead lines, cabling, etc.) and land acquisition/right-of-way costs are typically lower for HVDC transmission systems. Mr. Keen noted that the federal government GAO report has identified a number of advantages, including: (1) decreased congestion and improved reliability of the energy grid through the provision of access to additional energy generation assets and additional transmission paths; (2) lower costs to consumers at the end points where the HVDC system is integrated into the local distribution grids; (3) more effective utilization of existing generation assets and more competitive local wholesale energy markets; (4) facilitated development of new energy generation assets in locations outside population centers; and (5) facilitated development of renewable energy generation resources.

Mr. Keen also noted some disadvantages of HVDC over HVAC observed from that same GAO report, including diminished economic/aesthetic value of land when lines are built above ground, raised energy prices in areas from where energy is being taken, and reduced incentives

to identify alternatives that decrease demand for energy consumption. Mr. Keen further stated that when new infrastructure is added, consideration should be given to utilizing HVDC technology, depending on the parameters of the specific project.

Mr. Keen testified that the Grain Belt Project offers advantages to consumers. For example, the development and construction costs of the Project will be privately funded and reimbursed to the investors on a merchant-type basis, so that the ratepayer does not directly bear any of the cost, liability, or risk. Therefore, the ratepayer will not bear the brunt of a failed project. Mr. Keen further testified that the OUCC believes Petitioner has the technical and managerial capability to effectively and efficiently manage the Project. The Project's funding will depend on whether investors see the project as an attractive opportunity to realize an adequate return on their investment, while affording Petitioner the ability to provide energy to ratepayers at costs which are competitive.

Mr. Keen stated that the OUCC recommended Commission approval of Petitioner's request for declination of jurisdiction over Petitioner's construction, ownership and operation of, and other activities in connection with the Project. Additionally, the OUCC recommended the Commission require any reports filed with the Commission by Petitioner also be provided to the OUCC and other interested parties, and that Petitioner commit to the Commission and interested parties that it will not seek to recover costs of the construction and/or operation of the Project through the socialization of costs to transmission users in general, such as under an RTO tariff. Mr. Keen further stated that the OUCC believes that the reporting suggested by Petitioner will allow the Commission and the OUCC to effectively monitor the construction and operation of the Project because there is no need for extensive reporting requirements for a project with such a small physical footprint in the State.

7. **Settlement Agreement and Supporting Testimony.** The March 13, 2013 Settlement Agreement was entered into by all parties to this proceeding. The Settlement Agreement provides that it resolves all matters pending before the Commission in this Cause and is supported by substantial evidence.

A. **Petitioner.** Mr. Berry summarized the terms of the Settlement Agreement. He explained the Settlement Agreement states that Petitioner should obtain status as a transmission-only public utility in Indiana, which includes the right to exercise the power of eminent domain. The Settlement Agreement also states that Petitioner possesses sufficient technical, managerial, and financial capability and expertise to operate as a public utility in Indiana. The Settlement Agreement states that Commission should give its consent to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits, or franchises as may be necessary for Petitioner to occupy and use county roads, highways and other public rights-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23. The Settlement Agreement further provides that Petitioner should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM and/or MISO. The Settlement Agreement recommends that the Commission should decline to exercise a limited portion of its jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial,

and financial capability), and certain public utility annual reporting requirements, as described in more detail below. Additionally, the Settlement Agreement provides that Petitioner should be granted authority to locate its books and records outside the state of Indiana, at its principal office in Houston, Texas, with appropriate provisions for access thereto by the Commission and the OUCC.

Mr. Berry noted that, as demonstrated by OUCC witness Keen's testimony, the OUCC did not take issue with most of Petitioner's requested relief. However, Mr. Berry addressed Mr. Keen's recommendation in his case-in-chief testimony that requested Petitioner commit to the Commission and interested parties that Petitioner will not, at any point in the future, seek to recover costs of the construction or operation of the Project from transmission users in general. Mr. Berry testified that while Petitioner currently has no plans to seek cost recovery for this Project through regional cost allocation, Petitioner is not in a position to make an irrevocable commitment not to seek cost allocation. He stated that such a commitment would be premature and would potentially go against the public interest. If regulations change in the future, an irrevocable commitment not to recover costs in a certain manner may compromise the ability of Petitioner to complete the Project.

Mr. Berry explained the Settlement Agreement's provisions concerning regional cost allocation. The Settlement Agreement reflects the fact that Petitioner has no present intent of seeking regional cost allocation for the Project and provides that Petitioner may not seek regional cost allocation for the Project unless it complies with the following requirements: (1) Petitioner must file a notice with the Commission informing the Commission (and the OUCC) of Petitioner's decision to seek Project cost recovery via a PJM or MISO regional cost allocation process, and further it must notify the Commission and OUCC of the extent to which Indiana ratepayers would be affected by regional cost allocation; (2) Petitioner must submit to the Commission and OUCC evidence of benefits (and costs) to Indiana associated with its request for regional cost allocation, e.g., through a benefits study; (3) Petitioner must offer no objection to the participation of the Commission or the OUCC before the applicable RTO and the FERC with respect to regional cost allocation decisions relating to Indiana and the Project; and (4) Petitioner must file with the Commission in this Cause additional and updated information concerning the Project, including: (a) the current status of the Project (expected schedule, estimated cost, status of financing, status of contracts with vendors, developers, power purchasers); (b) Petitioner's continuing financial, technical and managerial capability to construct, own, operate, and manage the Project; (c) the status of the Project with the RTOs; and (d) other relevant information requested by the Commission. The Settlement Agreement provides that Petitioner will not object to a public hearing process on this issue. The Settlement Agreement goes on to explain that, although a Petitioner request for regional cost allocation from Indiana ratepayers for this Project would serve as part of the trigger for the above-described filing requirement, the settling parties' intended purpose of such a proceeding should not be to examine the reasonableness of regional cost allocation, as those decisions will be made in FERC and/or RTO forums; rather, the parties' intended purpose of the proceeding should be limited to examining Petitioner's continuing financial, technical, or managerial capability with respect to this Project in Indiana. Finally, the Settlement Agreement states the parties' belief that Petitioner's authority to operate in Indiana with respect to this Project should not be terminated

or modified without good cause, for example, a demonstration of inadequate financial, technical, or managerial capability.

Mr. Berry concluded that the Settlement Agreement is reasonable and in the public interest, and should be approved. Further, Petitioner has demonstrated, in its case-in-chief, that it has the technical, managerial, and financial capability to construct, own, and operate this Project.

B. OUCC. Mr. Keen noted that he still believes that the Project offers advantages to consumers. The Project, as presented to the Commission at this stage will not require ratepayers to directly bear any of the cost, liability, or risk for development and construction. These costs are to be privately funded and reimbursed to the investors on a merchant-type basis. However, there is a potential during either the MISO and/or the PJM planning process, either RTO could determine there are regional benefits as a result of the Project. Consequently, if all the qualifications for PJM or MISO regional cost sharing were met, costs associated with the Project could then be regionally allocated pursuant to a FERC-approved tariff through no action on the part of Petitioner.

Mr. Keen further noted that if Petitioner sought cost allocation through an RTO, and a Commission proceeding were initiated, the parties would only be looking for such a proceeding to reaffirm Petitioner's continued financial, technical, and/or managerial capability with respect to the specific project, and that the OUCC would not seek to examine the reasonableness of the cost allocation or the Project itself in such a proceeding. Mr. Keen concluded that the OUCC recommends the Commission approve the proposed Settlement between the parties without modification.

8. Discussion and Findings. Petitioner has requested that the Commission make the following findings: (1) that Petitioner will be a public utility in the State of Indiana; (2) that Petitioner possesses sufficient technical, managerial, and financial capability and expertise to operate as a transmission utility in Indiana; (3) that Petitioner should be granted authority to operate as a transmission-only public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law; (4) that Petitioner should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM or MISO; (5) that the Commission should decline to exercise a limited portion of its jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial and financial capability) and certain public utility annual reporting requirements outlined below; (6) that Petitioner should have the authority to maintain its books and records outside the State of Indiana; (7) that the Commission should consent to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits or franchises as may be necessary for Petitioner to use county roads, highways or other property and public right-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23; and (8) that certain of the information submitted in support of this Cause constitutes confidential and proprietary trade secret information under Indiana law, and should be excepted from public disclosure. With certain conditions, the Settlement Agreement recommends that such relief be granted. We discuss each of these requested findings below.

At the outset, however, we note that settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order - including the approval of a settlement - must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Pub. Serv. Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code ch. 8-1-2, and that such agreement serves the public interest.

A. Public Utility Status. Section 1 of the Public Service Commission Act defines “public utility” as:

every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the: (1) conveyance of telegraph or telephone messages; (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

Ind. Code § 8-1-2-1.

The evidence establishes that Petitioner’s ownership, development, financing, construction, and operation of the Project is for the purpose of transmitting wind power generated in western Kansas to public utilities, energy service providers, and power marketers within and outside of Indiana, via facilities to be owned both within and outside of Indiana. The Commission has found in prior cases that a business that transmits electricity to public utilities is itself a public utility. *See, e.g., AEP Indiana Michigan Transmission Co., Inc. and Indiana Michigan Power Co.*, Cause No. 44000 (IURC, Nov. 2, 2011). In *AEP Indiana Michigan Transmission Co.*, the Commission specifically found that it had jurisdiction over a transmission only entity that would own and operate facilities in Indiana. Consequently, for purposes of the ownership, development, financing, construction, and operation of the Project, we find that Petitioner is a public utility within the meaning of Ind. Code § 8-1-2-1.

B. Technical, Managerial and Financial Capability. Petitioner submitted extensive evidence of its technical, managerial, and financial capability to construct, own, and operate the Project. Specifically, Mr. Skelly and Dr. Galli testified in detail about the Petitioner

team's background, experience, and expertise in the energy sector, project development, electricity transmission, and financing. Mr. Berry also testified about Petitioner's and its parent company's financial expertise, backing and investors. Accordingly, we find that Petitioner has the necessary technical, managerial, and financial capability to construct, own, and operate the Project.

C. Authority to Operate as a Public Utility in Indiana. In light of our findings that the Petitioner will be a "public utility" within the meaning of the Indiana Public Service Commission Act, and that the Petitioner possesses the necessary technical, managerial, and financial capability to construct, own, and operate the Project, we also find that Petitioner should be authorized to operate as a transmission-only public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law.

D. Transfer of Functional Control of Transmission Facilities to RTO. Indiana Code § 8-1-2-83 provides that Commission approval is required for, among other things, contracts for the operation of any part of a public utility's works or system by another person. We have previously interpreted this provision as requiring Commission approval for a public utility to transfer functional control of its transmission system to a regional transmission organization, such as MISO or PJM. *See, e.g., Hoosier Energy Rural Elec. Coop. et al.*, Cause Nos. 42027 and 42032 (IURC, Dec. 17, 2001). We have also previously found that Indiana customers will benefit from Indiana public utilities' participation in either MISO or PJM, and that MISO and PJM both possess the capability to functionally operate regional transmission systems. Benefits of RTO participation include improved reliability and reduction in costs. *Id.*; *see also Indiana Michigan Power Company*, Cause Nos. 42350 and 42352. (IURC, Sep. 10, 2003). Accordingly, we find that the Petitioner should be authorized to transfer functional control of its Indiana transmission facilities to either MISO or PJM at the appropriate time.

E. Declination of Certain Jurisdiction. As noted above, Petitioner has requested, and the Settlement Agreement recommends, that the Commission should decline jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability), and certain public utility annual reporting requirements.

The Commission has concluded that the Petitioner will be a "public utility" as defined by the Public Service Commission Act. Indiana law also authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an "energy utility" if certain public interest conditions are satisfied. In particular, "the Commission may enter an order, after notice and hearing, that the public interest requires the Commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over . . . the energy utility. . . ." Ind. Code § 8-1-2.5-5(a). Indiana Code § 8-1-2.5-2 defines "energy utility" to mean, among other things, a public utility within the meaning of Ind. Code § 8-1-2-1. Because we determined the Petitioner to be a "public utility" under Ind. Code § 8-1-2-1, the Petitioner is an "energy utility."

In determining whether the public interest will be served by our declining to exercise some of our jurisdiction, as requested by Petitioner and the Settlement Agreement, Indiana Code

§ 8-1-2.5-5(b) states that the Commission shall consider the following:

- (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the Commission unnecessary or wasteful.
- (2) Whether the Commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state.
- (3) Whether the Commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
- (4) Whether the exercise of Commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

The evidence in this Cause demonstrates that the Petitioner does not intend to, nor does it request authority to, engage in retail sales of electricity to the general public or to any retail customer. Instead, Petitioner will provide only wholesale-level transmission services to generators and wholesale purchasers. More specifically, Petitioner will offer transmission service on the Grain Belt Project through an OATT, which will be filed with, and subject to the jurisdiction of FERC under the Federal Power Act and FERC's regulations. Petitioner expects that its customers will consist principally of (1) wind energy producers located in the wind-rich Resource Area at the western end of the Grain Belt Project, and (2) buyers of electricity – particularly buyers seeking to purchase electricity generated from renewable resources – located in Indiana or connected to the eastern end of the Project through the existing, interconnected transmission grid. Buyers of electricity are expected to be principally wholesale buyers, such as utilities, competitive retail electricity suppliers, including certified alternative retail electricity suppliers, brokers, and marketers.

Further, the evidence indicates that the Project will provide benefits to the state of Indiana and the region. These benefits include the delivery of approximately 15 million MWh of renewable energy per year; cost effectively meeting growing demand for renewable energy; and increasing generator competition, which will exert downward pressure on wholesale energy prices in the MISO and PJM markets. The Project will also provide a substantial opportunity for economic development in the manufacturing, installation, and operation of the transmission line and associated wind turbines. The Project will also have a positive impact on the environment by reducing the need for energy from other sources that will therefore reduce emissions of carbon dioxide, SO₂, NO_x and mercury. Additionally, the Project will also reduce water withdrawal and evaporation required for cooling thermal power plants. Finally, the Project will create geographical diversity in the wind projects that deliver into the MISO and PJM transmission systems, thereby reducing variability, facilitating wind integration, and improving reliability.

Pursuant to the provisions set forth in Ind. Code § 8-1-2.5-5, the Commission finds exercising limited jurisdiction over Petitioner and the Project, as requested, will facilitate the development of the proposed Project and will facilitate the transmission and delivery of wind energy from the west to the MISO and PJM regions. This should be beneficial for public utilities

and other purchasers in these regions, including the State of Indiana and will support energy utility efficiency. Petitioner has shown that it will be regulated by the FERC in many respects, and that full state regulation of the Project would thus be unnecessary. Petitioner has also shown that the wholesale market for electricity in Indiana will likely benefit from the ability of the Petitioner to transmit cost effective wind energy to the MISO and PJM regions. Accordingly, we conclude that the Commission's decision to decline some of the exercise of its jurisdiction over Petitioner meets the conditions outlined in Ind. Code § 8-1-2.5-5.

The Commission thus finds that a partial declination of jurisdiction over Petitioner as an energy utility, as requested, is in the public interest. Accordingly, we will decline to exercise a portion of our jurisdiction over Petitioner, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability),¹ and certain public utility annual reporting requirements, as described in more detail below. However, if the Commission determines that the Petitioner either has failed to commence construction of the Project under this Order or is no longer diligently pursuing the commencement of construction of the Project, or otherwise determines that the public interest is served by a declination of full jurisdiction, then the Commission may, following notice to the Petitioner, proceed to issue an Order terminating the declination of jurisdiction set forth herein.

F. Reporting Requirements. Consistent with the terms of the Settlement Agreement, it shall be a condition of this Order and our continued declination of jurisdiction over the Petitioner to do the following:

1. Provide the Commission with annual updates on the Project while development and construction are ongoing. These updates should summarize the Project construction and operational status and financing milestones, including:
 - a. identification of major construction vendors and contractors hired;
 - b. identification of major operation and maintenance contractors retained;
 - c. significant new debt and equity financings completed at the Petitioner level; and
 - d. significant changes in Clean Line's or Petitioner's senior management.

¹ Specifically, Petitioner shall not be required to seek prior approval of any transfers of ownership of Project assets or ownership interests in the Petitioner involving: (1) the grant of a security interest to a bank or other lender or collateral agent, administrative agent, or other security representative, or a trustee on behalf of bondholders in connection with any financing or refinancing (including any lease financing); (2) a debtor in possession; or (3) a foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner or ownership interests in Petitioner. Additionally, a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility; and (2) the successor satisfies the same or similar terms and conditions imposed on Petitioner as set forth in this Order.

2. File annually with the Commission its FERC Form 1, which will describe Petitioner's assets and revenues (in lieu of the annual report requirements required by Ind. Code §§ 8-1-2-16; 8-1-2-26; 8-1-2-49), once the Project is completed and in service.
 3. File annually with the Commission information about any affiliates that own or control electric generation resources in the MISO or PJM regions (which the Petitioner does not anticipate having).
 4. Maintain the Petitioner's books and records of account in accordance with FERC's Uniform System of Accounts at 18 C.F.R. Part 101, which should provide appropriate, useful, and sufficient accounting and financial information for this Commission's regulatory purposes.
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A responsible officer of the Petitioner shall verify all reports. The Petitioner shall provide two (2) paper copies and one (1) electronic copy of all such reports under this Cause, and to the OUCC, on an annual basis.

G. Cost Recovery. The Settlement Agreement, entered into between the Petitioner and the OUCC (collectively the "Parties"), is premised in part upon Petitioner's representation that it does not currently intend to seek recovery of any of the Project costs ("Project" being defined as the approximately 700-mile high voltage transmission line from western Kansas to Sullivan, Indiana) from Indiana retail ratepayers via a PJM or MISO regional cost allocation process, and will not seek recovery of Project costs from Indiana retail ratepayers through such a regional cost allocation process unless it abides with certain specific requirements. However, the parties have agreed that such requirements will not apply if Project costs are recovered through a process by which the applicable Indiana state governmental entity approves of the allocation of such costs; nor will such requirements be applicable in the case of a regional transmission organization's cost recovery from Indiana retail ratepayers and elsewhere, as a potential transmission operator.

The specific requirements and commitments specified in the Settlement Agreement are as follows:

If in the future Petitioner seeks recovery of Project costs from Indiana retail ratepayers through a PJM or MISO regional cost allocation process by submitting the Project into the applicable regional transmission expansion plan for purposes of cost allocation, then prior to exercising its rights under the Indiana Commission's authorization by commencing construction of the Project, Petitioner commits to do the following:

1. File a notice with the Indiana Utility Regulatory Commission informing the Commission (and the OUCC) of Petitioner's decision to seek Project cost recovery via a PJM or MISO regional cost allocation process, and notify the Commission and OUCC of the extent to which Indiana ratepayers would be affected by regional cost allocation;

2. Submit to the Commission and OUCC evidence of benefits (and costs) to Indiana associated with its request for regional cost allocation, e.g., through a benefits study;
3. Offer no objection to the participation of the Commission or the OUCC before the applicable RTO and the FERC with respect to regional cost allocation decisions relating to Indiana and the Project; and
4. File with the Commission in this Cause No. 44264 additional and updated information concerning the Project, including: (1) the current status of the Project (expected schedule, estimated cost, status of financing, status of contracts with vendors, developers, power purchasers); (2) Petitioner's continuing financial, technical, and managerial capability to construct, own, operate, and manage the Project; (3) the status of the Project with the RTO(s); (4) other relevant information requested by the Commission. If requested by the OUCC or directed by the Commission, Petitioner will not object to an examination of this filing through a public hearing process.

The parties agree that, although a Petitioner request for regional cost allocation from Indiana ratepayers for this Project would serve as part of the trigger for this filing requirement, the parties' intended purpose of such a proceeding should not be to examine the reasonableness of regional cost allocation, as those decisions will be made, with Commission input as desired, in FERC and/or RTO forums; rather, the parties' intended purpose of the proceeding should be limited to examining Petitioner's continuing financial, technical, or managerial capability with respect to this Project and Indiana. The parties further agree that Petitioner's authority to operate in Indiana with respect to this Project should not be terminated or modified without good cause, for example, based upon demonstrated inadequate financial, technical, or managerial capability.

The parties acknowledge that during the PJM and/or MISO planning processes, the RTO(s) may determine that there are regional benefits to aspects of Petitioner's Project, and that costs associated with such Project could be regionally allocated pursuant to a FERC-approved tariff through no action on the part of Petitioner.

The parties also acknowledge that nothing in this settlement agreement or in the Commission order to be issued in this proceeding shall constitute a waiver by the Commission or OUCC of any rights they may have to select or provide input for the selection of a transmission provider for any RTO-approved transmission project, including this Project. Further, if Petitioner proposes to construct, own or operate any other transmission facilities in Indiana in addition to those associated with the Grain Belt Project, it shall provide the Commission and the OUCC thirty days written notice of the project before seeking RTO or FERC approval. This requirement is consistent with our Order in *Pioneer Transmission*, Cause No. 44135, at 7 (Apr. 17, 2013).

In our view, these requirements strike a reasonable balance between the OUCC's concerns with regional cost allocation for this Project on the one hand, and the Petitioner's need to be able to compete with other providers of functionally similar energy services, on the other.

Indeed, we note that Indiana Code § 8-1-2.5-5(b) specifically directs us to consider “whether the exercise of Commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.” Accordingly, we find that these provisions are reasonable and should be approved.

H. Location of Books and Records. Petitioner proposed, and the Settlement Agreement provides, that Petitioner should be granted authority to locate its books and records outside the state of Indiana, at its principal office in Houston, Texas, with appropriate provisions for access thereto by the Commission and the OUCC. We grant Petitioner the authority to locate its books and records outside Indiana. Upon reasonable notice, Petitioner shall produce in Indiana copies of those portions of its books and records necessary for the OUCC and the Commission to perform their statutory duties. In the event it is not possible, for any reason, for Petitioner to produce the necessary books and records in Indiana, Petitioner must reimburse the OUCC and Commission for all reasonable travel expenses, including travel fare, mileage, lodging and meals incurred while inspecting Petitioner’s books and records outside of Indiana.

I. Consent to Boards of County Commissioners. The Commission will also give its consent to Boards of County Commissioners of all Indiana counties to grant the Petitioner such licenses, permits, or franchises as may be necessary for Petitioner to occupy and use county roads, highways, and other public rights-of-way for the provision of its services and facilities, pursuant to Indiana Code § 36-2-2-23. This is consistent with our order in *AEP Indiana Michigan Transmission Co., Inc. and Indiana Michigan Power Co.*, Cause No. 44000, (IURC, Nov. 2, 2011).

J. Confidentiality. On December 19, 2012, the Petitioner filed a Motion for Protection of Confidential and Proprietary Information (“Motion”), supported by the affidavit of David Berry. The affidavit indicates that such confidential information (“Confidential Information”) constitutes a trade secret and that the Petitioner has taken all reasonable steps to protect the confidential information from disclosure. On January 10, 2013, the Presiding Officers issued Docket Entries granting confidential treatment to the Confidential Information on a preliminary basis.

Based on the foregoing, pursuant to Ind. Code § 5-14-3-4(a)(4), we find that the financial information concerning the Petitioner’s private equity investors presented in this proceeding constitute “trade secrets” and should be afforded confidential treatment. Accordingly, this information is exempted from public disclosure and will be held as confidential by the Commission.

K. Approval of the Settlement Agreement. Based on the evidence presented and our findings above, we find the Settlement Agreement is a reasonable, balanced, and comprehensive resolution of the issues in this Cause. While an independent transmission company is a significant departure from the traditional regulatory construct in Indiana, the Commission finds it to be acceptable in this instance, in which the Project will provide many public interest benefits both economically and environmentally. In addition, the Settlement Agreement gives further assurance and provides that Petitioner’s operations should be transparent, accountable, and compliant with the Commission’s regulations and should not

adversely affect Indiana consumers. The Settlement Agreement also provides for ongoing communication among the parties and the filing and sharing of information related to certain aspects of Petitioner's operations. Taken together, the terms of the Settlement Agreement serve the public interest and satisfy the important public policy of fostering settlement over litigation. Therefore, the Commission finds that the Settlement Agreement is reasonable, in the public interest, and should be approved.

Finally, the parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. Consequently, with regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434; (IURC, March 19, 1997).

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Settlement Agreement shall be and hereby is approved.
2. The terms and conditions of the Settlement Agreement shall be and hereby are incorporated herein as a part of this Order, and the parties shall abide by the terms of the Settlement Agreement and this Order.
3. Petitioner is hereby determined to be a "public utility" within the meaning of Ind. Code § 8-1-2-1, and an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2.
4. Petitioner shall be authorized to operate as a transmission-only public utility in Indiana, including exercising all rights and privileges of public utilities under Indiana law.
5. Petitioner shall be authorized to transfer functional control of its Indiana transmission facilities to MISO or PJM.
6. The Commission declines to exercise a portion of its jurisdiction over Petitioner and its construction, operation, and financing of the Project, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability), and certain public utility annual reporting requirements, as delineated in this Order.
7. Petitioner shall have the authority to maintain its books and records outside the State of Indiana, subject to the conditions outlined in this Order.
8. The Commission consents to Boards of County Commissioners of all Indiana counties to grant Petitioner such licenses, permits, or franchises, as may be necessary for Petitioner to use county roads, highways, or other property and public rights-of-way for the provision of its services and facilities pursuant to Ind. Code § 36-2-2-23.
9. Petitioner shall comply fully with the terms of this Order and submit to the

Commission all information required by the terms of this Order.

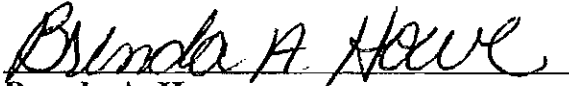
10. Petitioner's Confidential Information submitted in support of this Cause constitutes confidential and proprietary trade secret information under Indiana law, and should be excepted from public disclosure.

11. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, MAYS AND ZIEGNER CONCUR; LANDIS ABSENT:

APPROVED: MAY 22 2013

**I hereby certify that the above is a true
and correct copy of the Order as approved.**


Brenda A. Howe
Secretary to the Commission

SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

<p>PETITION OF GRAIN BELT EXPRESS CLEAN LINE LLC FOR: (1) A DETERMINATION OF ITS STATUS AS A "PUBLIC UTILITY" UNDER INDIANA LAW; (2) A DETERMINATION THAT IT HAS THE TECHNICAL, MANAGERIAL, AND FINANCIAL CAPABILITY TO OPERATE AS A PUBLIC UTILITY IN INDIANA; (3) AUTHORITY TO OPERATE AS A PUBLIC UTILITY IN INDIANA, INCLUDING AUTHORITY TO EXERCISE ALL RIGHTS AND PRIVILEGES OF A PUBLIC UTILITY ACCORDED BY INDIANA LAW; (4) AUTHORITY TO TRANSFER FUNCTIONAL CONTROL OF OPERATION OF ITS TRANSMISSION FACILITIES TO BE CONSTRUCTED IN INDIANA TO A FULLY-FUNCTIONING REGIONAL TRANSMISSION ORGANIZATION; (5) A DETERMINATION THAT THE COMMISSION SHOULD DECLINE TO EXERCISE CERTAIN ASPECTS OF ITS JURISDICTION OVER GRAIN BELT EXPRESS CLEAN LINE LLC; (6) AUTHORITY TO LOCATE ITS BOOKS AND RECORDS OUTSIDE THE STATE OF INDIANA; (7) CONSENT BY THE COMMISSION TO BOARDS OF COUNTY COMMISSIONERS FOR GRAIN BELT EXPRESS CLEAN LINE LLC TO OCCUPY PUBLIC RIGHTS OF WAY, TO THE EXTENT IT MAY BE NECESSARY; AND (8) ALL OTHER APPROPRIATE RELIEF</p>	<p>CAUSE NO. 44264</p>
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STIPULATION AND SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and among Grain Belt Express Clean Line LLC ("Grain Belt Express") and the Indiana Office of Utility Consumer Counselor ("OUCC") (collectively the "Parties" and individually "Party"). The Parties having been duly advised by their respective staff, experts and counsel, and solely for purposes of compromise and settlement, stipulate and agree that the terms and conditions set forth below represent a fair, just and reasonable resolution of the matters in this proceeding pending before the Indiana Utility Regulatory Commission ("Commission"), subject to their incorporation into a final, non-

**SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT**

appealable order ("Final Order") of the Commission without modification or further condition that may be unacceptable to any Party. If the Commission does not approve this Stipulation and Settlement Agreement ("Settlement"), in its entirety, the entire Settlement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Parties.

WITNESSETH:

WHEREAS, Grain Belt Express petitioned the Commission for approval, to the extent necessary for status as a "public utility" and for related regulatory relief as set forth in the Petition in this Cause dated November 2, 2012, and has supported such request with prepared testimony and exhibits filed in this proceeding;

WHEREAS, the OUCC has analyzed the Petitioner's filing, conducted discovery and otherwise given consideration to the relief sought by Petitioner in this Cause;

WHEREAS, Grain Belt Express and the OUCC agree that the OUCC and the Commission should have necessary information available on a forward going basis to understand and assess Grain Belt Express' construction and operations;

WHEREAS, Grain Belt Express and the OUCC agree that the Petitioner's operations should be transparent, accountable and compliant with the Commission's regulations and should not adversely affect Indiana consumers;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

A. SUBSTANTIVE TERMS AND CONDITIONS

**SETTLING PARTIES' EXHIBIT 1
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1. **Public Utility Status.** The Parties agree that the Commission should approve Grain Belt Express' status as a public utility in Indiana. This status includes exercising all rights and privileges of public utilities under Indiana law, including the right to exercise the power of eminent domain. The Commission will also give its consent to Boards of County Commissioners of all Indiana counties to grant Grain Belt Express such licenses, permits or franchises as may be necessary for Grain Belt Express to occupy and use county roads, highways and other public rights-of-way for the provision of its services and facilities pursuant to IC 36-2-2-23.

2. **Technical, Managerial, and Financial Capability.** The Parties agree that Grain Belt Express possesses sufficient technical, managerial, and financial capability and expertise to operate as a public utility in Indiana.

3. **Transferring Functional Control.** The Parties agree that Grain Belt Express should be granted approval to transfer functional control of the operation of its transmission facilities located in Indiana to PJM Interconnection, LLC ("PJM") and/or Midwest Independent Transmission System Operator, Inc. ("MISO").

4. **Partial Declination of Commission Jurisdiction.** The Parties agree that the Commission should decline to exercise a limited portion of its jurisdiction over Grain Belt Express, specifically, approval authority over long-term financings, approval authority over purchases and sales of facilities (except as necessary to ensure that a purchaser has the requisite technical, managerial, and financial capability), and certain public utility annual reporting requirements, as described in more detail below.

5. **Grain Belt Express' Books and Records.** The accounting, financial and administrative management and staff of Clean Line perform and will continue to perform accounting, financial, treasury and other administrative services for Grain Belt Express (along with the other subsidiaries of Clean Line), including maintenance of Grain Belt Express' accounting and financial books and records. The management and administrative staff of Clean Line performing these functions will be located at the principal offices in Houston. Due to the

**SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT**

nature of its business and operations, Grain Belt Express will be operating in, and potentially will be subject to the jurisdiction of regulators in, at least four states, Kansas, Missouri, Illinois, and Indiana. For these reasons, it would be inefficient and unduly expensive, and could necessitate duplicative efforts, for Grain Belt Express to maintain its books and records in Indiana, or at any location other than the principal office of Grain Belt Express and its parent company in Houston, Texas.

Therefore, the Parties agree that Grain Belt Express should be granted authority to locate its books and records outside the state of Indiana, at its principal office in Houston, Texas, with appropriate provisions for access thereto by the Commission and the OUCC. Grain Belt Express commits to produce in Indiana, upon reasonable notice, copies of those portions of its books and records necessary for the Office of Utility Consumer Counselor ("OUCC") and the Commission to perform their statutory duties. In the event it is not possible, for any reason, for Grain Belt Express to produce the necessary books and records in Indiana, Grain Belt Express commits to reimburse the OUCC and Commission for all reasonable travel expenses, including travel fare, mileage, lodging and meals incurred while inspecting Grain Belt Express' books and records outside of Indiana.

6. **Cost Recovery.** This Settlement is premised in part upon Grain Belt Express' representation that it does not currently intend to seek recovery of any of the Project costs ("Project" being defined as the approximately 700-mile high voltage transmission line from western Kansas to Sullivan, Indiana) from Indiana retail ratepayers via a PJM or MISO regional cost allocation process, and will not seek recovery of Project costs from Indiana retail ratepayers through such a regional cost allocation process unless it abides with the requirements of a., b., c., and d. of this Section 6, below. Provided, however, the following requirements will not apply if Project costs are recovered through a process by which the applicable Indiana state governmental entity approves of the allocation of such costs. Provided further, that the following requirements are not applicable to a regional transmission organization's ("RTO") cost recovery from Indiana retail ratepayers and elsewhere, as a potential transmission operator.

**SETTLING PARTIES' EXHIBIT 1
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If in the future Grain Belt Express seeks recovery of Project costs from Indiana retail ratepayers through a PJM or MISO regional cost allocation process by submitting the Project into the applicable regional transmission expansion plan for purposes of cost allocation, then prior to exercising its rights under the Indiana Commission's authorization by commencing construction of the Project, Grain Belt Express commits to do the following:

- a. File a notice with the Indiana Utility Regulatory Commission informing the IURC (and the OUCC) of Grain Belt Express' decision to seek Project cost recovery via a PJM or MISO regional cost allocation process, and notify the IURC and OUCC of the extent to which Indiana ratepayers would be affected by regional cost allocation;
- b. Submit to the IURC and OUCC evidence of benefits (and costs) to Indiana associated with its request for regional cost allocation, e.g., through a benefits study;
- c. Offer no objection to the participation of the IURC or the OUCC before the applicable RTO and the Federal Energy Regulatory Commission ("FERC") with respect to regional cost allocation decisions relating to Indiana and the Project; and
- d. File with the IURC in this Cause No. 44264 additional and updated information concerning the Project, including: (1) the current status of the Project (expected schedule, estimated cost, status of financing, status of contracts with vendors, developers, power purchasers); (2) Grain Belt Express' continuing financial, technical and managerial capability to construct, own, operate, and manage the Project; (3) the status of the Project vis a vis the RTO(s); (4) other relevant information requested by the IURC. If requested by the OUCC or directed by the IURC, Grain Belt Express will not object to an examination of this filing through a public hearing process.

The Parties agree that, although a Grain Belt Express request for regional cost allocation from Indiana ratepayers for this Project would serve as part of the trigger for this filing requirement, the Parties' intended purpose of such a proceeding should not be to examine the

**SETTLING PARTIES' EXHIBIT 1
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reasonableness of regional cost allocation, as those decisions will be made, with IURC input as desired, in FERC and/or RTO forums; rather, the Parties' intended purpose of the proceeding should be limited to examining Grain Belt Express' continuing financial, technical, or managerial capability with respect to this Project and Indiana. The Parties further agree that Grain Belt Express' authority to operate in Indiana with respect to this Project should not be terminated or modified without good cause, for example, based upon demonstrated inadequate financial, technical, or managerial capability.

The Parties acknowledge that during the PJM and/or MISO planning processes, the RTO(s) may determine that there are regional benefits to aspects of Grain Belt Express' Project, and that costs associated with such Project could be regionally allocated pursuant to a FERC-approved tariff through no action on the part of Grain Belt Express.

The Parties also acknowledge that nothing in this settlement agreement or in the IURC order to be issued in this proceeding shall constitute a waiver by the IURC or OUCC of any rights they may have to select or provide input for the selection of a transmission provider for any RTO-approved transmission project, including this Project.

7. **Reporting Requirements.** In lieu of Commission jurisdiction over certain aspects of the Project, Grain Belt Express will commit to do the following:
- a. Provide the Commission with annual updates on the Project while development and construction are ongoing. These updates will summarize the Project construction and operational status and financing milestones, including:
 - i. identification of major construction vendors and contractors hired,
 - ii. identification of major operation and maintenance contractors retained,
 - iii. significant new debt and equity financings completed at the Grain Belt Express level, and
 - iv. significant changes in Clean Line Energy Partners LLC or Grain Belt Express senior management.
 - b. File annually with the Commission its FERC Form 1, which will describe all of Grain Belt Express' assets and revenues (in lieu of the annual report requirements

**SETTLING PARTIES' EXHIBIT 1
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required by Ind. Code §§ 8-1-2-16; 8-1-2-26; 8-1-2-49), once the Project is completed and in service,

- c. File annually with the Commission information about any affiliates that own or control electric generation resources in the MISO or PJM regions (which Petitioner does not anticipate having).
 - d. Maintain Petitioner's books and records of account in accordance with FERC's Uniform System of Accounts at 18 C.F.R. Part 101, which should provide appropriate, useful, and sufficient accounting and financial information for this Commission's regulatory purposes.
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B. PRESENTATION OF THE SETTLEMENT TO THE COMMISSION

1. The Parties shall support this Settlement before the Commission and request that the Commission expeditiously accept and approve the Settlement. This Settlement is not severable and should be accepted or rejected in its entirety without modification or further condition(s) that may be unacceptable to any Party.

2. The Parties shall jointly move for leave to file this Settlement and supporting evidence. Such evidence will be offered into evidence without objection and the Parties hereby waive cross-examination. The Parties propose to submit this Settlement and evidence conditionally, and that, if the Commission fails to approve this Settlement in its entirety without any change or with condition(s) unacceptable to any Party, the Settlement and supporting evidence shall be withdrawn and the Commission will continue to hear Cause No. 44264 with the proceedings resuming at the point they were suspended by the filing of this Settlement.

3. A Final Order approving this Settlement shall be effective immediately, and the agreements contained herein shall be unconditional, effective and binding on all Parties as an Order of the Commission.

C. EFFECT AND USE OF SETTLEMENT

1. It is understood that this Settlement is reflective of a negotiated settlement and neither the making of this Settlement nor any of its provisions shall constitute an admission by any Party to this Settlement in this or any other litigation or proceeding. It is also understood that each and every term of this Settlement is in consideration and support of each and every other term.

2. This Settlement shall not constitute and shall not be used as precedent by any person in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce the terms of this Settlement.

3. This Settlement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

4. The Parties agree that the evidence filed in this proceeding constitutes substantial evidence sufficient to support this Settlement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement, as filed. The Parties shall prepare and file an agreed proposed order with the Commission as soon as reasonably possible.

5. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of any Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

6. The undersigned Parties have represented and agreed that they are fully authorized to execute the Settlement on behalf of their designated clients, and their successors

**SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT**

and assigns, who will be bound thereby.

7. The Parties shall not appeal or seek rehearing, reconsideration or a stay of the Final Order approving this Settlement in its entirety and without change or condition(s) unacceptable to any Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement). The Parties shall support or not oppose this Settlement in the event of any appeal or a request for a stay by a person not a party to this Settlement or if this Settlement is the subject matter of any other state or federal proceeding (except as allowed for within the terms of the Settlement).

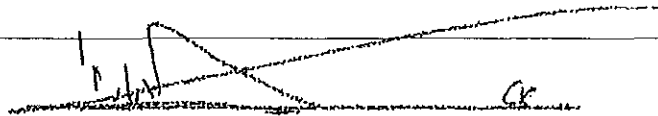
8. The provisions of this Settlement shall be enforceable by any Party before the Commission and thereafter in any state court of competent jurisdiction as necessary.

9. This Settlement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

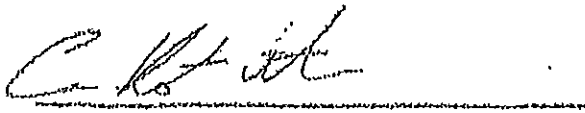
SETTLING PARTIES' EXHIBIT 1
SETTLEMENT AGREEMENT

ACCEPTED and AGREED to, as of this 13th day of MARCH, 2013.

GRAIN BELT EXPRESS CLEAN LINE LLC

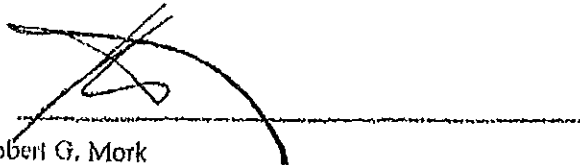


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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Rock Island Clean Line LLC :
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 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 : 12-0560
 Transmission Public Utility and to :
 Construct, Operate and Maintain an Electric :
 Transmission Line and Authorizing and :
 Directing Rock Island Rock Island pursuant :
 to Section 8-503 of the Public Utilities Act :
 to Construct an Electric Transmission Line. :

PROPOSED ORDER

DATED: August 11, 2014

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PROPOSED ORDER

By the Commission:

I. PROCEDURAL HISTORY

In this proceeding, Rock Island Clean Line LLC ("Rock Island," "RICL" or "RI") filed the above-referenced petition with the Illinois Commerce Commission ("Commission" or "ICC") pursuant to Sections 8-406 and 8-503 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101, et seq.

Rock Island therein requests an order granting it a certificate of public convenience and necessity ("CPCN" or "Certificate"), pursuant to Section 8-406 of the Act, authorizing it to operate as a transmission public utility in the State of Illinois and to construct, operate and maintain an electric transmission line ("Project"); and authorizing and directing it, pursuant to Section 8-503 of the Act, to construct the proposed line. Rock Island also seeks authorization to use the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts to file annual financial information required by ICC forms, and to maintain its books and records at a location outside of Illinois.

Petitions for leave to intervene were filed by Commonwealth Edison Company ("ComEd"); Locals 51, 9, 145, and 196, International Brotherhood of Electrical Workers, AFL-CIO ("IBEW"); the Illinois Agricultural Association a/k/a Illinois Farm Bureau ("IAA" or "Farm Bureau"); the Illinois Landowners Alliance, NFP ("ILA"); Wind on the Wires ("WOW"); the Environmental Law & Policy Center ("ELPC") and the National Resources Defense Council ("NRDC"), also collectively referred to "Environmental Intervenors" or "EI"; the Building Owners and Managers Association of Chicago ("BOMA"); Dynegy Midwest Generation, LLC and Dynegy Kendall Energy, LLC; Ameren Transmission Company of Illinois; Midwest Generation, LLC; John L. Cantlin; Joseph H. Cantlin;

Timothy B. Cantlin; Jason D. James; James Bedeker, Sally Bedeker and First Midwest Bank Trust #6243 ("Bedeker Intervenors"); Friesland Farms LLC, Larry Gerdes and Steven Gerdes ("Gerdes Intervenors"); and the Illinois Department of Agriculture ("IDOA"). IDOA later filed a motion to withdraw which is granted.

Motions to Dismiss were filed by ILA and IAA, and were denied in a written ruling.

Pursuant to due notice, a prehearing conference, status hearings and evidentiary hearings were held in this matter before an Administrative Law Judge at the Commission's offices in Springfield, Illinois.

Public Forums were held on September 18 and October 28, 2013, and were well attended. Numerous landowners and others expressed their objections to the proposed transmission line.

At the evidentiary hearings, Rock Island presented the filed testimony and exhibits of its witnesses: Karl McDermott, Michael Skelly, Gary Moland, Rudolph Wynter, Matthew Koch, Leonard Januzik, Hans Detweiler, David Loomis, Wayne Galli, Neil Wallack, Pierre Adam and David Berry.

The Commission Staff ("Staff"), ComEd, ILA and WOW also presented the filed testimony and exhibits of their respective witnesses. IBEW and BOMA also presented previously filed witness testimony. Testimony was also filed by the Bedeker Intervenors and Gerdes Intervenors. The IAA did not offer witness testimony; it did cross-examine witnesses.

ComEd witnesses were Steven T. Naumann and Ellen Lapson. Staff witnesses were Yassir Rashid, Daniel G. Kahle, Richard Zuraski and Alan Pregozen. ILA witnesses were Jeffrey Gray, Paul Marshall, Curtis Jacobs, Randy Rosengren, Sid Nelson, Ed Simpson and Bill Cole.

Many of the witnesses identified by name above were cross-examined at the hearings.

The WOW witness was Michael Goggin. The IBEW witness was James Bates. The BOMA witness was Michael Cornicelli.

The Gerdes Intervenors' witnesses were Larry and Steve Gerdes. The Bedeker Intervenors' witness was James Bedeker.

Post-hearing initial briefs ("IBs") and reply briefs ("RBs") were filed by Rock Island, ComEd, Staff, ILA, IAA, WOW and Environmental Intervenors. An initial brief was filed by IBEW. Suggested orders were filed by Rock Island and ComEd, and a summary of its position was filed by ILA.

ComEd, ILA and IAA oppose the petition. WOW, Environmental Intervenors and IBEW support the petition.

The positions of the Parties on the issues are summarized below. The Commission observes that these summaries of Parties' positions are intended to identify the positions of the Parties, not the findings of the Commission, except as otherwise noted.

II. DESCRIPTION OF ROCK ISLAND AND THE PROJECT

Rock Island is a Delaware limited liability company with principal offices in Houston, Texas, and is authorized to do business in Illinois. Rock Island is a wholly owned subsidiary of Rock Island Wind Line, LLC, a Delaware limited liability company, which is in turn a wholly owned subsidiary of Clean Line, also a Delaware limited liability company. The owners of Clean Line are GridAmerica Holdings Inc., Clean Line Investor Corp., Michael Zilkha, and Clean Line Investment LLC. GridAmerica Holdings Inc. is a subsidiary of National Grid USA. (RI IB at 2)

The transmission line planned by Rock Island would be 500 miles long and would originate at a converter station in O'Brien County, Iowa, "traverse Iowa" for 379 miles, cross the Mississippi River near Princeton, Iowa, and then enter Illinois south of Cordova, Illinois.

From there, the proposed line would extend for approximately 121 miles in Illinois to the Collins Substation in Grundy County.

The primary purpose of the 500-mile line is connect unidentified unbuilt wind generation facilities in northwest Iowa and nearby areas in South Dakota, Nebraska, and Minnesota ("Resource Area") with electricity markets in northeast Illinois and elsewhere in the PJM grid.

Except as noted below, the transmission line would be a direct current ("DC") line. The energy generated in wind farms is in AC form. To transmit this energy over a HVDC or "DC" transmission line, the energy must be converted to DC form. The DC portion of the proposed transmission line would originate from an AC-to-DC converter station at O'Brien County in Iowa and terminate at a DC-to-AC converter station located approximately four miles north of the Collins Substation in Grundy County. From the converter station, a four-mile AC segment, consisting of two parallel 345 kilovolt ("kV") AC lines, would connect to ComEd's existing 765 kV AC transmission system at or near the Collins substation.

The DC transmission line's nominal voltage will be ± 600 ("kV") direct current. It is described as the first DC transmission line proposed in Illinois.

RI characterizes the line as a "merchant project." As such, Rock Island asserts that it will recover its costs of construction and operation solely through the revenues it

receives from the specific transmission customers that purchase capacity and take transmission service on the Project. As discussed below, the FERC approved Rock Island's proposal to pre-subscribe "up to" 75 percent of transmission capacity to anchor customers. The FERC also approved Rock Island's request to sell the remaining 25 percent of the capacity using an open season auction.

III. APPLICABLE STATUTORY AUTHORITY

Section 8-406 (a) of the Act states:

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.

Section 8-406 (b) provides as follows:

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.

It then provides:

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.

Section 8-503 of the Act provides, in part, as follows:

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility . . . are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order; ...

IV. MOTIONS TO DISMISS

Separate Motions to Dismiss ("Motions") were filed by the IAA and ILA. The Motions sought dismissal of the application of Rock Island.

A ruling on the Motions was issued March 18, 2013. The ruling denied the Motions with respect to Rock Island's request for relief under Section 8-406.

In their post-hearing briefs, IAA and IAA again argue that their Motions should be granted.

In its Motion, IAA argues, in part, "Rock Island is not a public utility under [Section 3-105 of] the PUA because it does not own infrastructure for electric transmission in Illinois, therefore it cannot be granted relief under Section 8-406 of the PUA." (IAA Motion at 5, 12) According to IAA, "...Rock Island does not meet the threshold criteria required to be deemed a public utility and therefore, as a matter of law, is not eligible for relief under Sections 8-406 or 8-503 of the PUA." (*Id.* at 5) IAA concludes, "Therefore, Rock Island's Verified Petition should be dismissed with prejudice." (IAA Motion at 12)

In its Motion, the ILA, whose members include persons who own or farm land on or near an "identified potential route" for the proposed line, expresses a similar position with respect to Section 8-406. The ILA argues, in part, "Both § 8-406(a) and (b) identically require that a petitioner for a Certificate be a public utility: only a public utility may obtain a § 8-406(a) Certificate to transact business and only a public utility may obtain a § 8-406(b) Certificate to construct facilities." (ILA Motion at 3) ILA contends that Rock Island "lacks transmission infrastructure – a threshold requirement of Illinois law" under Section 3-105, and that "the entity aspiring to become a public utility must have in place qualifying infrastructure before it may be granted public utility status." (ILA Motion at 5-6)

Rock Island, IBEW and Wind on the Wires filed responses in which they oppose the Motions.

ComEd filed a response in which it opposes the Motions with respect to Section 8-406. According to ComEd, "While Section 8-406 imposes restrictions on utilities' transacting business and constructing facilities, Section 8-406 does not limit the applicants for CPCNs [certificates of public convenience and necessity] to entities that are already utilities as suggested by Movants." (ComEd Response at 4)

ComEd argued, "Section 8-406(a) places no limitation on who may seek a CPCN. It does not state that CPCNs can only be issued [to] utilities, let alone that applicants must be utilities when they file." In ComEd's view, Section 8-406(a) is written as a prohibition on activity absent a CPCN by stating that "[n]o public utility ... 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," and nowhere does it state that the required CPCN could only be obtained after the party was already functioning as a utility or owned utility assets. ComEd continues, "Rather, the Public Utilities Act allows non-utility applicants to both become public utilities and to subsequently operate, for public use, plant and equipment that transmit electricity. If Section 8-406 required applicants to be public utilities even prior to obtaining a CPCN, it would create a nonsensical Catch-22 whereby non-utilities could not receive approval to become utilities before such time as they were already violating the law by acting as a utility without a CPCN." (*Id.*)

Similarly, Rock Island argued, "IAA's and ILA's construction of the PUA sets up a classic 'catch-22': Under their construction, an entity cannot apply for a certificate to construct public utility facilities and transact public utility business unless it already owns public utility plant, equipment or property, but constructing the public utility facilities needed (according to IAA and ILA) in order to apply for a certificate, without already possessing a certificate authorizing construction of those facilities, is prohibited by §8-406(b) ('no public utility shall begin the construction of any new plant, equipment, property or facility . . . unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction')." (Rock Island Response at 6; see also WOW response at 2)

ILA and IAA filed replies to the responses.

Ruling Issued March 18, 2013

A ruling on the Motions was issued March 18, 2013. The ruling denied the Motions with respect to Rock Island's request for relief under Section 8-406. The ruling stated, in part:

First of all, despite Movants' [ILA and IAA] repeated assertions that the applicant must have qualifying transmission infrastructure in place in order to satisfy Section 3-105 before it may file an application under Section 8-

406, a reading of Section 3-105 reveals no references to such a term or anything similar to it.

Furthermore, as observed by several parties, Movants' interpretation of the statute creates an unworkable "Catch-22." Under their theory, an entity could not apply for a certificate to construct public utility facilities and transact public utility business unless it already owns public utility plant, equipment or property. Under Section 8-406(b), however, constructing the public utility facilities needed in order to apply for a certificate, without already possessing a certificate authorizing construction of those facilities, is prohibited. That section provides that "no public utility shall begin the construction of any new plant, equipment, property or facility . . . unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction."

The more relevant issue is whether an applicant is able to meet the criteria in Section 8-406(b) of the Act. In fact, Movants' concerns about qualifying transmission infrastructure appear to relate more to the criteria in 8-406(b) than to the definition of a public utility in Section 3-105. In that regard, given that the proposed line route is an issue to be considered under Section 8-406, it is difficult to see how Movants expect an applicant to already have the transmission infrastructure in place over a line route that Movants themselves are placing at issue.

The ruling further stated:

In any event, unless those criteria in Section 8-406 are met, the Commission may not grant a certificate of public convenience and necessity and public utility status under Section 8-406(b) authorizing an applicant to proceed with construction of a transmission line. In the instant case, the applicant has sought authority under 8-406(b) and has filed extensive proposed evidence in purported support thereof, and other parties will be given an opportunity to address those issues.

In that respect, this case is clearly distinguishable from the Arkansas case cited by Movants and addressed in Rock Island's response. In the Arkansas case, unlike the current case, the Rock Island affiliate did not seek authorization to undertake construction of a transmission line, and therefore did not present information in support thereof. For that reason, the Arkansas case was dismissed, essentially as premature, without prejudice to refileing.

It is also observed, as noted by Rock Island and others, that the Commission has not limited the application process in Section 8-406 to those entities who are already certificated utilities. For example, in Docket No. 06-0179, one of the applicants that was granted a certificate to

construct an electric transmission line and operate as a public utility in connection therewith, Ameren Illinois Transmission Company, was not an existing certificated public utility at the time of filing.

The ruling of March 18, 2013 concluded, "In conclusion, the Motions are denied with respect to Rock Island's request for relief under Section 8-406."

Commission Conclusion

In the instant Order, the Commission concurs in the rationale and determination contained in the ruling of March 18, 2013 which denied the Motions with respect to Rock Island's request for relief under Section 8-406. The Commission observes that the question of whether Rock Island should be granted a Certificate under Section 8-406 was extensively addressed on the merits in the course of the proceeding, and is considered in this Order below.

With respect to the request to dismiss the relief sought under Section 8-503, the ruling of March 18, 2013 stated, in part, "Assuming without argument that Section 8-406 relief is granted to the applicant, the question of whether Rock Island should also be granted relief under Section 8-503 at the same time is an issue that can be further addressed in the course of the proceeding as has been done in prior cases, and will not be further ruled upon at this time." The Commission observes that the question of whether Rock Island should be granted relief under Section 8-503 was in fact addressed on the merits in the course of the proceeding, and findings are contained in this Order below.

V. SECTION 8-406(A)

Section 8-406 (a) of the Act states:

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.

A. Rock Island Position

Rock Island states that in the context of this proceeding, it should be granted a CPCN for the Project in order to also receive a CPCN to transact a public utility business, and that the determination that "the public convenience and necessity require the transaction of such business" under §8-406(a) of the PUA is dependent on a

determination under §8-406(b) that Rock Island's construction and operation of the Project will promote the public convenience and necessity in accordance with the provisions of that subsection. (RI IB at 24-25)

Although RI believes its Project will be the first merchant transmission project in Illinois, it states that the Commission has previously granted CPCNs as transmission public utilities to at least two companies. In Docket 01-0142, the Commission granted CPCNs to American Transmission Company L.L.C. ("ATC"), which had been formed to take ownership of and operate the transmission facilities of Wisconsin electric utilities, some of which were located in Illinois, and to ATC's affiliate ATC Management, Inc. ATC's petition in that docket stated that ATC would own, control, operate and manage, within Illinois, facilities used for the transmission of electricity, and that its transmission lines would transmit electric energy within Illinois for use by the public to serve Illinois customers. The Commission found that the petitioners' transmission lines were transmitting power within Illinois to serve Illinois customers and that ATC and ATC Management fell within the definition of "public utility" in the PUA. (RI IB at 25, citing *American Transmission Company L.L.C. and ATC Management Inc.*, Docket 01-0142, Order Jan. 23, 2003 at 5; RI Ex. 10.13 at 16-17)

In Docket 06-0179, the Commission granted CPCNs to Illinois Power Company ("IPC") and to a newly-formed entity, Ameren Illinois Transmission Company ("Ameren Transco"), to construct three new 345 kV transmission lines for the purpose of enabling electricity to be delivered from a single wholesale generation source, the Prairie State Generating Company plant (an independent power producer), into the bulk electric system. The petition in that case stated that "Ameren Transco will own, control, operate and manage, within this State, for public use, facilities for the transmission of electricity" and that it would be "transmitting electricity for use by the public at rates, terms, and conditions subject to regulation by the FERC." Rock Island states that the Commission found Ameren Transco to be a public utility and granted CPCNs to Ameren Transco and IPC to construct, operate and maintain the three new 345 kV transmission lines. (RI IB at 26, citing *Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company*, Docket 06-0179, Order dated May 16, 2007; RI Ex. 10.13 at 17-18)

In Docket 06-0706, the Commission granted CPCNs to Ameren Transco and IPC to construct, operate and maintain a new transmission line in the area of Ottawa, Illinois. Ameren Transco stated in its petition that it would be "transmitting electricity for use by the public at rates, terms, and conditions subject to regulation by the [FERC]." The Commission found that Ameren Transco and its proposed transmission activities satisfied the definition of a public utility and that Ameren Transco was a public utility. In Docket 12-0598, the Commission granted a CPCN to Ameren Transco to build new transmission facilities in Illinois collectively referred to as the Illinois Rivers Project, finding that Ameren Transco is a public utility pursuant to the PUA. (RI IB at 25-26, citing *Ameren Transmission Company of Illinois*, Docket 12-0598, Order dated Aug. 20, 2013)

Rock Island asserts that like ATC and Ameren Transco, Rock Island will be owning, operating and managing transmission facilities in Illinois to transmit electricity for use by the public at rates, terms and conditions regulated by the FERC, and that it will construct and operate the Project for public use for the transmission of electricity and will hold itself out to serve the public. Rock Island states that it will offer and provide non-discriminatory, open access transmission service to eligible customers, as defined by its Open Access Transmission Tariff ("OATT") in conformance with FERC regulations, specifically, the service of transmitting electricity delivered to Rock Island's western converter station in O'Brien County, Iowa, to an interconnection point with the PJM grid at the Collins Substation in Grundy County, Illinois. (RI IB at 26-27, citing RI Exs. 10.13 at 4-6, 14-15; 10.26 at 35-36)

Rock Island expects that its transmission customers will fall into three categories. The first is owners of generation resources located in the Resource Area that will contract for transmission capacity to deliver the output of their plants into the PJM transmission network at the Collins Substation. These customers can be expected to have contracted with one or more suppliers to the retail market -- e.g., a utility, an ARES or other competitive supplier, a wholesale power marketer, a municipal electric utility, or an electric cooperative -- to purchase the generator's output; the electricity delivered to the purchasing entity would ultimately be sold to and used by thousands of individual retail electricity customers. (RI IB at 27, citing RI Ex. 10.13 at 12-13; see also RI RB at 39-40)

The second is wholesale purchasers of electricity, such as electric utilities, competitive retail suppliers, municipal electric utilities, electric cooperatives, and wholesale power marketers, who would contract for their own transmission capacity and use that transmission capacity to have delivered, to northern Illinois, electricity that they purchase from generators located in the Resource Area. The electricity transmitted by the Project to northern Illinois for these customers would ultimately be sold and distributed to thousands of individual retail electricity customers. (*Id.*, citing RI Ex. 10.13 at 13)

Regarding the third category, RI states that while it would be impractical for residential and smaller non-residential customers to contract directly for bulk transmission service on the Project, it would be possible for larger retail customers to contract directly for transmission capacity and service on the Project to facilitate their procurement of electricity from the Resource Area, such as, for example, a large institutional electricity user or a government entity that wishes to obtain a portion of its electric supply from renewable resources and to negotiate for and purchase the renewable energy directly from the producer rather than through an intermediate supplier. Rock Island states that the definition of "eligible customer" under the FERC pro forma OATT, to which Rock Island's OATT will be required to conform, includes retail customers taking unbundled transmission service. (*Id.*, citing RI Ex. 10.13 at 13-14)

Rock Island asserts that the Project will provide 3,500 MW of transmission capacity and is projected to deliver over 15 million MWh of electricity annually from the Resource Area to northeast Illinois and the PJM grid. (*Id.* citing RI Ex. 10.13 at 15)

According to Rock Island witness Mr. Berry, any eligible customer under its OATT will be able to request and, subject to the overall capacity of the Project, obtain transmission service on the Project in "multiple ways". First, during Rock Island's initial process to identify and contract with anchor tenants, any eligible customer may request to negotiate a precedent agreement with Rock Island for long-term firm transmission service. Second, any eligible customer may participate in Rock Island's enrollment process, referred to as an "open season", to award the remaining capacity on the Project; and in the open season, all eligible customers have an equal opportunity to procure long-term firm transmission service. Third, if Rock Island does not sell all of the Project's capacity during the anchor tenant and open season processes, any eligible customer may request service from the remaining firm service under Rock Island's OATT. (RI IB at 28, citing RI Ex. 10.13 at 10)

Fourth, Mr. Berry asserted that upon expiration or termination of the initial transmission service contracts entered into during the anchor tenant and open season processes, any eligible customer may request the freed-up capacity under Rock Island's OATT. Fifth, any eligible customer may request non-firm service on the Project at any time, and Rock Island is obligated to grant these requests so long as the transmission capacity is not in use by firm service customers. Finally, Rock Island will create a secondary market for the Project's transmission capacity, in which holders of contracted capacity will be able to make their contracted capacity available to other eligible customers. (*Id.*, citing RI Ex. 10.13 at 10)

Response to IAA and ILA

In response to ILA's and IAA's arguments in Section III of their initial briefs, Rock Island submits that IAA and ILA rely on the same argument on which their Motions to Dismiss were based, i.e., that only an entity that is already a public utility can apply for and be granted a CPCN as a public utility, and since Rock Island does not currently own any plant, equipment or property in Illinois and has no assets or real property in Illinois that could be used to sell, transmit or deliver electricity, Rock Island is not currently a public utility and therefore cannot be granted a CPCN as a public utility. Rock Island asserts that IAA's and ILA's argument regarding Rock Island's request for a CPCN as a public utility should be rejected for the reasons stated in Rock Island's response to the IAA and ILA Motions to Dismiss. (RI RB at 34)

Rock Island states that ILA cites several decisions for the proposition that in order to grant a CPCN, the Commission must find that the proposed service is necessary for the public convenience and necessity. Rock Island states that the cases cited by ILA emphasize that "necessity" as used in this context does not mean "indispensably requisite," that necessity has been construed to mean "needful, requisite

or conducive,” and that the Commission has broad discretion to determine what constitutes the public convenience and necessity in a particular case. (RI RB at 34-35)

Response to ComEd

In ComEd’s view, to be a utility, RI must establish that it has or will have Illinois customers, and RI has not done so. (ComEd IB at 14) Rock Island states that §3-105 says no such thing and does not even use the word “customers.” (RI RB at 39)

Rock Island states that ComEd points to the fact that Rock Island has “assumed” that all of its customers will be wind generators located outside Illinois in the Resource Area (ComEd IB at 16-17). RI asserts that this assumption, and Rock Island’s justification for it, was made in the context of responding to the arguments of other parties that the generator customers that will connect to the western end of the Project may not be limited to wind generators. Rock Island states that the FERC’s pro forma OATT requires that Rock Island’s transmission service tariff include as eligible customers, “Any electric utility (including the Transmission Provider and any power marketer), Federal power marketing agency, or any person generating electric energy for resale.” Additionally, under the terms of the FERC’s pro forma OATT, Rock Island must, and will, offer transmission service on the Project to any retail customer taking unbundled transmission service pursuant to a State requirement for such service, which exists in Illinois under Article 16 of the PUA, or a voluntary offer of retail unbundled transmission service which Rock Island will include in its tariff. (RI RB at 36-37, citing RI Ex. 10.13 at 5, 12-14)

Rock Island responds to ComEd’s argument that based on the decision in *Mississippi River*, Rock Island will not be a public utility because it will only serve a fixed and limited number of customers (ComEd IB at 15, 18-19). Rock Island states that Mississippi River Fuel, an interstate pipeline, expressly contracted with its local gas distribution company customers not to sell gas to any of their retail customers other than the specific, identified retail customers it had already contracted with, and it refused requests from additional industrial gas customers to sell them gas, which is something RI could not do under the OATT. (RI RB at 37, citing 1 Ill. 2d at 511-513) Rock Island states that the decision emphasized that “it is entirely clear from the record that Mississippi has never intended to assume the status of a public utility or professed to devote its property to ‘public use’”, and that Mississippi River Fuel “has done no act by which it has given the reasonable impression that it was holding itself out to serve gas to the public, or to any class of the public generally.” (RI RB at 37, citing 1 Ill. 2d at 515-518)

Rock Island asserts that, in contrast to the facts in *Mississippi River*, it is expressly holding itself out to serve the public and to dedicate its property, plant and equipment to public use. In support of that argument, RI cites a passage of testimony from Mr. Berry. (RI RB at 37, citing RI Ex 10.13 at 14-15)

Rock Island also responded to ComEd's argument that a retail user or a utility or other wholesale retailer does not become a transmission customer of a transmission owner or operator simply because the power the retail user, utility or other wholesale buyer consumes or resells has been transported by the transmission owner/operator's transmission line. (ComEd IB at 17) Rock Island states that it will offer transmission service on the Project to, and expects its customers to include, both (1) owners of generation resources located in the Resource Area that will contract for transmission capacity to deliver their output into the PJM transmission network at Collins Substation; and (2) wholesale purchasers of electricity, such as electric utilities, competitive retail suppliers, municipal electric utilities, electric cooperatives, and wholesale power marketers, which would contract for their own transmission capacity and use that transmission capacity to have delivered, to northern Illinois, electricity that they purchase from generators located in the Resource Area. Rock Island states it is also possible that large retail purchasers of electricity may purchase unbundled transmission service on the Project, in order to transport electricity that they purchase on an unbundled basis from sellers in the Resource Area. (Petition ¶¶17; RI Exs. 1.0 at 14-15; 10.0 at 18; 10.13 at 12-14; 10.19; RI IB at 27; RI RB at 39-40)

Rock Island argues that ComEd's reliance on the decision of the Arkansas Public Service Commission ("PSC"), *Ark. Pub. Svc. Comm'n* Docket No. 10-041-U, Order No. 9 (Jan. 11, 2011) ("Arkansas Order"), concerning a subsidiary of Clean Line, Plains and Eastern Clean Line LLC ("Plains and Eastern"), is unfounded. (RI RB at 43-44, citing ComEd IB at 19-20) Rock Island states that in the Arkansas case, Plains and Eastern was only applying for a certificate of public utility status, and not for a certificate to build its transmission line in Arkansas. The filing in Arkansas stated that the applicant "does not seek authorization to begin construction of a transmission line, which authorization Clean Line will seek pursuant to a separate application." (RI RB at 43, citing Arkansas Order at 1) According to Rock Island, the Arkansas case is similar to Rock Island's previous filing in Docket 10-0579, in which Rock Island sought only a CPCN as a public utility and did not request a CPCN for its transmission line nor present the detailed information necessary to support a request for a CPCN for a transmission line. In Docket 10-0579, Rock Island states that it ultimately agreed with Commission Staff that the request for a CPCN as a public utility should be considered in conjunction with a request for a CPCN for a specific public utility project, which Rock Island has filed for in the instant docket. (RI RB at 43)

Rock Island also states that Plains and Eastern, at the time of the Arkansas PSC decision, planned to construct a "through" transmission line through Arkansas to the line's ultimate destination in a state to the east of Arkansas, with no plans to directly deliver electricity into Arkansas to wholesale or retail customers in that state through an interconnection in Arkansas. (*Id.*, citing Arkansas Order at 2, 4, 5 and 11) Rock Island states that the Arkansas PSC found, based on this, that it could not find that Plains and Eastern met the statutory test of transmitting power "to or for the public for compensation," stating that its "decision is based on the fact that it cannot grant public utility status to Clean Line based on the information about its current business plan and present lack of plans to serve customers in Arkansas." (*Id.*, citing Arkansas Order at

11-12) Rock Island asserts that, in contrast, it will be, by tariff, expressly offering transmission service to customers in Illinois, and all of the electricity transported by the Rock Island Project will be delivered into Illinois. (RI RB at 43-44)

Rock Island states that several other states have granted certificates to Clean Line subsidiaries as public utilities and/or to construct their specific proposed transmission projects, under the laws of those states. According to RI, the Oklahoma Corporation Commission granted, to Plains and Eastern, electric transmission-only public utility status; the Kansas Corporation Commission granted Grain Belt Express Clean Line LLC ("Grain Belt") a Limited Certificate of Public Convenience to Transact the Business of a Public Utility in the State of Kansas; the Kansas Corporation Commission granted Grain Belt a siting permit, which is the authorization required under Kansas law to build the Kansas portion of the Grain Belt transmission project; the Indiana Utility Regulatory Commission granted Grain Belt authority to operate as a transmission-only public utility in Indiana. (*Id.* at 44-45)

Response to Staff

In response to Staff's statement that Rock Island witness Mr. Berry "essentially concedes in its testimony that no need for the proposed Project has actually been established" (Staff IB at 9), Rock Island asserts that Staff's characterization is incorrect and the testimony it cites is taken out of context. Rock Island explains that in the testimony cited by Staff, Mr. Berry was discussing the proposed financing condition to Rock Island's CPCN that was proposed by Staff and accepted by Rock Island. RI provides a quotation of this passage of testimony in its reply brief. (RI RB at 36-37)

Rock Island states that Staff's Initial Brief provides a discussion of court cases on the topic of what constitutes a "public utility," along with a discussion of the FERC's requirements for merchant transmission providers such as Rock Island to provide non-discriminatory open access transmission service to eligible customers, but that Staff does not reach a specific conclusion on whether Rock Island will be a "public utility." (Staff IB at 10-15) Rock Island asserts that a common theme in many of these cases in which an entity was found not to be a public utility is that the entity disclaimed any intention to be a public utility, to hold itself out to provide service to the public, or to devote its plant, property and equipment to the public use. (Rock Island RB at 46-47)

Rock Island states that Staff's statement that 75% of the capacity of the Project will be pre-subscribed to "pre-selected customers" and only 25% will be available through "open auction" (Staff IB at 15) is an incomplete description of the ways in which customers will be able to obtain transmission service on the Project. (Rock Island RB at 47-48) Rock Island asserts that it is authorized by the FERC to contract with anchor tenant customers for "up to" 75% of the capacity of the Project; therefore, the 75% figure is a ceiling not a floor. (*Id.*, citing RI Ex. 10.13 at 6)

According to Rock Island, the overriding principles are that Rock Island will offer all eligible customers the opportunity to purchase transmission service on the Project;

Rock Island will not deny any eligible customer the opportunity to purchase transmission service; and Rock Island will not unduly discriminate against any transmission customer in favor of another eligible customer, and that what is relevant to Rock Island's public utility status is that the service will be offered to the entire universe of eligible customers, not just to the number that actually elect to take service. (*Id.* at 47-49, citing RI Ex. 10.13 at 6) Rock Island states that Staff acknowledged that the FERC requirement to provide non-discriminatory open access, which Rock Island will comply with, "could arguably overcome the public use hurdle since all customers would have an equal right to use the utility on the same terms, as required for public use under Section 3-105 of the Act." (RI RB at 48-49, citing Staff IB at 13)

Rock Island responded to Staff's concern that the FERC's order granting Rock Island's request for negotiated rate authority observed that Rock Island stated it would be unable to resize the Project if its customer solicitation process reveals market interest in excess of the planned transmission capacity. Staff also noted that the FERC's Final Policy Statement on the allocation of capacity on new merchant transmission projects, which was issued after the FERC's order granting Rock Island negotiated rate authority, specifies that "all merchant transmission developers and non-incumbent cost-based, participant-funded transmission projects become public utilities at the time their projects are energized" and therefore are subject to "the obligation to expand their transmission systems, if necessary, to provide transmission service." Staff stated that in the current docket, Rock Island has not provided any evidence that it would be able to increase the capacity of the Project if the Project becomes oversubscribed. (RI RB at 49-50, citing Staff IB at 13-15)

In response, Rock Island asserts that Staff is criticizing Rock Island for not responding to an issue that Staff never raised in the evidentiary phase of this case. According to Rock Island, its statement in its FERC negotiated rate application -- that it would be unable to resize the capacity of the Project if market interest exceeds capacity of the Project without undue delay -- is a simple fact of the line as currently proposed. Rock Island asserts that if the line were oversubscribed, it would first construct the Project as designed and proposed in the instant proceeding, and then seek subsequent authorizations to expand the Project. Rock Island states it does not object to the obligation to expand its facilities or service offering to meet an increased demand for its transmission service after the Project, as now proposed, is completed. Rock Island asserts that it has such an obligation based on the provisions of the FERC's pro forma OATT. (RI RB at 50-51)

According to Rock Island, an obligation to expand a transmission provider's service offering in response to increased demand is embodied in §15.4 of the FERC's pro forma OATT, and while a transmission provider can proposed deviations in its tariff from the pro forma OATT, these must be approved by the FERC. Based on the FERC's pronouncements in the Final Policy Statement cited by Staff, Rock Island "believes the FERC would not approve a tariff provision that deviated from §15.4, and therefore the obligation to expand applies to Rock Island." (Rock Island RB at 51)

Rock Island suggests it would be unacceptable to the parties for Rock Island to propose in the context of this case that it be allowed to increase the size or capacity of the Project as conditions warrant, but that does not mean that Rock Island is unwilling or unable to increase the transmission capacity it is offering in the future. (*Id.* at 51-51)

Rock Island also argues that the cases cited by Staff indicate that an obligation to expand the capacity of the applicant's equipment and facilities to accommodate increased demand is not necessarily a requirement for public utility status, and that the utility's obligation to offer service may be limited by the capacity of its facilities and equipment. (Rock Island RB at 52) For example, in *Illinois Highway Transportation Co. v. Hantel*, 323 Ill. App. 364, 376 (3d Dist. 1944), the Court stated, "A common carrier of passengers has been defined as one who undertakes to carry all persons indifferently who may apply for patronage so long as there is room . . . [T]hey serve all the public alike who apply to them for carriage, so long as they have room . . . carrying all who apply and refusing none unless they have no room or for some other legal reason may refuse." RI also cites *State Public Utilities Commission ex rel. Macon County Telephone Co. v. Bethany Mutual Telephone Ass'n*, 270 Ill. 183, 185, 110 N.E.334 (1915), where the Court stated, "The words 'public use' mean of or belonging to the people at large, open to all the people to the extent that its capacity may admit of the public use." (RI RB at 53)

B. Positions of Staff and Intervenors

Staff

According to Staff, Rock Island essentially concedes that no need for the proposed Project has actually been established. Rock Island witness Berry states that "permanent installation of facilities cannot and will not commence unless and until the need for the Project is actually established through the market test of transmission customers contracting for sufficient service on the transmission line to support and justify financings that raise sufficient capital to cover the total Project cost." (Staff IB at 9, citing RICL Ex. 10.13 at 3-4)

Under Section 3-105 of the Public Utilities Act, 220 ILCS 5/3-105, "Public Utility" means and includes, among other things:

... every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers and appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, *for public use*, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, or permit or right to engage in: (1) the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communication purposes
(Staff IB at 9-10, emphasis added)

As an initial matter, Staff asserts that while Rock Island has not adequately shown that it currently owns, controls, operates or manages any plant, equipment or property to be used in transmission of electricity, it would be illogical to suggest that an entity cannot apply for a certificate to construct public utility facilities and transact public utility business unless it already owns public utility plant, equipment or property. Illinois courts have indicated that a literal reading of a statute will not be followed where it would lead to consequences that the legislature could not have contemplated or intended. (Staff IB at 10, citing *In re Marriage of Eltrevoog*, 92 Ill. 2d 66, 70 (1982))

According to Staff, "To restrict entities seeking to engage in utility business in Illinois in such a manner would reach the undesired and absurd result of erecting barriers of entry from participation in the industry or imposing requirements on existing public utilities in Illinois from which non-certificated entities would effectively be exempt." (Staff IB at 10) Staff further argues, "Therefore, a more logical assessment of the provision is that the Commission may assess whether a petitioner's proposal would meet the CPCN criteria of the statute if and when approved. Such provides the Commission with the flexibility of assessing an application and any public need for particular projects on a case by case basis." (*Id.*)

Staff states that the next inquiry is the issue of whether the Company has shown that the plant, equipment or property at issue is for "public use." According to Staff, courts have interpreted Section 3-105 to require that all persons must have an equal right to use the utility, and it must be in common and upon the same terms. (Staff IB at 10-11, citing *Palmyra Tel. Co. v. Modesto Tel. Co.*, (336 Ill. 158 (1929)) Whether a given business is a public utility depends upon the public character of the business or service rendered which makes its regulation a matter of public consequence and concern because it affects the whole community. (*Id.*, citing *Illinois Highway Transp. Co. v. Hantel*, 323 Ill. App. 364 (1944))

Staff maintains that in interpreting Section 3-105, the courts have been clear that the service must be made available to all persons on the same terms and conditions, not confined to privileged persons, such as one group or type of customer as is the case here. A "public utility" implies a public use of an article, product, or service, carrying with it the duty of the producer or manufacturer, or one attempting to furnish the service, "to serve the public and treat all persons alike, without discrimination. . ." (*Id.*, citing *Highland Dairy Farms Co. v. Helvetia Milk Condensing Co.*, 308 Ill. 294, 300, (1923)) The term "public utility" as used historically, implied a public use carrying with it the duty to serve the public "and treat all persons alike, and it precluded the idea of service which was private in its nature and was not to be obtained by the public." (*Id.*, citing *Springfield Gas & Electric Co. v. City of Springfield*, 126 N.E. 739 (1920), *aff'd*, 257 U.S. 66 (assessing PUA of 1913, Section 10, since repealed and now replaced with Section 3-105))

While it is not essential to a public use that its benefits should be received by the whole public, or within a large part of it, they must not be confined to specified privileged

persons, but must be extended to all persons in common upon the same terms, it being immaterial how few avail themselves of the rights so extended. (*Id.* at 12, citing *State Public Utilities Commission ex rel. Macon County Telephone Co. v. Bethany Mut. Telephone Ass'n*, 110 N.E. 334 (1915))

Petitioner asserts that its proposed project is for public use. In Staff's view, the facts are "far from clear on this point." (*Id.* at 12) Rock Island states that it will use an anchor tenant model to sell up to 75% of the transmission capacity on the project with capacity not secured by anchor tenants being sold to customers through an "open season" process or processes that would constitute at least 25% of capacity, and that its "target customer base" for transmission services will be comprised primarily of wind energy producers and purchasers of electricity generated from renewable resources. (Petition at 10-11) Specifically, Petitioner "expects that its customers will consist principally of (i) wind energy producers located [in states west of Illinois (primarily in Iowa)], and (ii) buyers of electricity – particularly buyers seeking to purchase electricity generated from renewable resources – located at the eastern end of the Rock Island Project." (Staff IB at 12, citing Petition at 10-11)

Staff states that in this capacity, Rock Island would be acting as a provider of open access transmission services. The Federal Energy Regulatory Commission ("FERC") is the federal regulator of, among other things, the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce. FERC requires that the transmission provider offer and provide transmission service to all eligible customers on a non-discriminatory basis. (*Id.* at 13, citing *Rock Island Clean Line LLC*, Order Conditionally Authorizing Proposal and Granting Waivers in Part, issued on May 22, 2012, 139 FERC ¶ 61,142, at 16 ("FERC Order")) According to Staff, this means Rock Island would not be allowed to give a preference to wind generators, but would be required to offer its service to all customers in a non-discriminatory manner subject to a regional transmission organization ("RTO") open access transmission tariff ("OATT"). Staff states, "The requirement of non-discriminatory open access could arguably overcome the public use hurdle since all customers would have an equal right to use the utility on the same terms, as required for public use under Section 3-105 of the Act." (*Id.*)

In the FERC Order, FERC conditionally approved negotiated rates for Rock Island. FERC explained that pursuant to their OATTs, federally-defined public utilities have an obligation to expand their transmission capacity upon request at cost-based rates and that the cost of public utility capacity expansion provides downward pressure on the negotiated rates that Rock Island will charge. (Staff IB at 13, citing FERC Order at 17) Regarding capacity expansion, Staff states that Rock Island's position was clear -- Rock Island said "... it would be unable to resize the Project were the solicitation process to reveal market interest in excess of its planned transmission capacity...." (FERC Order at 22)

Because of Rock Island's status as a merchant transmission provider, rather than a public utility under the FPA, FERC did not rule definitively on the question of capacity

expansion. Rather, FERC said that if Rock Island's open season results in oversubscription, it would "require that Rock Island in its open season report justify in greater detail its reasons for not expanding the Project and for allocating capacity among open season participants." (FERC Order at 33) Staff states, "Thus, even though FERC directed Rock Island to file, upon completion of the Project, a rate schedule for service under the OATT for the RTO to which it transfers operational control (FERC Order, Ordering P (C)), it was not necessarily required to expand its service capacity to accommodate all eligible customers." (Staff IB at 14)

Staff states that in FERC's Final Policy Statement on the allocation of capacity on new merchant transmission projects, FERC clarified its policies and said that it reaffirmed that "all merchant transmission developers and non-incumbent cost-based, participant-funded transmission projects become public utilities at the time their projects are energized. . . .Public utility transmission providers are subject to the Commission's OATT transmission requirements, including the obligation to expand their transmission systems, if necessary, to provide transmission service." (Staff IB at 14, citing *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects, Priority Rights to New Participant-Funded Transmission*, 142 FERC ¶ 61,038, P 22 (2013)) Staff comments, "It is unclear whether this FERC policy statement would trump the specific findings of the FERC Order addressing the Rock Island project at issue. If so, it would arguably alleviate 'public use' concerns." (*Id.*)

Staff states that in the current ICC proceeding, three-fourths of the capacity of the proposed project is intended to be pre-subscribed for private contracts to a limited number of pre-selected customers, and "only" 25 percent is assured of being available through open auction. While FERC indicates in a policy statement that merchant transmission projects will be considered public utilities required to file an OATT, the Company has not provided any evidence here that it would be willing and able to expand the capacity of the project at issue to provide service to eligible customers if and when it becomes oversubscribed. When the Petitioner was before FERC seeking negotiated rate authority for the same project, it explained that it would not be able to expand the project's capacity, stating "it is not financially or practically feasible to materially increase the size of this Project." (FERC Order at 22) Staff states that Rock Island has not provided any evidence here that that assessment has changed. (Staff IB at 15)

Further, while Rock Island states that it is not seeking authority in this proceeding to acquire land and land rights through eminent domain pursuant to Section 8-509, it is "entirely possible" Rock Island could seek such authority at a later time. (Staff IB at 15-16, citing RICL Ex. 1.0 at 5)

Finally, Staff states that it "has concerns with any finding that Rock Island would be an Illinois 'public utility,' entitled to rights inherent in that status, including the right, when authorized following proper application to the Commission, to be granted by the Commission the right to exercise the power of eminent domain." (Staff IB at 16) Staff

concludes, "Without having clearly shown that it is offering its facilities for 'public use,' Rock Island should not be granted a status that would permit it to pursue approvals for the taking of private property. The Commission should consider with care the grant of a potential right of infringement on private property rights to an entity which would be doing so primarily for its own admittedly private purposes and not for 'public use.'" (*Id.*)

In its reply brief, in response to Rock Island's claim it would be the first merchant transmission project in Illinois (RI IB at 25), Staff argues that this fact, even if true, does not make Rock Island a public utility. (Staff RB at 7)

Staff states that Rock Island points to some prior cases that it claims are representative of why it should be granted a CPCN. One was Docket 01-0142, where the Commission granted CPCNs to American Transmission Company L.L.C. ("ATC"), a transmission public utility formed to take ownership of and operate the transmission facilities of Wisconsin electric utilities, some of which were located in Illinois, and to ATC's affiliate ATC Management, Inc. In that case, the Commission found that the petitioners "own, control, operate, and manage, within this State, for public use, facilities used in the transmission of electricity." *American Transmission Company L.L.C. and ATC Management Inc.*, Docket No. 01-0142, Order, January 23, 2003 ("ATC Order"), at 5.

According to Staff, the Commission noted in that case that the Petitioners' transmission lines are transmitting power within Illinois to serve Illinois customers and it is therefore in the public interest that the Commission oversee certain aspects of ATC operations. Rock Island argues that like ATC, and other transmission public utilities, Rock Island will be owning, operating and managing transmission facilities in Illinois to transmit electricity for use by the public at rates, terms and conditions regulated by the FERC. (Staff RB at 7-8, citing RI IB at 26)

While it agrees there are transmission-only companies in Illinois that the Commission has deemed to be public utilities, Staff argues that those companies are distinguishable from the transmission operations that Rock Island plans. Staff asserts that in each of those instances, the transmission service of those projects is made available to all customers on the same terms and conditions, clearly not confined in any respect to privileged or pre-determined contract customers as Rock Island seeks to do. (*Id.* at 8)

Staff argues that what is essential about being a public utility in Illinois is that the entity provides its services, whatever they might be, "for public use." This means that "all persons must have an equal right to use the utility, and it must be in common, upon the same terms, however few the number who avail themselves of it." (Staff RB at 8, citing *Palmyra Tel. Co.*) If and when the Project becomes subject to a FERC open access transmission tariff requiring the provision of non-discriminatory open access, the Project's limited capacity will still prevent Rock Island from providing access to all eligible customers. Staff concludes, "What Rock Island is asking the Commission to do is grant it a CPCN so it looks like a 'public utility' for purposes of condemning private

property to build its line, while at the same time it plans to offer only a token percentage of that line's capacity for 'public use.' The transmission service that Rock Island plans to provide on its transmission line does not meet the public use standard under Section 3-105 of the PUA." (Staff RB at 8-9)

ComEd

According to ComEd, the PUA's definition of a "public utility" requires "not only that a utility [own, control, operate or manage] transmission assets, but that it do so 'for public use.'" (ComEd IB at 14, citing 220 ILCS 5/3-105)"

ComEd argues, "The fact that providing a service or product normally provided by a public utility does not make an entity a public utility unless it holds itself out to provide that service or product to the public at large was established in the Illinois Supreme Court's opinion in *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509 (1953) (*Mississippi River*)." (ComEd IB at 14) *Mississippi River Fuel Corp.* ("Mississippi River Fuel") was a fuel company that sold natural gas in Illinois at retail directly to 23 industrial customers as well as to a power company and an electric company for resale to the general public, all through individual contracts for terms of two years or less. (*Id.*, citing *Mississippi River* at 512) The Illinois Supreme Court affirmed the circuit court's conclusion that Mississippi River Fuel was not a public utility subject to regulation under the PUA because the record failed to support the conclusion that Mississippi River Fuel devoted its property to "public use." (*Id.*, citing *Mississippi River* at 515-516; ComEd RB at 9)

In ComEd's view, to be a utility, RI must establish that it has or will have Illinois customers and that it does or will own, control, operate, and manage, within this State and for public use, facilities used in the transmission of electricity, before issuance of a CPCN. (*Id.*, citing 220 ILCS 5/3-105)

Section III.A of ComEd's initial brief is titled, "RI has not committed to owning and operating transmission assets in Illinois." (ComEd IB at 15)

According to ComEd, RI has made no commitment to ever own, control, operate or manage Illinois transmission assets. Mr. Skelly testified that, even after obtaining a CPCN, if RI came to believe that "the project wasn't worth investing in any further, then we would abandon it." (Tr. 286) ComEd asserts that this risk is "no small thing" given that RI has no construction financing and that the pool of generators it hopes to serve does not exist; that RI's CFO Mr. Berry confirmed that RI will not begin to build any of the Project until and unless it has all required financing (RI Ex. 10.13 at 4); and that his testimony also confirms that RI cannot offer service to customers as RI will not commit to build the Project, even in the event the Commission issues a CPCN and a Section 8-503 order directing the construction of the Project (Tr. 1049-1050). (ComEd IB at 16)

ComEd argues, "RI cannot, in short, prove that it will own or control transmission assets in Illinois, even if its Petition is granted. That is fatal to its application to be deemed a public utility." (*Id.*; ComEd RB at 6-7)

Section III.B of ComEd's initial brief is titled, "RI has not proven that it will offer or provide service to the Illinois public." (ComEd IB at 16)

While RI claims that customer could also include competitive retail suppliers or retail purchasers, RI CFO Mr. Berry testified that "Mr. Zuraski's model should ... treat Rock Island's transmission charge as paid by wind generators because they, not ratepayers in general, are likely to be Rock Island's transmission customers." (ComEd IB at 16-17, citing RI Ex. 10.14 REV at 50-51) The economic studies which RI relies on to claim market benefits assume that the RI customer-subscribers who pay for the line will be out of state generators. (*Id.*, citing Tr. 121-122, McDermott; and Tr. 562-563, Loomis) ComEd also states that RI's CEO likewise confirmed that the line's subscriber customers are expected to be wind or renewable energy generators in the "Resource Area," not in Illinois. (*Id.*, citing Tr. 271, Skelly; ComEd RB at 9-10)

ComEd also disputes RI's claims that utilities, retail energy suppliers, or retail purchasers in Illinois may take service on the line. ComEd asserts that an entity does not become a transmission owner's transmission customer simply because the power that they consume or resell has previously flowed over the transmission owner's transmission line. ComEd adds that buyers of energy transmitted across the Project need not be customers of RI, or take service from RI, any more than load serving entities currently operating in ComEd's zone must be transmission customers of every generator lead or transmission facility over which the power they consume has flowed. (*Id.* at 17; ComEd draft order at 6; see also ComEd RB at 10)

As further evidence that the Project will not serve the Illinois public, ComEd states that RI aims to reserve up to 75% of the Project's capacity for contract anchor tenants in the Resource Area, leaving "merely" 25% to serve the Illinois public. ComEd argues that the Illinois Supreme Court has recognized that serving such a limited number of entities in Illinois does not satisfy the "public use" requirement in the Act. (ComEd draft order at 6-8, citing *Mississippi River*; see also ComEd IB at 18-20) And, because RI has not committed to build the Project unless sufficient demand materializes at some point in the future, ComEd asserts that it is unclear whether RI will ever serve even this limited subset of customers.

In the event that the Project is built, like Mississippi River Fuel, RI will have contractually agreed to serve its customers rather than the public at large. Moreover, RI represented to the Federal Energy Regulatory Commission ("FERC") that it was unwilling to expand the Project's capacity to meet heightened demand and its explanation of its assertions provided for the first time in its Reply Brief lack credibility. (ComEd draft order at 8)

Section III.C of ComEd's initial brief is called, "The Project is indefinite and rife with uncertainty." (ComEd IB at 19)

ComEd reasons that RI's potential to own and operate transmission assets in the future does not qualify RI as a public utility now. ComEd cites as instructive the Arkansas Public Service Commission conclusion with respect to a different Clean Line project. (ComEd IB at 19-20 and ComEd draft order at 6, citing *Ark. Pub. Svc. Comm'n* Docket No. 10-041-U, Order No. 9 (Jan. 11, 2011) ("*Arkansas Order*") That Order held, in part, "... the Commission's decision is based on [the] fact that it cannot grant public utility status to Clean Line based on the information about its current business plan and present lack of plans to serve customers in Arkansas. Without pre-judging any future plans Clean Line may have or may bring before the Commission, the Commission denies Clean Line's requested CCN." (ComEd IB at 20, citing *Arkansas Order* at 11-12) ComEd argues that this same rationale is applicable here, where RI has an "uncertain and highly speculative business plan," and no customers. (*Id.*)

ComEd also cautions that empowering private speculators with eminent domain authority will enable RI to threaten Illinois landowners with condemnation in the event that negotiations come to an impasse. (ComEd draft order at 7; ComEd IB at 13)

In its reply brief, ComEd challenges RI's claims that the Commission has granted CPCNs for similar transmission-only utilities in the past. Observing that untraditional transmission developers can and have operated in Illinois in accordance with the terms of the PUA, ComEd asserts that the precedent cited in RI's Initial Brief illustrates RI's significant evidentiary shortcomings. ComEd asserts that in each case where the Commission has issued a CPCN, the utility was not only committed to owning and operating utility facilities, but also was either ready to commence construction upon certification or contractually bound to acquire existing utility property. (ComEd RB at 7 and ComEd draft order at 7, citing *Am. Transmission Co. L.L.C. & ATC Mgmt. Inc.*, Docket No. 01-0142, Order Jan. 23, 2003; *Ill. Power Co. d/b/a AmerenIP and Ameren II. Transmission Co.*, Docket No. 06-0179, Order May 16, 2007; *Ill. Power Co. d/b/a AmerenIP & Ameren III. Transmission Co.*, Docket No. 06-0706, Order on Reopening June 23, 2010; *Ameren Transmission Co. of Ill.*, Docket No. 12-0598, Order Aug. 20, 2013)

As to Docket 01-0142, ComEd contends that unlike RI, American Transmission Company, LLC ("ATC") was committed to operating utility assets upon certification and was acquiring existing utility assets under Wisconsin law and binding contract. Additionally, ComEd states that ATC was formed from 25 municipalities, retail electric cooperatives, and investor-owned utilities that each were to contribute their transmission assets and/or cash to ATC. (ComEd RB at 8; ComEd draft Order at 7) In Docket 06-0179, ComEd submits that Illinois Power Company ("AmerenIP") and the company then known as Ameren Illinois Transmission Company ("AITC") jointly sought a CPCN under Section 8-406(a). Though AITC was a newly-formed entity, ComEd states that AmerenIP was already an Illinois utility and that AITC had the financial and technical support of an established corporate family that possessed the financial and

operational qualifications necessary to qualify as a public utility. ComEd further contends that the CPCNs subsequently issued to Ameren Transco lend RI no support because they were granted after Ameren Transco had already been recognized by the Commission as a public utility. (ComEd RB at 8-9; ComEd draft order at 7)

ComEd also cautions that empowering private speculators with eminent domain authority will enable RI to threaten Illinois landowners with condemnation in the event that negotiations come to an impasse. (ComEd draft order at 7; see also ComEd IB at 13)

IAA

Section III of IAA's initial and reply brief is titled, "As a non-utility, Rock Island is not eligible for a certificate to transact business in Illinois pursuant to § 8-406(a) of the PUA." (IAA IB at 6; RB at 2)

According to IAA, "§ 8-406(a) does not allow the Commission to issue a certificate to a petitioner deeming it a "public utility," but rather allows the Commission to issue a certificate to a "public utility" allowing it to transact business in Illinois." (IAA IB at 6)

IAA further argues, "Since only a 'public utility' can be granted a certificate under § 8-406, the same arguments of the Motions to Dismiss have application in this Initial Brief as a preliminary legal issue on whether or not to issue a certificate to transact business and a Certificate of Need and Public Convenience ("CPCN") to Rock Island." IAA adds, "As such, the Farm Bureau fully restates and adopts its arguments and that of the ILA of each party's Motion to Dismiss and Replies, dated March 7, 2013, as if fully restated herein." (IAA IB at 6)

IAA concludes, "Plainly put, the Commission must first find that Rock Island is a public utility before it can grant any of the relief requested in Rock Island's Verified Petition, including allowing it to transact business in Illinois. As detailed herein, the Commission cannot arrive at this conclusion. Rock Island is not a 'public utility' as defined in § 3-105(a) of the PUA and is therefore not eligible for a certificate to transact business in Illinois as a public utility." (IAA IB at 8)

ILA

In ILA's view, "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." (ILA IB at 14)

ILA further argues, "In addition, the public convenience and necessity do not require Rock Island to conduct the business it proposes to conduct." The Commission may issue a CPCN only if it finds that the proposed service is necessary for public convenience and necessity. (*Id.*, citing, e.g., *New Landing Utility v. Illinois Commerce*

Comm'n, 58 Ill.App. 868, 374 N.E.2d 6 (2d Dist. 1977)) ILA concludes, "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." (*Id.* at 14-15)

Environmental Intervenors

Environmental Intervenors did not address the Section 8-406(a) issue in their initial brief. In their reply brief, they state that the FERC Order "prohibits RICL from privileging one citizen over another." (EI RB at 2)

They also argue that while it might be impracticable for Rock Island to expand the capacity of the Project should demand outstrip capacity, the Commission should not understand this limitation as a restriction on public use. Physical limitations do not reduce Rock Island's ability to extend access to all persons upon the same terms, which the Illinois courts have held is the basis upon which the Commission should determine whether or not a project is for the public use. (EI RB at 3, citing *State Public Utilities Commission ex rel. Macon County Telephone Co. v. Bethany Mut. Telephone Ass'n*, 110 N.E. 334, 335-36 (1915)) In Environmental Intervenors' view, the Commission, should reject Staff's argument that the Project does not constitute a public use because Rock Island is unable to guarantee its ability to expand the capacity of the Project should the Project become oversubscribed. (*Id.*)

C. Commission Conclusion

In the conclusion in its initial brief, Staff stated that it "has concerns with any finding that Rock Island would be an Illinois 'public utility'..." In its reply brief, Staff concludes that "the transmission service that Rock Island plans to provide on its transmission line does not meet the public use standard under Section 3-105 of the PUA."

Staff asserts that three-fourths of the capacity of the proposed project is intended to be pre-subscribed for private contracts to a limited number of pre-selected customers; that "only" 25 percent is assured of being available through open auction; and that Rock Island has not provided any evidence that it would be willing and able to expand the capacity of the project at issue to provide service to eligible customers if and when it becomes oversubscribed.

The Commission observes that Staff's brief also provided an informative explanation of the Rock Island proceeding and decision at the FERC, 139 FERC ¶ 61,142, and another relevant proceeding before the FERC, 142 FERC ¶ 61,038, as summarized above.

ComEd contends that "RI has not proven that it will offer or provide service to the Illinois public."

Among other things, ComEd argues that an entity does not become a transmission owner's transmission customer simply because the power that they consume or resell has previously flowed over the transmission owner's transmission line.

ComEd also states that Rock Island aims to reserve up to 75% of the Project's capacity for contract anchor tenants in the Resource Area, leaving "merely" 25% to serve the Illinois public. ComEd argues that the Illinois Supreme Court in its *Mississippi River* decision has recognized that serving such a limited number of entities in Illinois does not satisfy the "public use" requirement in the Act.

Other arguments by Staff and ComEd, and Rock Island's response to those arguments, are summarized above and will not be repeated in detail here.

ILA and IAA also argue that Rock Island does not qualify as a utility within the meaning of Sections 8-406(a) and 3-105 of the PUA. Their arguments are largely the same as those made in their Motions to Dismiss as addressed above, and will not be further discussed here.

The Commission has reviewed the arguments of the parties. As with most of the issues in this case, an assessment of the "public use" issue is complicated by the many uncertainties associated with the "merchant" nature of the proposed transmission line project.

As indicated above, the FERC approved Rock Island's proposal to pre-subscribe "up to" 75 percent of transmission capacity to anchor customers. 139 FERC ¶ 61,142 at Para 28-30.

The FERC also approved Rock Island's request to sell the remaining 25 percent of the capacity using an open season auction. (*Id.* at Para. 28-30) As explained by Staff, this means that Rock Island would be required to offer its service to all customers in a non-discriminatory manner subject to a regional transmission organization ("RTO") open access transmission tariff ("OATT"). In fact, Staff suggested that the requirement of non-discriminatory open access "could arguably overcome the public use hurdle" since all customers would have an equal right to use the utility on the same terms, as required for public use under Section 3-105 of the Act. (Staff IB at 16)

RI represents that it will comply with this FERC requirement. RI also asserts that potential users of transmission service to the Collins Substation, via the open-access tariff, would include parties seeking transmission capacity for delivery of electricity to northern Illinois. The Commission finds this assertion to be reasonable.

Given the considerations in the two paragraphs immediately above, and subject to the conditions below, the Commission finds that Rock Island's proposal satisfies the public use standard. The Commission wishes to emphasize that this finding does not

reach the question of whether Rock Island has made the showings required by Section 8-406(b)(1), and no presumptions are created with respect thereto.

As noted above, Staff argues that Rock Island has not provided any evidence that it would be willing and able to expand the capacity of the project at issue to provide service to eligible customers if and when it becomes oversubscribed. Staff cites the FERC Order, which states, "Rock Island asserts that it would be unable to resize the Project were the solicitation process to reveal market interest in excess of its planned transmission capacity because it would result in delays and additional costs." 139 FERC ¶ 61,142 at Para. 22. Staff also notes that in a subsequent FERC matter, 142 FERC ¶ 61,038, the FERC stated that "Public utility transmission providers are subject to the Commission's OATT transmission requirements, including the obligation to expand their transmission systems, if necessary, to provide transmission service."

On this issue, it is not known whether the FERC will allow Rock Island to implement a tariff that deviates from the above policy pronouncement. If Rock Island is required to file a FERC tariff which complies with that pronouncement, Rock Island will need to obtain approval from the Illinois Commerce Commission before undertaking any such expansion.

VI. SECTION 8-406(b) -- CRITERION (1)

Section 8-406(b) provides in part as follows, "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."

Section 8-406(b) then provides alternative tests for demonstrating the proposed construction will promote the public convenience and necessity. It states, in part:

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....

A. Rock Island Position

1. Promotion of Development of Effectively Competitive Market

Rock Island is developing the Project to connect Illinois and the PJM grid to the outstanding wind resources of northwest Iowa and nearby areas in South Dakota, Nebraska and Minnesota. According to Rock Island, the transmission line will enable

over 4,000 MW of high capacity factor wind farms to be constructed in the Resource Area and will deliver their output of low cost renewable energy to northeast Illinois. Without the Project, Rock Island contends, these new wind generation plants will not be built, due to the limitations of the existing transmission grid to bring their output to load and population centers. The Project will provide access to renewable energy resources needed to meet Illinois' and other states' RPS requirements in a cost-effective manner. Rock Island states that the Project will increase the supply of zero marginal cost renewable energy to Illinois and PJM, which will increase generator competition and exert downward pressure on wholesale energy prices and REC prices, and therefore ultimately on retail electricity prices and RPS compliance costs. (RI IB at 34, citing RI Exs. 1.0 at 13, 25-29; 10.0 at 3-4; 10.14 Rev. at 37-38; 4.0 Revised at 31, 37-39)

According to Rock Island, the U.S. Department of Energy's National Renewable Energy Laboratory ("NREL") estimates that Iowa, Nebraska and South Dakota have the potential for over 1.8 million MW of wind generation capacity in areas with sufficient wind speeds to support gross capacity factors greater than 40%, but as of June 30, 2012, there was less than 5,700 MW of installed wind generation capacity in these states. Rock Island estimates that within O'Brien County, Iowa, where the Project's western converter station will be located, and the eight surrounding counties, there is at least 45,000 MW of high quality wind generation potential, i.e., in areas with wind speeds that could produce net capacity factors of at least 40%. RICL asserts that higher capacity factor wind generation facilities result in lower-cost wind energy because the capital costs of the wind generation facilities can be recovered over more MWhs of output. The higher average wind speeds in the Resource Area allow the construction of higher capacity factor, lower-cost wind generation facilities than is possible in Illinois and other nearby states. (*Id.* at 34-35, citing RI Exs. 10.0 at 4-6, 7-9; 10.2; 10.14 Rev. at 41; 10.26 at 29)

Rock Island is in discussions with 18 different wind generation developers that are in various stages of development activities in O'Brien County and the surrounding region. According to Rock Island, public records show that these developers control almost 100,000 acres of land in the area on which wind generation projects could be built. (RI IB at 35-36, citing RI Ex. 10.0 at 11)

Rock Island contends that, based on the data on wind generation development potential and developer activity in the Resource Area, the amount of available wind resources is not a constraining factor on the number of wind energy projects that can be built there; rather, the key constraints are transmission infrastructure and access to markets. Without transmission paths to load centers and buyers of renewable energy, additional wind projects in the Resource Area will not be developed. Currently, there is a lack of long-distance transmission capacity between the Resource Area and market areas such as northern Illinois. Rock Island asserts that, as illustrated by a comparison of a map showing the windiest areas in the U.S. (RI Ex. 10.1) to a map of the existing high voltage transmission grid in the U.S. (RI Ex. 10.3), transmission capacity needed to bring electricity produced by wind generation facilities in areas with the best wind resources, including the Resource Area, to load and population centers in Illinois and

other eastern states, is limited or non-existent. No transmission lines above 345 kV, and no DC lines of any voltage, currently connect the Resource Area to northern Illinois. (RI IB at 35-36, citing RI Ex. 10.0 at 6-10)

Further, Rock Island asserts, while it is theoretically possible to move power from the Resource Area to northern Illinois using existing 345 kV lines, this would (i) entail substantially higher electric losses as compared to HVDC transmission facilities, (ii) expose the shippers to congestion costs on the AC system that result from transmission constraints, and (iii) require the shipper to pay wheeling charges to both MISO and PJM. (RI IB at 37)

Rock Island witnesses Michael Skelly and David Berry, who are wind generation developers, both testified that developers of wind generation projects will not invest capital in the construction of additional wind generation facilities in areas such as the Resource Area that have the nation's best wind resources, without reasonable assurances of adequate transmission capacity and infrastructure to deliver the output to load and population centers such as the northern Illinois markets. (RI IB at 37-38, citing RI Exs. 1.0 at 24-25; 10.0 at 11)

Renewables

According to Rock Island, the demand for electricity from renewable resources in Illinois and PJM states will be high in the coming years due to state RPS requirements; a growing interest, above and beyond specific RPS mandates, in meeting demand for electricity using renewable resources; the need to replace the energy generated by fossil-fueled plants that will be retiring due to age, environmental requirements and economic issues; and the fact that high-capacity factor wind energy has become cost competitive with other power sources. Illinois' statutory RPS requirement for ComEd and Ameren Illinois to supply their "eligible retail customers" increases from 2% in 2008 to 25% by June 1, 2025. These RPS requirements also apply to ARES with respect to the retail load they serve, although ARES are currently required to meet 50%, and allowed to meet up to 100%, of their RPS obligations by making alternative compliance payments to the Illinois Power Agency ("IPA"), which is to use the payments to procure RECs. Further, at least 75% of the renewable energy that the utilities use, and at least 60% of the renewable energy that ARES use to meet their respective RPS obligations, must come from wind generation. (*Id.* at 38-39, citing RI Ex. 10.0 at 14-16; 20 ILCS 3855/1-75 (c)(3); 220 ILCS 5/16-115D)

Rock Island submits that numerous municipalities have adopted municipal aggregation programs whereby an ARES supplies electricity to customers in the municipality other than those customers who opt out of the program to remain with the utility or enter into separate contracts with other ARES. A number of these municipalities have required the ARES supplying their aggregation programs to obtain a significant portion of its electricity supply from additional renewable resources beyond the RPS requirements, or to offer the retail customers in the program an option to

specify that a stated percentage of the electricity purchased must come from renewable resources above the RPS requirements. (RI Ex. 10.0 at 16-17; RI IB at 39)

According to Rock Island, beyond Illinois, 30 states and the District of Columbia have established renewable energy standards, while another seven states have voluntary renewable energy goals. Within the PJM footprint, eight states (in addition to Illinois) plus the District of Columbia have enacted an RPS. (RI Ex. 10.0 at 17; RI IB at 39) Rock Island estimates that the demand for electricity from renewable resources due to RPS requirements in Illinois and in states in the PJM footprint will be the following amounts (RI Exs. 10.0 at 18; 10.5 at 2; RI IB at 39):

<u>Year</u>	<u>Illinois</u>	<u>States in PJM footprint</u>
2015	13.3 million MWh	82.7 million MWh
2020	24.3 million MWh	131.0 million MWh
2025	36.2 million MWh	165.0 million MWh

Rock Island states that PJM has separately estimated the RPS obligations of load-serving entities in the PJM service territory footprint in 2025 to be 131.5 million MWh. In contrast, Rock Island states, total renewable energy generation in 2011 was about 7.0 million MWh in Illinois and about 27.8 million MWh in the PJM states. (RI Ex. 10.0 at 19; RI IB at 39-40) Thus, Rock Island contends, there is a significant need for additional renewable generation resources to be added between now and 2015 to meet RPS requirements in Illinois and the other PJM states. Rock Island asserts that development of additional wind generation resources, particularly high-capacity factor wind generation in areas with high wind speeds such as the Resource Area, is necessary both to meet the RPS requirements in an absolute sense, and to maintain the prices of electricity from renewable resources and of RECs at reasonable levels in the face of the increasing demand. (RI Ex. 10.0 at 19-20; RI IB at 40)

In several states, RPS obligations can be met by purchasing RECs generated in the subject state or in other states. As a result, REC prices will move up and down across an entire region, not just within a single state, in response to relative changes in supply and demand; there is a substantial correlation in REC prices between states. Thus, Rock Island asserts, Illinois has a significant interest in the availability of adequate renewable resources to meet both Illinois' RPS requirements and those of other states. (RI Ex. 10.0 at 17-21; IB at 40)

Rock Island states that the demand for electricity from renewable resources will be driven by ongoing retirements in the existing U.S. generation fleet due to age and environmental requirements. The U.S. DOE Energy Information Administration projected 50,000 MW of coal plant retirements by 2035 under a "business as usual" scenario and 70,000 MW of retirements by 2035 if there is greenhouse gas regulation. RICL asserts that several retirements of coal-fired plants in Illinois and other Midwest states have recently been announced. (RI Ex. 2.11 Rev. at 15-16; IB at 41) The environmental factors impacting coal-fueled generation will also make construction of new or replacement coal-fueled generation extremely unlikely. As coal plants are

retired, they will need to be replaced by other, cleaner sources of generation, including low cost wind energy, in order to keep prices from increasing and to maintain a secure electric supply. Further, Rock Island states, the difficulty in constructing new coal plants will require suppliers to turn to other sources of generation such as wind energy to replace retired generation and meet load growth. (RI Ex. 10.0 at 22-24; IB at 40-41)

According to RICL, new wind generation facilities, particularly wind generation facilities in the Resource Area, are a cost effective resource to meet the growth in demand for electricity from renewable resources. Power purchase agreements for wind generation in the windiest parts of the country are now routinely signed at prices in or below the \$30 per MWh range, which compares favorably to the DOE's estimate of the cost of electricity from a new combined cycle gas plant of \$66 per MWh, from a new conventional coal plant of \$95 per MWh, and to NREL's estimate of the cost of new utility-scale photovoltaic solar projects at \$90-\$150 per MW. Rock Island submits that the cost advantage for wind generation is due to a decline in wind generation installation costs since 2008, and improvements in wind generation technology, including taller towers, longer turbine blades, advanced materials, and more sophisticated controls, which have increased wind turbine capacity factors (and therefore energy output) by up to 30% at a given wind speed. (RI Ex. 10.0 at 24-25; RI IB at 41) Rock Island claims the higher wind speeds and resulting higher wind turbine capacity factors in the Resource Area as compared to Illinois and other Great Lakes states, enable new wind generation facilities in the Resource Area to produce electricity at a lower cost per MWh. (RI Ex. 10.0 at 7-8; IB at 41-42)

Effect on Electricity Prices

Rock Island witness Gary Moland conducted and presented analyses to measure the impacts of the operation of the Rock Island Project and the generation that will use the Project to deliver electricity to northern Illinois. Using the PROMOD production cost analysis model, which RICL describes as a widely-accepted modeling tool in the electric utility industry, Mr. Moland estimated (i) wholesale electricity prices (also known as locational marginal prices or "LMPs") and demand cost to serve load in Illinois; (ii) variable production costs to serve load in the eastern U.S.; and (iii) the amounts of various types of emissions, in the years 2016 and 2020, both with and without the Rock Island Project in operation, under four different future economic and regulatory scenarios. (RICL IB at 42)

Rock Island states that LMPs, which are calculated by PJM and MISO, represent the incremental cost of energy at a specific electrical bus or collection of busses on the transmission grid at a given point in time, and are used to determine the cost to buy and sell energy on the market. LMPs include (i) the cost of the next increment of energy needed to meet system-wide demand; (ii) the cost of transmission congestion impacts on a specific bus location; and (iii) the cost of electrical losses associated with a specific bus location. "Demand cost" is the hourly electrical demand at each bus multiplied by the hourly LMP at that bus summed over all buses for all hours, and represents the total cost to purchase energy to supply total annual demand in Illinois under RTO settlement

rules. Variable production cost is the total variable cost of generation to meet annual electricity demand including fuel, emissions, variable operation and maintenance, and unit start-up costs. (RICL Ex. 3.0 at 5, 9; IB at 42)

The four future economic scenarios used by Mr. Moland for his analyses were referred to as "Business as Usual," "Slow Growth," "Robust Economy," and "Green Economy." By comparing the scenario without the Project to a scenario with the Project and keeping all other model assumptions the same, Mr. Moland calculated the Project's impact on LMPs, demand costs, variable production costs and emissions levels resulting from construction and operation of the Project. (RI Ex. 3.0 at 3-5, 9; RI IB at 43)

According to Rock Island, the analyses show that: (1) The Project reduces demand costs in Illinois, (the total cost to purchase energy to supply total annual electric demand in Illinois) by \$249 million (Slow Growth scenario) to \$493 million (Green Economy scenario) in 2016; the reduction is \$320 million in the Business as Usual scenario. (RI Ex. 3.3 at 1; RI IB at 44); (2) The Project reduces demand costs in Illinois by \$93 million (Green Economy scenario) to \$289 million (Robust Economy scenario) in 2020; the reduction is \$242 million in the Business as Usual scenario. (RI Ex. 3.3 at 1; RI IB at 44); (3) The Project reduces the average LMPs in both the PJM Illinois region and the MISO Illinois region in both 2016 and 2020 under all four scenarios. (RI Ex. 3.3 at 2; RI IB at 44); (4) The Project reduces variable production costs in the eastern U.S. by \$389 million (Slow Growth scenario) to \$1,098 million (Green Economy scenario) in 2016; the reduction is \$490 million under the Business as Usual scenario. (RI Ex. 3.3 at 3; RI IB at 44); and (5) The Project reduces variable production costs in the eastern U.S. by \$423 million (Slow Growth scenario) to \$1,060 million (Green Economy scenario) in 2020; the reduction is \$616 million under the Business as Usual scenario. (RI Ex. 3.3 at 3; RI IB at 44)

Rock Island states that the demand cost savings resulting from operation of the Project include significant savings to customers due to reduced transmission congestion costs. Congestion costs represent the difference in marginal electricity prices between different nodes on the transmission system (RI Ex. 3.5 at 2; RI IB at 44); they are the portion of LMPs attributable to overall transmission constraints. Rock Island contends that the demand cost savings in Illinois for 2016 include savings from reduced congestion ranging from \$158 million (Slow Growth scenario) to \$328 million (Robust Economy scenario). (RI Ex. 3.5 at 3; RI IB at 44) For 2020, the Project reduces congestion costs by \$100 million in the Slow Growth scenario, by \$111 million in the Business as Usual scenario, and by \$126 million in the Robust Economy scenario. (RI Ex. 3.5 at 3; RI IB at 44)

Rock Island claims the overall results of Mr. Moland's analyses, that the introduction of new renewable generation resources into the Illinois and PJM wholesale electricity markets made possible by the Project will reduce the costs of electricity in the wholesale market used to serve retail load in Illinois, are consistent with findings of the Illinois Power Agency ("IPA"). The IPA reported in its 2011 report on the costs and

benefits of renewable resource procurement in Illinois that renewable generation lowered the total load payment for generation in Illinois for 2011 by \$176 million. (RI Ex. 4.0 Rev. at 6; RI IB at 4)

Rock Island Karl McDermott used Mr. Moland's results and other information to evaluate whether construction and operation of the Project will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers. Dr. McDermott testified that if a transmission project is promoting competition in the PJM market, there should be downward pressure on prices, which will be manifested as lower average wholesale electricity prices, in Illinois. (RI Ex. 4.0 Rev. at 7; RI IB at 45) He concluded that the Project will allow lower cost generation to enter the Illinois market, which will create competitive downward pressure on prices in the wholesale electricity market. He testified that the additional transmission capacity provided by the Project will promote an effectively competitive electricity market by increasing the size of the supply side of the market competing to serve load in Illinois and by opening the Illinois market to lower cost generation resources. Dr. McDermott further stated that the projected downward pressure on electricity prices is a strong indication of a market operating efficiently, and is expected to benefit customers directly through lower prices for electricity. He also testified that the high value renewable resources which the Project will enable to access the Illinois market should have the effect of providing competitive pressures on prices in markets for RECs as well as for renewable energy. (RI Ex. 4.0 Rev. at 2-4; RI IB at 45-46)

Dr. McDermott testified that for ComEd and Ameren retail customers who buy power through the real-time or close to real-time wholesale markets, any reduction in wholesale electricity prices will provide a direct benefit. According to the witness, for those customers who buy electricity from ComEd or Ameren through the IPA-administered procurement process, the benefits to retail customers will manifest through the daily balancing process the utilities undertake, and will subsequently reduce the purchased energy adjustment in the long term as contracts of more recent vintage are added to the supply portfolio. Similarly, for other customers who buy electricity under contracts (e.g., with ARES), the benefits will manifest as new contracts are added to the portfolio. (RI Ex. 4.0 Rev. at 8; RI IB at 46)

Using Mr. Moland's results, Dr. McDermott calculated the net present value ("NPV") of the reduction in demand costs in Illinois resulting from construction and operation of the Project and the associated wind generation over the 2016-2020 period under each of the four scenarios. He said the NPV reduction in the costs to serve load in Illinois over this period range from \$667 million to \$1,221 million (in 2013 dollars), depending on the scenario analyzed. (RI Ex. 4.0 Rev. at 20-24; RI IB at 46) He assumed all the reductions in costs resulting from the Project would be passed through to retail customers and reflected in the cost to load. Dr. McDermott stated that if the NPV of costs is lower in the scenario with a proposed project than in the scenario without the project, the project is beneficial. (RI Ex. 4.0 Rev. at 21; RI IB at 46-47) He testified that the reduction in total cost to serve load in Illinois with the Rock Island Project ranges from 2.4% (Green Economy scenario) to 5.2% (Slow Growth scenario),

and that there are NPV cost reductions in both the PJM and MISO regions of Illinois under all four scenarios. Additionally, Dr. McDermott calculated the NPV reductions in cost to load for alternative periods ending in 2018 and 2021. He stated that the smallest NPV benefits under any of the scenarios for any period analyzed exceeded \$300 million; therefore, the choice of the analysis period did not change the overall conclusions of his analysis. (RI Ex. 4.0 Rev. at 30; RI IB at 47)

Dr. McDermott also analyzed the potential benefits of the Project on the market for RECs in Illinois. He said the differential wind speeds between Illinois and the Resource Area suggest that wind generation served by the Project will have higher capacity factors, and therefore lower per MWh costs, than similar wind resources sited in Illinois. (RI Ex. 4.0 Rev. at 31; RI IB at 47) To the extent RECs produced by the wind generation connected to the Project enter the Illinois energy portfolio, either through the IPA procurement process or non-IPA purchases, there will be competitive pressures on REC prices that will benefit Illinois consumers. (RI Ex. 4.0 Rev. at 6; RI IB at 47) Further, the REC market is not limited to Illinois but is more regional in nature, due to the ability to use RECs produced by generators in one state to meet compliance obligations in another state. (RI Ex. 4.0 Rev. at 14-16; RI IB at 47) The REC market in the Eastern Interconnection is larger than in Illinois, and by providing access to tradable (i.e. standalone) RECs and bundled (i.e. with the associated energy) RECs, the Project should have a positive effect on the entire regional REC market. (RI Ex. 4.0 Rev. at 6; RI IB at 47)

As a further analysis, Dr. McDermott analyzed the impact of the Project on the amount of generation capacity competing to serve the Illinois wholesale electricity market. He stated that, based on the year and the future scenario considered, the quantity of capacity competing to serve load in Illinois will increase as a result of the Project by up to 2.9% of total economic capacity. (RI Ex. 4.0 Rev. at 34-35; RI IB at 48) "Total economic capacity" was defined as the generation supply that can be delivered into a destination market at a delivered cost less than 105% of the price in the destination market, and can therefore compete to supply load in the destination market, and whose ability to do so contributes to competition in the destination market. This construct and definition are used in the Delivered Price Test in the FERC's Merger Policy Statement, which is a recognized standard for measuring the relevant size of the electricity markets for competitive analysis. (RI Ex. 4.0 Rev. at 17-18; RI IB at 48)

As part of his economic capacity analysis, Dr. McDermott analyzed how the size of the REC markets (i.e., the amounts of capacity to produce RECs ("REC capacity") and volume of RECs produced ("REC energy")) would be impacted by the Project. Using the two study years 2016 and 2020, he concluded that: (1) in 2016, the Project would provide for an increase of 18% to 28% of REC capacity and an increase of 18% to 30% of REC energy in Illinois and adjoining states; (2) in 2016, the Project would provide for an increase of 5% to 9% of REC capacity and an increase of 5% to 8% of REC energy in the Eastern Interconnection; (3) in 2020, the Project would provide for an increase of 10% to 27% of REC capacity and an increase of 10% to 28% of REC energy in Illinois and adjoining states; and (4) in 2020, the Project would provide for an

increase of 3% to 7% of REC capacity and an increase of 3% to 6% of REC energy in the Eastern Interconnection. (RI Ex. 4.0 Rev. at 36-39; RI IB at 49)

Wind Generators as Customers

FERC, in its order granting Rock Island negotiated rate authority for the Rock Island Project, directed that Rock Island (1) cannot limit transmission service on the Project to electricity delivered from any specific source, and (2) cannot give preference to any particular type(s) of resources over other resources that seek to contract for capacity; therefore, Rock Island must offer all eligible customers, on a non-discriminatory basis, the opportunity to purchase transmission service on the Project. (RI Ex. 10.13 at 6; RI IB at 49) Nevertheless, Rock Island contends that that all of the generators connecting to the Project in the Resource Area will be wind generation facilities given the plentiful wind resource in the Resource Area; the cost advantage of wind generation in the Resource Area versus northern and central Illinois; the lack of such a cost advantage for any other generation besides wind in the Resource Area; the high level of activity of wind generation developers, and the low level of activity of developers of other types of plants, in the Resource Area; and prior analyses by RTOs which have made reasoned and defensible assumptions about the location of new wind generation in analyzing the benefits of proposed new transmission projects. (RI Ex. 10.14 Rev. at 39-40; RI IB at 50)

According to RICL, at least 18 wind generation developers are already active in the Resource Area. (RI Ex. 10.14 Rev. at 41; RI Ex. 10.19 Rev.; RI IB at 50) In contrast, RICL has found no evidence of any thermal generation under active development, with the exception of one existing coal plant which may be converted to natural gas. (RI Ex. 10.14 Rev. at 42; RI IB at 50) During 2013, MidAmerican Energy announced the retirement of five coal plants in Iowa, and Interstate Power & Light announced the retirement of several coal units in Iowa. (RI Ex. 10.14 Rev. at 44) Further, no new nuclear plant construction is planned for the Resource Area. Nor is Rock Island aware of any plans by owners of existing thermal generation in the Resource Area to connect to the Project for purposes of exporting their power to northern Illinois and/or PJM. (*Id.* at 42, 43; RI IB at 50-51) Rock Island asserts that other parties provided no evidence that any other kind of power plant is under development in the Resource Area or would be likely to connect to or subscribe for transmission service on the Rock Island Project. (RI Ex. 10.14 Rev. at 42; RI IB at 51)

Rock Island also contends that new wind generation facilities located in the Resource Area have a geographic advantage compared to locating in northern Illinois; whereas, new thermal (natural gas) generation facilities have no such advantage. Wind speeds are higher in the Resource Area than in Illinois and other locations to the east, resulting in higher capacity factors and lower costs to generate wind energy in the Resource Area. The cost to construct wind farms is lower in the Resource Area, and larger wind farms are possible than in locations farther east, due to lower population density and the higher prevalence of windy sites in the Resource Area, resulting in economies of scale in construction and lower unit costs in the Resource Area.

Additionally, Rock Island states that the times and amounts of wind power production in the Resource Area are statistically uncorrelated with the times and amounts of wind power production in northern Illinois; this reduces the overall variability of wind power and increases the economic advantage of locating wind generation in the Resource Area. (RICL Ex. 10.14 Rev. at 42-43; IB at 51)

Rock Island states that in contrast, average natural gas prices have been higher in Iowa than in Illinois, making it more expensive to burn natural gas to generate electricity in northwest Iowa than to do so in northern Illinois. Therefore, Rock Island contends, there is no economic reason for a natural gas plant developer to build new gas-fueled generation in northwest Iowa, subscribe for transmission capacity on the Project, and deliver the output of the new gas-fueled generation to northern Illinois, rather than locate the new gas plant in northern Illinois, much closer to the target load. Rock Island also contends that construction of a large amount of new gas-fueled generation in northwest Iowa would require a major investment in natural gas pipeline infrastructure in the area. (RI Ex. 10.14 Rev. at 43; RI Ex. 10.20; RI IB at 51-52)

Rock Island asserts that it is common practice to make assumptions about the location of new generation in studying the benefits of proposed transmission lines. RICL states that MISO, in performing its cost-benefit studies for the MISO MVP lines, made assumptions about the locations of new wind generation based on where the lowest-cost generation could be sited, and did not include in its assumptions only wind generators with signed contracts or interconnection agreements. MISO used similar third-party data sources to those used by Rock Island to identify locations where wind generation is likely to be developed. (RI Ex. 10.14 Rev. at 45-46; RI IB at 52) According to Rock Island, other transmission planning organizations, including the Southwest Power Pool, California Independent System Operator, and Electric Reliability Council of Texas, have performed similar analyses to measure the benefits of proposed transmission lines, using, as has Rock Island, "reasoned, defensible assumptions" about the location of new wind generation. (RI Exs. 10.14 Rev. at 46; 10.23; RI IB at 52)

To address the contentions of other parties that a significant portion of the generation connecting to the Project could be generation sources other than wind, Rock Island performed an alternative economic benefits analysis assuming that 50% of the generation connected to the Project is combined cycle gas generation. According to Rock Island, this alternative analysis showed that the Project would provide economic benefits for Illinois consumers even if the connected generation mix were 50% natural gas and 50% wind generation. (RI Ex. 10.14 Rev. at 45; RI IB at 52-53) Under this assumption, the Project purportedly reduces LMPs in both the PJM and MISO regions of Illinois in both 2016 and 2020; reduces demand costs to serve load in Illinois by \$259 million to \$279 million in 2016 and by \$211 million to \$223 million in 2020; and reduces variable production costs in the Eastern United States by \$274 million to \$279 million in 2016 and by \$281 million to \$331 million in 2020. (RI Exs. 3.5 at 1-2; 3.6 at 1-3; RI IB at 52)

Response to Staff Analysis

Rock Island states that Staff witness Richard Zuraski presented economic analyses of the Project that found it will be a lower cost alternative for consumers than other options. (RI IB at 53, citing Staff Ex. 3.0 at 16-43) Rock Island witness David Berry performed further economic analyses of the Project using Mr. Zuraski's financial model, but with various changes or additions to data inputs, assumptions and parameters. (RI Exs. 10.14 Rev. at 49-54; 10.24; 10.26 at 37-41; 10.29; RI IB at 53) Rock Island states that no other parties presented any alternative forms of economic analysis of the Project or any additional alternative versions of either the Moland-McDermott analysis or Staff's economic analysis. (RI IB at 53)

According to RICL, the principal difference between the analyses performed by Mr. Moland and Dr. McDermott and the analyses performed using the Staff methodology is that the Moland-McDermott analysis measured the reduction in costs to serve load resulting from construction and operation of the Project and the associated wind farms, while the Staff methodology explicitly took into account both the costs to construct and operate the Project and the associated wind farms and the energy cost reductions they produce, and compared these costs to the costs of certain alternatives. Rock Island asserts that Mr. Moland's and Dr. McDermott's analyses analyzed how the construction and operation of the Project reduces wholesale electricity prices and therefore reduces electricity prices paid by consumers, while the Staff methodology is a traditional revenue requirements analysis comparing the net present value of future revenue requirements ("PVR") of the Project and alternatives. (RI IB at 54)

In RICL's view, the Moland-McDermott methodology is the more appropriate form of analysis given that the Project is a merchant project, and Rock Island is not asking Illinois retail ratepayers to pay for the cost of the Project. Mr. Moland and Dr. McDermott found that the market clearing prices that would be paid to generators by load serving entities on behalf of their customers are less with the Project than without it; therefore, the Project creates net consumer benefits. Rock Island contends that this analytical approach is reflective of the way consumers or the load-serving entities that supply them actually buy electricity in PJM and MISO. In a deregulated, competitive electricity market, buyers of wholesale electricity do not directly reimburse generators or other market participants for their inputs, but rather pay them the market clearing price set by the grid operator. Therefore, RICL contends, it is neither necessary nor appropriate to treat consumers as paying generators both for their output (electric energy) and for their inputs into production of the output; to include both sets of costs would be to double-count. Rock Island states that, for generators or other market participants who sell into the PJM and MISO markets, transmission service is an input cost, along with fuel costs, capital costs, and operations and maintenance. The Project's transmission customers will need to recover the costs they incur for transmission service on the Project from the proceeds they receive from selling wholesale energy, capacity and RECs in the PJM and MISO markets. (RI Ex. 10.14 Rev. at 47-48; RI IB at 54-55)

Rock Island states that the Staff methodology, in contrast, which explicitly includes the capital and operating costs of the project being evaluated, would be more appropriate for use in a situation in which a utility is proposing to build a project and directly recover the costs from consumers, such as for a traditional rate-based transmission line being built by an incumbent utility. In such a case, the costs of the project are not recovered solely from market participants, for whom the cost of service from the project is an input cost, but rather from the entire base of electric ratepayers. (RI Ex. 10.14 Rev. at 48; RI IB at 55)

Rock Island contends that a competitive market analysis -- which is called for by the "promote the development of an effectively competitive electricity market" criterion of §8-406(b)) -- should look at the difference between market outcomes under various assumptions with the proposed project or without it, which is the approach Dr. McDermott used. (RI IB at 55-56)

Rock Island contends that both the Moland and McDermott analyses, and the analyses using the Staff methodology, show that the Project will yield economic benefits to consumers in terms of reduced electricity costs. (RI IB at 53) Rock Island states that the analysis presented by Staff witness Mr. Zuraski did two things. First, it evaluated whether there is a net economic benefit of building the Project compared to building nothing and purchasing energy from the market. The comparison was performed for a number of scenarios using different values for important variables. Rock Island claims this set of analyses concluded that the Project likely creates a net benefit compared to the status quo; that is, in the majority of the scenarios analyzed, the Project is a lower cost alternative compared to market energy purchases. Mr. Zuraski noted that there is considerable uncertainty associated with this conclusion since in some assumption scenarios, market purchases are the lower-cost alternative. Rock Island submits that the expectation of net economic benefits is stronger when considering the LMP savings throughout PJM and MISO, rather than just the LMP savings in Illinois. (RI IB at 56, citing Staff Ex. 3.0 at 29-33 and RI Ex. 10.14 Rev. at 49) Rock Island states that Mr. Zuraski testified, "From my perspective, it would be perfectly reasonable for the Commission to take into account LMP savings throughout PJM and MISO," rather than just the LMP savings produced by the Project in Illinois. (*Id.*, citing Staff Ex. 3.0 at 22-23)

RICL also states that Mr. Zuraski used his model to compare (a) the cost of generating wind energy in the Resource Area and transmitting it to northern Illinois via the Project to (b) the cost of generating wind energy through the construction of additional wind farms in Illinois that would produce the same amount of energy, and concluded that in a majority of his scenarios, option (a) is more cost effective than option (b). (RI IB at 56-57, citing Staff Ex. 3.0 at 39-42 and RI Ex. 10.14 Rev. at 49)

Rock Island witness Mr. Berry conducted a number of additional analyses using the Staff model but with different values for certain variables than those used by Mr. Zuraski. (RICL IB at 57-58) Specifically, Mr. Berry varied a number of assumptions, the first being years of LMP savings where Mr. Zuraski used only five years of LMP savings in his analyses. Although this was the same time period used by RICL witness Moland

and McDermott, their methodology was fundamentally different from Mr. Zuraski's and included an assumption as to when market prices would return to a long-term equilibrium following the commencement of the Project's operation. Mr. Zuraski's analysis, in contrast, is a PVRR comparison of alternatives and includes the full, (depreciable) lifetime costs of the Project. Therefore, RICL argues, it should include the LMP savings over the full depreciable life of the Project. (RI Ex. 10.14 Rev. at 50) The second assumption was treatment of transmission charges. Mr. Zuraski treated Rock Island's transmission charges as paid by retail customers. Instead, RICL argues, they should be modeled as paid for by the transmission customers of the Project that are using it to transport wind energy from the Resource Area to northern Illinois. In the revenue requirements analysis, the principal consequence of this treatment is that the transmission charges are a tax-deductible expense for the transmission customers of the Project. (*Id.* at 50-51)

The third assumption was transmission system upgrades for Illinois wind generation. In his "Illinois Wind" scenario, Mr. Zuraski did not include the costs of transmission facilities needed to connect the new Illinois wind generation facilities to the existing transmission grid, although he included such costs for the new Iowa wind farms in the "Rock Island Project + Iowa Wind" scenario. (*Id.* at 51-52; RI Ex. 10.26 at 28) The fourth was capacity value of wind generation; Mr. Zuraski used a 2013-2014 MISO Capacity Resource Factor for the Iowa wind farms in his "Rock Island Project + Iowa Wind" scenario. Since the Iowa wind farms connected to the Project will deliver their output into PJM, RICL claims he should have used a capacity resource value calculated using PJM's approach. (RICL IB at 58; RI Ex. 10.14 Rev. at 52)

The fifth was wind farm costs. Mr. Berry updated Mr. Zuraski's input assumptions to use more current estimates of the costs for new wind generating projects in the regions that include Iowa and Illinois, respectively, based on Lawrence Berkeley National Laboratory's 2012 Wind Technologies Market Report which in turn is based on information from projects built in 2011 and 2012. The sixth was other taxation changes – Mr. Berry made four other minor tax refinements to Mr. Zuraski's model, including conforming the treatment of Illinois and Iowa property taxes and exemptions to the respective state's laws. (RI IB at 57-58)

According to Rock Island, when the changes in assumptions described above are implemented into the Staff model, the model shows the Project is "overwhelmingly beneficial" compared to the alternative of no new construction, in which consumers purchase energy from the existing market. Rock Island states that this result is consistent in every case modeled, with an average consumer benefit under Mr. Zuraski's "Model A" of \$16.3 billion and an average consumer benefit under Mr. Zuraski's "Model B" of \$17.9 billion, in both cases using a 5% real discount rate. (RI IB at 58-59, citing RI Exs. 10.14 Rev. at 53 and 10.24)

Rock Island claims that the "revised analyses" also showed that, compared to building new wind generation in Illinois, the Rock Island Project is the more economic choice, i.e., it has a lower revenue requirement. Rock Island states that, under Mr. Zuraski's "Model A," the Project has the lower revenue requirement in the "base case"

as well as in 88% to 93% of the sensitivity cases, depending on the discount rate used. Under Mr. Zuraski's "Model B," the Project results in a lower revenue requirement compared to the "Illinois Wind" scenario in the "base case" as well as in 87% to 96% of the sensitivity cases, depending on the discount rate used. (*Id.*, citing RI Exs. 10.14 Rev. at 54 and 10.24)

In surrebuttal testimony, Mr. Berry reported the results of additional sensitivity analyses using the Staff model and (1) only five years of LMP savings (the same period as originally used by Mr. Zuraski), and (2) the current Project cost estimate of \$1.833 billion. He stated that the Project remains beneficial compared to the alternative of no new transmission or generation construction, in which consumers purchase energy from the market. (RI IB at 59, citing RI Ex. 10.26 at 37-39)

According to RICL, using a 5% real consumer discount rate used by Mr. Zuraski, the average consumer benefit is \$16.5 billion under "Model A" and \$18.1 billion under "Model B." (*Id.*, citing RI Ex. 10.26 at 39; RI Ex. 10.29) With only five years of LMP savings assumed, and using a 5% real consumer discount rate, the Project remains economically beneficial; the average consumer benefit in this sensitivity is \$6.9 billion under "Model A" and \$8.6 billion under "Model B." (*Id.* at 59-60, citing RI Exs. 10.26 at 39-40; Ex. 10.29) Additionally, when compared to the alternative of building a comparable amount of new wind generation in Illinois, the Project continues to have the lower revenue requirement with the updated assumptions including the current Project capital cost estimate. Rock Island states that under the Staff "Model A," the "Rock Island Project + Iowa Wind" scenario has the lower revenue requirement in the "base case" and in 93% to 97% of the sensitivity cases, depending on the discount rate used. Under the Staff "Model B," the "Rock Island Project + Iowa Wind" alternative results in a lower revenue requirement than the "Illinois Wind" scenario in the "base case" and in 93% to 99% of the sensitivity cases, depending on the discount rate used. (*Id.* at 60; RI Ex. 10.26 at 40)

2. Necessary to Provide Adequate, Reliable and Efficient Service

Rock Island claims the record supports a finding that the Project is necessary to provide adequate, reliable, and efficient service to customers. (RI IB at 61; draft order at 88)

Rock Island witness Leonard Januzik of Quanta Technology, L.L.C. ("Quanta") presented analyses of the impacts on the reliability and adequacy of electric service in northern Illinois and the State of Illinois resulting from installation of the Project and the wind generating facilities to be located in the Resource Area whose output will be delivered to Illinois by the Project. Quanta performed two types of studies: (1) Loss of Load Expectation ("LOLE") study -- a probabilistic analysis that is used to determine the likelihood of not being able to serve the total electrical demand of a given system during the year (RICL Ex. 6.0 at 5); and (2) transfer capability study -- a deterministic analysis to evaluate the amount of additional power that can be transported into an area as a result of transmission system configuration changes, such as the installation of the Project. (*Id.* at 4-5; RI IB at 61) Rock Island states that both of these analyses, and the

methodologies used by Mr. Januzik to conduct them, are generally accepted in the industry as measures of reliability.

According to Rock Island, LOLE studies have been conducted for several decades in the determination of proper capacity reserve levels and are important components of the transmission planning process for the RTOs. Because Illinois is the area of interest in this case, the LOLE and transfer capability studies focused on the impacts to the northern Illinois ("NI") portion of the PJM system and on Illinois as a whole. The NI region of PJM and the MISO region of Illinois are appropriate study regions for purposes of these reliability studies because of the strong internal transmission connections within these regions. (RICL Ex. 6.7 Rev. at 2-5; IB at 61-62)

The LOLE study analyzed whether the Project, by making more generating capacity available in NI, will increase generating reserve margins, and thereby increase reliability, in NI and the entire State of Illinois. (RI Ex. 6.7 Rev. at 2; IB at 62) The LOLE study measured the adequacy of the region's generating capability to reliably serve its demand, measured in terms of how often demand is at risk of exceeding available generating capacity. Mr. Januzik testified that a value of 0.1 day per year (the loss of load on one day in 10 years) has long been viewed by the industry as providing a satisfactory balance between the social costs of outages and the economic costs of unutilized capacity. (RI Ex. 6.0 at 6)

Mr. Januzik conducted LOLE studies using three different scenarios as to the degree of load forecast uncertainty. According to Rock Island, the results of the LOLE study show an increase to the system reserve margins for both the NI region and the State of Illinois as a result of installation of the Project; the system reserve margin required to attain the target LOLE of 0.1 day per year decreases. Correspondingly, there is an order of magnitude decrease in LOLE with the Project as compared to without the Project. Conversely, loads in excess of those currently projected can be supplied by the available generation. Rock Island states that the LOLE study shows that addition of the Project allows service to additional load of approximately 1,100 MW to 1,270 MW in Illinois and approximately 1,300 MW to 1,470 MW in NI, depending on the Load Forecast Uncertainty scenario, while maintaining the target LOLE. (RI Ex. 6.0 at 17; Exs. 6.3-6.4; IB at 63)

A transfer capability study measures the ability to transfer power from one part of the transmission system to another. The transfer capability study performed by Quanta determined the impact of the Project on the ability to transfer power from the MISO RTO and the PJM RTO into NI and into the entire state of Illinois. The transfer capability study determined the First Contingency Incremental Transfer Capability ("FCITC") between a designated point of receipt, or source, to a designated point of delivery, or sink. FCITC is a measure of how much power can be transferred from one portion of the network to another before reaching a point where a transmission facility outage results in an overload of another transmission facility; it measures the increase in transfer capability from the base level to the transfer limit, i.e., the point at which the

network is compromised due to a network element becoming overloaded for the contingent outage of another element. (RI Ex. 6.0 at 12-13)

In terms of the Project's reliability impact, the transfer capability study provides an indication of how much transmission capacity may be available so that the load in the subject region can be supported by external resources -- the greater the increase in FCITC and total transfer capability, the more transmission capability there is to import power into the receiving region should there be a capacity shortfall due to factors, such as capacity outages, that might require power imports to meet demand. In addition, sufficient import capability is required to enable reserve sharing by providing access to external resources and reduce capacity reserve margin requirements. (RI Ex. 6.0 at 14-15; IB at 63-64) In addition to the incremental change in FCITC due to the addition of the Project, the transfer capability study measures the additional amount of import capability made available due to installation of the Project, represented by the increase in transmission capability to serve Illinois load net of the amount of that transmission capacity used by the connected wind generators in the Resource Area to serve summer peak demand. This additional import capability is referred to as the "HVDC Incremental Imports." Rock Island explains that the sum of the FCITC increase and the HVDC Incremental Imports due to installation of the Project equals the total increase in transfer capability due to the Project. (RI Ex. 6.0 at 14; IB at 64)

The transfer capability study purportedly showed that installation of the Project (i) will increase FCITC by about 1,015 MW for imports into NI and by about 1,180 MW for imports into the entire state of Illinois, and (ii) will increase total transfer capability into NI by 1,525 MW and into the entire state of Illinois by 1,690 MW which would exceed the capacity of the largest generating units in the State. (RI Ex. 6.0 at 17-19; IB at 64) Rock Island states that the results of the transfer capability analysis indicate that, for the peak scenario as modeled, there is a significant increase in incremental import capability into both NI and the state of Illinois as a result of installation of the Project. (RI Ex. 6.0 at 18-19; IB at 64-65)

According to Rock Island, the results of the LOLE and transfer capability studies performed by Quanta show that there is a significant increase in the reliability and adequacy of electric service in Illinois and in the northern Illinois region of PJM as a result of installation of the Project and the wind generating facilities that will be connected to it. (RI Ex. 6.0 at 19) Rock Island states that the addition of a new transmission path that did not previously exist for additional energy resources to access customer demand (load) in a region, as the Project will provide, will increase the reserve margin where that demand is located. Rock Island states that even if the area to which the new transmission path is being connected can currently meet its minimum reserve margin requirements, "this does not mean that the addition of the new transmission path is unnecessary, unwarranted or not beneficial in terms of reliability." (RI IB at 65)

Rock Island also contends that the Project is being developed to provide adequate and efficient service to customers by enabling significant new renewable energy resources to be developed in the Resource Area and have their output delivered

to Illinois and the PJM network, and to provide a means for load serving entities within PJM to obtain and provide electricity from renewable resources to their customers. The Project will accomplish this objective using HVDC technology, which is the more efficient technology for transporting large amounts of energy from renewable resources over long distances. (RI Ex. 2.11 Rev. at 5-6; Tr. 707; RI IB at 65) Rock Island claims that dispersing the locations of wind farms reduces the variability of their energy output because the combined energy output of geographically diverse wind farms -- such as those that will interconnect to the Project -- is less variable and has fewer wind integration costs than the output of geographically concentrated wind farms, thereby improving reliability and the efficiency of service. (RI Ex. 10.0 at 4, 25-29; Ex. 10.26 at 25; IB at 65-66)

According to Rock Island, Illinois and other Midwestern states are in an era in which significant existing generating capacity has recently been retired or announced for retirement and additional existing generating capacity is at risk of retirement due to environmental or economic considerations. (RI Ex. 10.0 at 22-24; Ex. 10.14 Rev. at 44; IB at 66) The Project will provide a hedge against additional retirements of existing generating capacity for environmental or economic reasons, including retirements that are unexpected or occur sooner than currently anticipated. (RICL IB at 66)

With regard to the phrase in §8-406(b)(1) of the PUA, "necessary to provide adequate, reliable, and efficient service to its customers," Rock Island states that Illinois courts have held that "necessity" and "necessary" as used in the certificate provisions of the PUA do not mean "indispensably requisite," but rather that the service proposed to be provided is "needful and useful to the public." Rock Island cites decisions including *Eagle Bus Line, Inc. v. ICC*, 3 Ill. 2d 66, 78 (1954); and *Gernand v. ICC*, 286 Ill. App. 3d 934, 945, (4th Dist. 1977).

Rock Island also asserts that the Illinois Supreme Court stated, "When the statute requires a certificate of public convenience and necessity as a prerequisite to the construction or extension of any public utility, the word 'necessity' is not used in its lexicographical sense of 'indispensably required.' If it were, no certificate of public convenience and necessity could ever be granted.... The word connotes different degrees of necessity. It sometimes means indispensable; at others, needful, requisite or conducive. It is relative rather than absolute." *Wabash, Chester & Western R.R. Co. v. ICC*, 309 Ill. 412, 418, 141 N.E. 212, 214-15 (1923). (RI IB at 66-67) Additionally, Rock Island argues that the Illinois courts have long held that what constitutes public convenience and necessity is within the Commission's discretion to determine in each case, thereby permitting consideration of a broad range of factors as applicable to the particular case. Rock Island cites cases, including *Egyptian Transp. Sys. v. Louisville & N. R. Co.*, 321 Ill. 580, 584, (1926); and *Commonwealth Edison Co. v. ICC*, 295 Ill. App. 3d 311, 317 (2d Dist. 1998). (RI IB at 67)

Response to ComEd

Rock Island disputed ComEd's argument that the Project is not necessary to provide adequate, reliable and efficient service to customers. (RICL RB at 90, citing ComEd IB at 30-32) Rock Island asserts that the Project is not intended to prevent the bulk power system from falling below some predetermined standard of reliability, but will provide significant reliability benefits for Illinois. (RI IB at 61-68) RICL contends that new wind generation will not be developed in the Resource Area unless new transmission infrastructure is constructed to provide an outlet for wind generation in the Resource Area to market areas such as northern Illinois and PJM. (*Id.* at 34-38; RB at 90)

Rock Island also disputed ComEd's assertion that the reliability studies Rock Island presented in this case had "serious flaws." (RICL RB at 90, citing ComEd IB at 31) Rock Island states that ComEd is apparently referring to several criticisms by Mr. Naumann of Rock Island witness Mr. Januzik's reliability studies. Rock Island contends that Mr. Naumann's criticisms were largely "quibbles" concerning the geographic areas encompassed by the studies, and that RICL witness Mr. Januzik demonstrated that these criticisms were unfounded.

According to Rock Island, Mr. Januzik showed that: (1) It was reasonable to base the transfer capability and LOLE studies on the Northern Illinois portion of PJM ("NI") and on the State of Illinois as a whole, since for reliability purposes Illinois (not PJM or MISO in their entirety) is the region of interest in this case before the Illinois Commerce Commission and such studies can be conducted for a system or area of any size and location; (2) It is commonplace and long-standing practice in the industry to conduct LOLE analyses for a sub-region of a balancing area such as PJM; further, the analytical methodology of the LOLE study is not dependent on the boundaries of the area studied; (3) The NI area of PJM and the MISO portion of Illinois together comprise a valid study area for LOLE analysis, due to the transmission ties between these areas; (4) A complete outage of both poles of the HVDC transmission line is not an event that is considered in a typical LOLE study; and (5) FCITC is an appropriate metric to use for the transfer capability study as it is a common concept in the U.S. to analyze reliability limitations to transfers of power from a given source to a given sink or multiple sinks; whereas, the alternative metrics suggested by Mr. Naumann are not appropriate for what the transfer capability study is attempting to measure. (RI IB at 91-92, citing RI Ex. 6.7 Rev. at 2-11)

The witness further testified that (6) Because the transfer capability study focuses on the change in incremental transfer capability into the NI region resulting from the addition of the generation resources delivered by the Project and the effect they would have on line loading (i.e., the total amount of power that could flow if required), it was not necessary for the study to consider firm versus non-firm transactions; (7) The assumption used in the transfer capability study that 50% of the power injection of the Project into PJM would displace resources outside the NI region was a conservative assumption; an allocation based on load-weighted, pro-rata sub-regional demands

would have resulted in a higher percentage of the power injected by the Project into PJM going to displace resources outside of NI and shown a larger increase in transfer capability due to the Project; (8) It was not necessary for the transfer capability study to consider the impacts of any potential system upgrades that might be required as the result of the PJM interconnection process; any such upgrades would only further increase the incremental transfer capability into the NI region; and (9) The LOLE study and the transfer capability study are two independent analyses of the reliability impacts of the Rock Island Project and show two separate reliability benefits of the Project to the NI region and to Illinois. (RI RB at 91-92, citing RI Ex. 6.7 Rev. at 11-15)

Response to Staff

Rock Island responded to Staff's statement that Rock Island failed to provide an independent study, such as a load flow study, from PJM or MISO that would demonstrate the need for the Project. (RICL RB at 96, citing Staff IB at 20) Rock Island states that it is unaware of any requirement to present such a study from an RTO in a CPCN case before this Commission (RI Ex. 2.15 at 3), and that Staff cited no basis for such a requirement. Rock Island states that later in its Initial Brief, Staff "concedes" that the fact the Project has not been found by PJM to be necessary for reliability purposes is "not controlling under Illinois law." (RI RB at 96, citing Staff IB at 46) Rock Island reiterates that PJM does not evaluate the need for a merchant transmission line such as the Rock Island Project, but rather only evaluates what is necessary for a reliable interconnection of the Project to the PJM grid. (RI RB at 96)

3. Least Cost

Section IV.A.1.c of RICL's initial brief is titled, "The Project Satisfies the 'Least Cost' Requirement of §8-406(b)(1)." (RICL IB at 68)

In its first "perspective," RICL largely repeats or restates arguments made earlier in its brief as described above.

Second, Rock Island states that the Project will use HVDC technology to bring power from the Resource Area to northern Illinois. Rock Island submits that there is no transmission line from the Resource Area to northern Illinois using AC technology being proposed by any utility or merchant developer (RI Ex. 2.11 Rev. at 2), and no party identified any proposed AC lines, or other proposed HVDC lines, that could be considered to be alternatives to the Project. Rock Island asserts that it is a well-known fact among experienced power systems engineers, and has not been disputed in this case, that the most efficient means to transfer bulk amounts of electric energy over distances greater than approximately 300 miles (particularly energy produced by variable generation resources) is HVDC technology, rather than AC technology. (RI IB at 69-70, citing Exs. 2.11 Rev. at 2-3; 2.0 at 20; and Tr. 707)

Rock Island contends that the cost, reliability and operational benefits of HVDC for this application include: (1) HVDC lines can transfer significantly more power with lower line losses over longer distances than comparable AC lines; (2) HVDC technology

gives the operators direct control of energy flows, which makes HVDC particularly well-suited to manage the injection of variable wind generation; (3) HVDC lines, unlike AC lines, will not become overloaded by unrelated outages, because the amount of power delivered is strictly limited by the DC converters at each end of the HVDC line, thereby reducing the likelihood that outages will propagate from one region to another; (4) HVDC lines utilize narrower ROW and fewer conductors than comparable AC lines, thereby making more efficient use of transmission corridors and minimizing visual and land use impacts; (5) HVDC lines can dampen power oscillations in an AC grid through fast modulation of the AC-to-DC converter stations and thus improve system stability; and (6) HVDC lines complement AC networks without contribution to short circuit current power or additional reactive power requirements. (*Id.* at 70, citing Rock Island Exs. 2.0 at 21-22; 2.11 Rev. at 2-3)

According to Rock Island, over long distances, high-voltage AC ("HVAC") lines require intermediate switching or substations approximately every 200 miles -- to segment the line to handle issues associated with voltage support, transient over-voltages, and transient recovery voltages -- and they exhibit angular and voltage stability limitations, have a higher requirement of reactive power dependent on loading, and have higher charging current requirements at light load. (RI IB at 70-71, citing Ex. 2.0 at 20) With respect to electrical losses, typical aluminum steel reinforced conductors provide greater resistance to AC than to DC; moreover, the large reactive power requirements of long AC lines means that less of the line is used to move real power and the significant reactive power requirements introduce associated reactive losses. (*Id.*, citing RICL Exs. 2.0 at 20 and 2.11 Rev. at 4)

Rock Island presented a comparison of the costs of an HVDC line, including the converter stations, to several AC lines for delivery of 3,500 MW over a distance of 500 miles. The AC alternatives evaluated were several configurations of 345 kV-and-above AC lines. (RI Ex. 2.11 Rev. at 3-4; RI IB at 71) The construction costs and costs of electrical losses for the alternatives analyzed are shown in the following table from Rock Island Ex. 2.11 Rev. at 4:

Solution to Transmit 3,500 MW, 500 miles (Transmission Line + Necessary Equipment)	Cost (\$ billion)	Loss Costs (\$ million)
Five, single circuit 345 kV transmission lines	5.96	876.4
Two, double circuit 345 kV transmission lines plus one, single circuit 345 kV transmission line	5.45	876.4
Two, single circuit 500 kV transmission lines	3.79	784.7
One, double circuit 500 kV transmission line	3.01	784.7
One, single circuit 765 kV transmission line	2.37	584.2
One, +600 kV HVDC bi-pole system	2.15	384.0

Rock Island contends that this analysis demonstrates that the HVDC solution has a substantial capital cost advantage over the AC alternatives and also has substantially lower losses costs than the AC alternatives. Rock Island concludes that its HVDC

solution is the lowest cost alternative for connecting high capacity factor wind generation in the Resource Area to northern Illinois. (RI Ex. 10.26 at 36; RI IB at 71-72)

Third, Rock Island again asserts that as compared to the status quo, the Project is also least cost. (RI IB at 72) Rock Island also states that as a merchant transmission project, it will recover its costs solely from customers who contract for transmission capacity and service on the Project, and is not proposing to recover its costs through cost allocation to load (i.e., to retail customers) within PJM or MISO. (RI Exs. 10.13 at 11; 10.14 Rev. at 28-29, 48; RI IB at 72) Rock Island relies on Dr. McDermott's testimony that the competitive market will determine that the Project is the least cost approach; if it is not the least-cost approach, it will not be built, because if shippers can reach their desired markets using an alternative lower-cost resource, they will not purchase transmission service on the Project. (RI Ex. 4.2 at 10; Tr. 151; RI IB at 72-73)

Also with respect to comparisons to the status quo, Rock Island asserts that while it is theoretically possible to move power from the Resource Area to northern Illinois using existing 345 kV lines, this would (i) entail substantially higher electric losses as compared to HVDC transmission facilities, (ii) expose the shippers to congestion costs on the AC system that result from transmission constraints, and (iii) require the shippers to pay wheeling charges to both MISO and PJM. (RI Ex. 10.0 at 10; RI IB at 73)

Fourth, Rock Island states that with respect to the Project route, which is addressed more fully later in this order, the Preferred Route is the least cost option taking into account both construction cost and other route selection considerations. Rock Island states that the Commission has typically addressed the least cost aspect of §8-406(b) by examining which of the potential routes of a proposed transmission line is the least cost, considering all relevant factors, and that based on this approach, the Commission does not always choose the transmission line route with the lowest construction cost as the least-cost route. (RI Ex. 7.35 at 27; RI IB at 73) Rock Island states that the Preferred Route for the DC Section of the Project has the second-lowest estimated construction cost of the routes studied. In RICL's view, even though the estimated construction cost for the Preferred Route for the DC Section is 0.7% (\$2 million) higher than the construction cost for the Proposed Alternative Route, the Preferred Route is superior based on application of the Routing Criteria used by Rock Island; the overall advantages of the Preferred Route outweigh the very modest cost advantage of the Proposed Alternative Route. (RI IB at 73-74, citing RICL Exs. Ex. 7.0 Rev. at 36; 9.0 Rev. at 9 and 7.30 at 38)

Specifically, RICL asserts, the Preferred Route is shorter, has fewer homes within 200 feet, 500 feet and 1000 feet of the centerline of the route, has fewer other buildings within 100 and 200 feet of the centerline, and affects a smaller number of land parcels and landowners, than does the Proposed Alternative Route. The Preferred Route has no known schools, hospitals or religious facilities within 1,000 feet of the centerline, does not cross any Agricultural Preservation Areas, crosses the fewest number of center pivot irrigation systems, and does not require the placement of transmission structures in wetlands. The Preferred Route also avoids a possible conflict

with an unregistered ultra-light airstrip that would occur with the Proposed Alternative Route. (RI IB at 74, citing RI Exs. 7.0 Rev. at 27-28, 34-35; and 8.2 at 55-63)

With respect to the AC section, RICL states that the Preferred Route of that section has the lowest construction cost of the AC Section route alternatives studied and is the best route of the alternatives studied based on application of the other Routing Criteria. (*Id.* at 74-75, citing RI Ex. 9.0 Rev. at 9 and Ex. 7.0 Rev. at 28, 36-37)

In response to ComEd's assertion that Rock Island presented no evidence that the Project is least cost, Rock Island cites Dr. Galli's analysis that compared the costs of an HVDC line from northwest Iowa to northeast Illinois to a series of potential AC alternatives and demonstrated that the HVDC line such as proposed by Rock Island is overwhelmingly the least cost alternative. (RI RB at 90, citing ComEd IB at 31, and RI Ex. 2.11 Rev. at 3-4)

Rock Island responded to Staff's citation of Mr. Rashid's testimony in which he asserted that Rock Island did not provide information on whether it considered or examined alternatives to the Project to determine if it meets the least cost criterion of §8-406. (Staff IB at 21-23)

Rock Island states that Mr. Rashid's concerns over whether the Project satisfies the least cost criterion seem to be founded in a misunderstanding of what constitutes "open access transmission service." Rock Island explains that it will use the Project to offer and provide open access transmission service from the Project's western converter station in O'Brien County, Iowa, to the Collins Substation in Grundy County, Illinois. Rock Island will be required to offer this service to all eligible customers on a non-discriminatory basis and without giving undue preference to any eligible customer. This is Rock Island's open access transmission service obligation. (RI Ex. 10.26 at 35-36) Rock Island states that Mr. Rashid seemed to think that by being an open access transmission service provider, Rock Island is required to provide access to customers at intermediate locations all along the route of the Project throughout Illinois; he therefore questioned Rock Island's HVDC versus AC cost comparison for not including the costs for such intermediate interconnections. Rock Island asserts that Mr. Rashid's premise is incorrect, in that Rock Island does not need to provide service at intermediate points along its route in order to be an open access transmission provider. Rock Island states that it is only required to offer nondiscriminatory access to the service it is offering to provide, namely, point-to-point transmission service from O'Brien County, Iowa to the Collins Substation in Illinois. (RI RB at 97-98, citing Staff IB at 21-23; RI Exs. 2.15 at 4; and 10.26 at 36)

Rock Island states that customers could seek to interconnect to the Project at one or more points along the route through an interconnection request under Rock Island's OATT, which would require the customer to pay the costs of the interconnection. (RI RB at 98)

Rock Island also states that later in the same section of its Initial Brief, Staff states that Mr. Rashid "testified that it was not clear whether the proposed project, which [Rock Island] estimates will cost \$2 billion overall, is the least-cost project that

would further the cause that [Rock Island] identifies for implementing the proposed project,” and that “Mr. Rashid suggested that one such alternative would be an AC transmission line of equal load capacity as [Rock Island’s] proposed DC line.” (Staff IB at 28) Rock Island characterizes Staff’s assertion as “particularly baffling” since Rock Island presented a cost comparison of a 3,500 MW capacity, ±600 kV 500-mile HVDC transmission line to five different AC alternatives and showed that the HVDC line was overwhelmingly lower cost than all of the AC alternatives. (RI RB at 98-99)

4. Proposed Condition Regarding Cost Allocation

Rock Island states that because the Project is a “merchant” transmission project, RICL will recover its costs of construction and operation solely through the revenues it receives from the specific transmission customers that purchase capacity and take transmission service on the Project. According to Rock Island, its investors, not the retail electric ratepayers of Illinois or other states, will bear any risks that the Project cannot be successfully constructed and completed or that the revenues received by the Project will prove to be insufficient to provide its investors with an adequate rate of return on their investment. (RI IB at 75, citing RI Exs. 10.13 at 11; 10.14 Rev. at 28-29, 30-31, 35; 10.26 at 8, 10, 14; and Tr. 647-48, 951-52, 1007-08) Rock Island states that it has no “plans” to seek to recover the costs of the Project from retail customers by cost allocation to load through RTO cost recovery processes, and in fact believes there is presently no cost allocation mechanism by which the costs of an inter-regional transmission line such as the Project can be recovered. (*Id.* at 75-76, citing RI Exs. 1.0 at 15-16; 10.14 Rev. at 29; and 10.26 at 19-20)

In RICL’s view, the fact that the Project is a merchant transmission project whose costs will be paid for by its specific transmission customers through their payments for transmission capacity and service (rather than by all retail ratepayers or load-serving entities in an RTO region) distinguishes the Project from other projects that are dependent on cost recovery from captive ratepayers through regional cost allocation mechanisms. According to Rock Island, the “fact” that the Project costs will not be recovered through allocation to load-using RTO cost allocation processes supports the conclusion that the Project will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers, is least cost, and promotes the public convenience and necessity. Rock Island claims merchant transmission projects like the Project are a logical, market-driven response to the Commission’s previously-expressed concerns about the use of regional cost allocation processes to recover the costs of transmission projects. (RI IB at 76)

Rock Island notes that some parties have expressed concerns that at some future date, Rock Island could request and obtain cost allocation treatment from PJM or MISO, at a point in time after this Commission has granted a CPCN for the Project on the assumption that it is a merchant project and will not use cost allocation. (ComEd Ex. 1.0 2d Rev. at 37; ILA Ex. 7.0 at 10; Staff Exs. 3.0 at 5 and 6.0 at 3) To address these concerns, Rock Island proposed a condition to its CPCN whereby it would not be allowed to recover any portion of its costs through regional cost allocation to load unless it first makes a new filing with this Commission for approval to recover its costs through

cost allocation to load and receives approval from the Commission. As modified by Rock Island witness Mr. Berry in his surrebuttal testimony in response to a comment in ComEd witness Mr. Naumann's rebuttal testimony, Rock Island's proposed condition is (RICL IB at 76-77, citing RI Ex. 10.26 at 21-22) as follows:

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 through PJM and MISO transmission service charges that are paid by retail electric suppliers in respect of their electric load served in Illinois.

Rock Island states that under the condition, in order to justify the use of cost allocation, it would have to persuade the Commission in a future proceeding that the Project's benefits outweigh its costs to ratepayers. Staff and other interested parties would be able to participate in the proceeding. Further, the Commission would have complete discretion to determine the basis on which it would grant or deny such a request, in the unlikely event one were ever made. (RI IB at 78, citing RI Ex. 10.14 Rev. at 29-30)

Rock Island claims there are ample assurances that it will comply with the condition. First, Rock Island's authority to construct and operate the Project will be subject to its continued compliance with the condition. According to RICL, the Commission can enforce compliance with the conditions it imposes in a CPCN order, including by initiating a proceeding to show cause why the CPCN should not be rescinded due to noncompliance with the condition (220 ILCS 5/10-108; 220 ILCS 5/10-113(a)), as well as by seeking civil penalties for violation of the Commission's order (220 ILCS 5/5-202). Second, lenders and investors will likely insist on a covenant in Rock Island's financing documents forbidding Rock Island from violating the conditions of its CPCN. Third, Rock Island's negotiated rate authority granted by the FERC forbids Rock Island from obtaining cost recovery through socialized rates. (RI IB at 78, citing RI Ex. 10.26 at 19, 20)

Rock Island responded to concerns expressed by ComEd witness Mr. Naumann that, despite the condition, the Project could become part of the PJM and MISO regional transmission plans for regional cost allocation purposes without any action on the part of Rock Island. (RICL IB at 78-79, citing ComEd Ex. 4.0 Rev. at 27-28) Rock Island characterizes this possibility as implausible. Rock Island claims Mr. Naumann was unable to identify any transmission project that was cost-allocated without the owner taking affirmative action to accomplish this result, i.e., based on the request of a third party unrelated to the owner. (*Id.*, citing RI Ex. 10.26 at 19 and Tr. 957) According to Rock Island, the suggestion that PJM could "reclassify the Project" (ComEd Ex. 4.0 Rev. at 27) without any action by Rock Island is simply at odds with the way the PJM

regional transmission expansion plan actually works. Further, even if PJM or MISO could somehow "reclassify the Project," Rock Island still could not receive recovery of its costs from the regional cost allocation process without taking additional affirmative actions, including signing the applicable transmission owners' agreement, obtaining a modification to the FERC's grant of negotiated rate authority, submitting required accounting information to the RTO, and actually accepting the funds. Rock Island states that it would be prohibited by the CPCN condition from taking such actions, absent approval by the Commission in a subsequently-initiated proceeding. (*Id.*, citing RI Ex. 10.26 at 19-20)

5. Delaying Issuance of CPCN until Interconnection Processes are Completed

Rock Island opposes ComEd's position that this proceeding should be dismissed without prejudice until such time as the interconnection processes for the Project at PJM and MISO are completed and the network upgrades and their costs, and any operating limitations, required in order for the Project to be allowed to interconnect to the existing transmission system, have been determined by PJM and MISO. (RI IB at 79-80, citing ComEd Exs. 1.0 2d Rev. at 9, 10-11, 20-21, 28, 32-33 and 4.0 Rev. at 5, 7, 17, 33-35)

According to Rock Island, the RTO interconnection study processes will result in a determination that the Project can be interconnected with the existing transmission grid in a manner that does not threaten the reliability of the grid, and will determine the network upgrades and operational requirements, if any, to ensure that result. Federal law and regulation require that Rock Island complete the interconnection study processes and sign interconnection agreements with PJM and MISO before the Project will be allowed to operate. (RI IB at 81-82, citing RI Exs. 2.11 Rev. at 8; 10.14 Rev. at 30, 35, 37; 10.26 at 27) The PJM and MISO interconnection processes for the Project will be carried out in accordance with these RTOs' FERC-jurisdictional tariffs and related rules and agreements, without the need for involvement by the Commission arising out of this certificate proceeding. (*Id.*, citing RI Ex. 2.11 Rev. at 31) Further, ComEd and any other affected transmission owners have had and will continue to have a full opportunity to participate in the RTOs' interconnection processes and to provide relevant information and concerns to the RTOs, including comments on studies and proposed solutions to reliability concerns. Rock Island states that ComEd has extensively exercised that opportunity to date. (*Id.*)

Rock Island states that PJM and MISO are charged with ensuring reliable interconnections and operations, and will require, as conditions to the Project interconnecting with their systems, implementation of the system upgrades and other actions they determine are needed to maintain the reliability of their systems. (*Id.* at 82, citing RI Ex. 2.15 at 32-33) The interconnection study process is intended to identify -- for the interconnection customer (here, Rock Island) and the incumbent transmission owner (here, ComEd in PJM and MidAmerican in MISO) -- the equipment that will be required, costs for that equipment, and any required operational procedures, to allow for the efficient and reliable operation of the grid consistent with the planning requirements of the RTO and applicable reliability requirements of NERC and the utility to which the

interconnection is made. (*Id.*, citing RI Ex. 2.15 at 14-15) The PJM and MISO interconnection study processes will identify any reliability issues presented by the interconnection of the Project, and will prescribe solutions that prevent any deterioration of system reliability. Rock Island states that the final interconnection agreements it enters into will identify the appropriate mitigation actions to accommodate the reliable operation of the transmission system with the Project in service, and to provide for protection of ComEd's and other entities' facilities during any abnormal system events, including mitigating any potential impacts to system stability. (*Id.* at 82-83, citing RI Exs. 2.11 Rev. at 24, 31; 2.15 at 15)

Rock Island states that it holds two positions for the Project in the PJM interconnection queue, referred to as the S57/S58 positions (collectively, the "S position"), which represents a 3,500 MW HVDC interconnection with 700 MW of Firm Transmission Injection Rights ("FTIR"), and the U3-026 position ("U position"), which requests an additional 492 MW of FTIR. RICL asserts that based on PJM's August 2013 SIS for the S position, there will be a need for installation of two new 765 kV circuit breakers and associated SCADA and communications equipment, at an estimated cost of \$14 million, and a new transformer at Plano at an estimated cost of \$10 million, to accommodate the S position interconnection. (RI IB at 83, citing RI Ex. 2.11 Rev. at 10-12) The August 2013 SIS for the S position also identified other potential reliability issues that could require operational solutions, rather than system upgrades. (*Id.* at 83-84)

Rock Island asserts that because the Project will originate within the MISO region and transmit the output of generating facilities located in the MISO region to an interconnection point with the PJM grid, it is also necessary that MISO perform a "No-Harm" study. A scope of work for this study has been established and it is currently in progress. The MISO No-Harm study will identify any "loop flow" impacts of the Project and any necessary mitigation actions to address these impacts. Rock Island states that ComEd also has the opportunity to participate in the MISO No-Harm study, and has been doing so. (RI IB at 84-86, citing RICL Exs. 2.0 at 11-12; 2.11 Rev. at 24-26; 10.14 Rev. at 26; 2.16 at 35-37)

Rock Island states that the PJM August 2013 SIS identified a specific reliability concern arising in the event of an outage of one of the two ComEd 765 kV transmission lines that connect at the Collins Substation, the Collins-Wilton Center line and the Plano-Collins line, while the Rock Island Project is injecting power to the PJM grid at the Project's full capacity of 3,500 MW. Rock Island states that the August 2013 SIS report proposed two alternative acceptable mitigations for this issue, one of which entails reducing the power injection level of the Project to 700 MW during any period when one of the two ComEd 765 kV lines is out of service. (RI IB at 87, citing RICL Exs. 2.11 Rev. at 23-24; Ex. 2.15 at 21)

Rock Island contends, however, that, PJM's mitigation option of limiting the Project's power injection level to 700 MW in this situation is based solely on the fact that the S position requests 700 MW of FTIR, not on actual system limitations.. Rock Island states that PJM has not determined what specific level of power injection (700 MW or

higher) the Project would be limited to in the event of an outage of one of the ComEd 765 kV lines. Rock Island states that the level to which the Project's power injections will be limited in the event of and during the period of an outage of one of the ComEd 765 kV lines will likely be much higher than 700 MW, and there actually may be no reduction in power injection level required from the Project's 3,500 MW full capacity. Rock Island states that it appears PJM has performed an analysis of the operation of the Project at a power injection level of 1,192 MW -- the combined FTIR requested for Rock Island's S and U queue positions -- during a ComEd 765 kV line outage, and found, on a preliminary basis, that the system remains stable under these conditions. (RI IB at 87-88, citing RI Ex. 2.15 at 22-23, 33-34 and Tr. 938-941)

According to RICL, the mitigation action proposed in PJM's August 2013 SIS report for an outage of one of the ComEd 765 kV lines -- that the power injection level of the Project be reduced to 700 MW within 30 minutes -- is achievable using modern, readily-available equipment and operating practices, particularly in light of the greater control capabilities of HVDC technology. Power electronics coupled with the high-speed communication and controls capabilities of modern day control systems allow for automatic responses to system disturbances. Rock Island claims this is common industry knowledge as it relates to HVDC and Flexible Alternating Current Transmission Systems ("FACTS"). Rock Island states that protocols such as the one proposed by PJM in the event of an outage of a ComEd 765 kV line are already in effect on other HVDC projects worldwide. (RI IB at 88, citing RI Ex. 2.15 at 23-25, 27-32)

Rock Island witness Dr. Galli provided an explanation of the operational steps that would be taken to effectuate this mitigation and to redispatch the system to reduce the power injection level of the Project to 700 MW within 30 minutes. (RI IB at 88, citing RI Exs. 2.15 at 28-32 and 2.20) Rock Island also states that PJM has expressed confidence, based on its experience, that redispatch of the system to reduce the power injection level of the Project from its maximum of 3,500 MW to 700 MW can be accomplished within 30 minutes, and has so advised Exelon, in writing. (RI Ex. 2.17 at 3; RI IB at 88-89)

In addition to the potential reliability issues for which specific system upgrades will be required, and the potential reliability issue resulting from an outage of one of the ComEd 765 kV lines, the PJM August 2013 SIS report identified a number of other potential constraints for which mitigation actions may be required. Rock Island contends there is no indication that any additional, significant system upgrades will be needed to resolve any of these additional constraints. Rock Island asserts that some of the constraints may be resolved through the operation of PJM's Security-Constrained Economic Dispatch ("SCED") process, without the necessity for any separate operating procedures. Rock Island submits that mitigation actions, if any, that may be required for any of these constraints would be limited to the use of specific operating procedures. (RI IB at 89)

Rock Island witness Dr. Galli provided a description of the potential constraints identified in the August 2013 SIS Report and how they would be resolved. (RI Exs. 2.15 at 12-26 and 2.18) He asserted that PJM has identified workable mitigation solutions

for each of the reliability issues that will resolve or prevent these reliability issues from arising, and that completely address any concerns about possible adverse reliability impacts to the grid due to the interconnection and operation of the Project. Dr. Galli explained that the additional constraints identified in the August 2013 SIS will not require additional operating limitations or restrictions on the Project or otherwise materially affect its operation. (RI IB at 89-90, citing RICL Ex. 2.15 at 7)

Rock Island believes it should be able to mitigate most, if not all, of these potential reliability issues without the need to curtail power injections by the Project below its 3,500 MW maximum capacity, by the installation of fast-acting reactive power equipment coupled with the controllability of HVDC technology, and the operation of PJM's SCED process. Rock Island states that it will install FACTS devices known as static synchronous compensators, or STATCOMs, which are power electronic-based devices that provide reactive power support, and thus voltage support, on a nearly instantaneous basis, allowing for a response within milliseconds to system voltage disturbances by either producing or absorbing reactive power to stabilize voltage. Rock Island states that installation of the STATCOMs will ensure that the transmission system can accommodate the Project's full injection level of 3,500 MW during both normal and contingency conditions including during the additional contingencies that were identified in the August 2013 SIS. (*Id.*, citing RI Ex. 2.15 at 8, 23-26, 34-37)

Rock Island states that PJM's analysis in the August 2013 SIS did not include application of additional fast-acting reactive power devices such as the STATCOMs that Rock Island will install. Rock Island asserts that Siemens, the technology vendor for Rock Island's converter stations, restudied the voltage issues identified by PJM by incorporating the use of STATCOMs, and found that STATCOMs support the system AC voltage and prevent potential AC-voltage collapse, thereby minimizing and in most cases eliminating the need to reduce the Project's power injection levels as a mitigation measure in response to constraints. (RI IB at 90-91, citing RICL Ex. 2.15 at 34-37 and 2.19 at 4-6) Rock Island states that PJM and MISO will be able to review and confirm the use of STATCOMs and the resulting resolution of potential voltage issues as part of completing the interconnection process.

Rock Island witness Mr. Moland conducted sensitivity runs of his economic benefits analysis under the assumption that the Project is limited to 700 MW during periods when one of the two ComEd 765 kV lines is out of service. He assumed a ComEd 765 kV line would be out of service due to an outage during 4.1% of the hours of the year, based on the historical outage experience of these lines. During these hours, energy delivery on the Project was capped at 700 MW in his analysis. Mr. Moland performed the sensitivity runs using the "Business as Usual" and "Slow Growth" scenarios. His analyses purportedly showed that, under the assumption that the Project's energy delivery is limited to 700 MW when one of the ComEd 765 kV lines is out of service, the Project's annual energy delivery would be reduced by 1.7% and the demand cost savings for Illinois would be reduced by approximately 1% to 3% -- depending on the year and economic scenario -- compared to his original analyses that did not include these operating limits. Variable production cost savings in the Eastern Interconnection were reduced by between 0.44% and 2.37%, depending on the year

and economic scenario, under these assumptions compared to the base case. According to Rock Island, these analyses show that even if the Project's power injection level is limited to 700 MW during a ComEd 765 kV line outage, over 97% of the Project's economic benefits remain. (RI IB at 91-92, citing RI Exs. 10.26 at 17-18; 3.7 at 1-3; 3.8 at 1, 4)

Rock Island also ran an alternative set of cases using the Staff revenue requirements model with the additional assumption that the Project's power injection level is limited to 700 MW when one of the ComEd 765 kV lines is out of service. According to RICL, these analyses showed that even with the impacts of this potential operating restriction, the Project is clearly beneficial compared to the alternative of no new transmission or generation construction in which consumers continue to purchase energy from the existing market. Assuming LMP savings from the Project continue over its lifetime, the average consumer benefits from the Project across a range of assumption scenarios are \$16.3 billion under Staff's "Model A" and \$17.9 billion under Staff's "Model B." Assuming LMP savings from the Project are limited to five years, the average consumer benefits from the Project are \$6.8 billion under Staff's "Model A" and \$8.4 billion under Staff's "Model B." Similarly, Rock Island claims that with the potential operating restriction incorporated into the analysis, the Project still has a lower present value revenue requirement than building a comparable amount of new wind generation capacity in Illinois in 92% to 97% of the sensitivity cases under Staff's "Model A" and in 93% to 99% of the sensitivity cases under Staff's "Model B." (RI IB at 92-93, citing RI Exs. 10.26 at 40-41 and 10.30)

Rock Island next contends that delaying issuance of the order in this case granting the requested regulatory approvals would delay the ultimate completion of the Project and thus delay the realization of the economic, reliability and environmental benefits it will produce. According to RICL, approval of a specific route for the Project in Illinois, easement ROW widths, and the structures to be used for the transmission line will enable Rock Island to proceed to more detailed engineering and construction cost estimating activities for the line. RICL states that pursuant to §8-510 of the PUA, upon receiving a CPCN for the Project, it will have the right, upon appropriate notice to landowners, to enter landowners' properties for the purpose of conducting surveys. This will enable Rock Island to conduct necessary detailed environmental, biological and archeological surveys, such as surveys for wetlands and species habitats, as well as land surveys, that are necessary to perform detailed engineering and determine specific structure placement locations. Rock Island also states that receipt of approval for a specific route of the Project in Illinois will enable Rock Island and landowners along that route to engage in informed discussions about easement acquisition and property-specific concerns regarding construction of the Project and placement of structures. (RI IB at 93)

Additionally, Rock Island asserts that receipt of the major regulatory approvals for the Project is necessary for Rock Island to move forward to obtain both contracts with customers for transmission service on the Project and binding financial commitments from lenders and investors for the capital to construct the Project. (RI IB at 93-94)

6. Response to Other Parties

Response to IAA

Rock Island responded to the IAA's argument that Rock Island has shown the Project is required or necessary to make the Illinois electricity market adequate, reliable, efficient or competitive, and that Rock Island presented no evidence that reliability will be adversely affected without the Project. Rock Island states that from the perspective of both generators and consumers, the Project is needed in order to provide efficient transmission access from the wind-rich Resource Area to the northern Illinois electricity market to enable the development of cost-effective wind generation in the Resource Area. Rock Island states that the Project is being developed to provide adequate and efficient service to customers by enabling significant new renewable energy resources to be developed in the Resource Area and to have their output delivered to Illinois and the PJM network, and to provide a means for load-serving entities within Illinois and PJM to obtain and provide electricity from renewable resources for their customers. Further, Rock Island states that it has demonstrated that the Project will provide significant reliability benefits. (RI RB at 55, citing IAA IB at 9-10, 12)

With respect to the competitive electricity market, Rock Island states that the statutory criterion is whether a proposed 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." Rock Island states that, contrary to IAA's characterization, the statute does not require that a project will turn the electricity market from "non-competitive" into "competitive." Rock Island also responded to IAA's assertion that Staff witness Mr. Zuraski "opined that a competitive electricity market already exists in Illinois, not necessitating the Project." (IAA IB at 10, citing ICC Staff Ex. 3.0 at 5) Rock Island responds that while Mr. Zuraski did opine that an effectively competitive electricity market exists, he also opined, based on his financial analysis, that he expected that the Project will promote the development of an effectively competitive electricity market that operates efficiently and is the least cost means of satisfying those objectives. (RI RB at 55-56, citing Staff Ex. 3.0 at 6)

Rock Island responded to the IAA's argument that the Project has not been assessed in a regional planning process of PJM or MISO and that Rock Island has not produced a study by one of the RTOs showing that the transmission system will be compromised if the Project is not built. (IAA IB at 10) Rock Island responds that the Project will be delivering electricity into the PJM network, and PJM does not have a process for assessing the need for or economic benefit of a merchant transmission project such as the Project. (RI RB at 56, citing RI Exs. 2.11 Rev. at 38-40 and Ex. 10.14 Rev. at 57-58; ComEd Ex. 1.0 2d Rev. at 15; and Tr. 649, 655, 953) Rock Island states it would go through the PJM or MISO regional expansion planning process only if it were seeking to allocate the cost of the Project to load, which it is not doing. (*Id.*)

Rock Island responded to IAA's assertion that the estimated costs of new facilities for interconnecting the Project into the PJM system are unknown, which was

based on the direct testimony of ComEd witness Mr. Naumann. (IAA IB at 10) Rock Island states that Mr. Naumann's direct testimony pre-dated the release of PJM's August 2013 re-tool System Impact Study for the Project, which concluded that the necessary system upgrades for interconnection of the Project to PJM will cost, in total, approximately \$24 million. (RI RB at 57, citing RI Exs. 2.11 Rev. at 11-12 and 10.14 Rev. at 36) Rock Island also responded to IAA's contention that the impact of the Project on "congestion problems" is unknown. (IAA IB at 10) Rock Island states that the record shows the Project will reduce, by hundreds of millions of dollars, congestion costs on the PJM system that customers pay for in wholesale electric prices. (*Id.*, citing RI Exs. 3.5 at 2 and 10.14 Rev. at 31-32)

Rock Island responded to IAA's argument that Rock Island has not shown that transmission customers for the Project exist in sufficient quantity to justify the transmission line. (IAA IB at 11-12) Rock Island stated that it has shown that there are at least 18 wind developers active in the Resource Area, who have acquired options on thousands of acres of land in the area that can be used for the installation of wind turbines and with whom Rock Island has been in contact to discuss plans and with many of whom it is in commercial discussions. (RI RB at 57-58, citing RI Exs. 10.14 Rev. at 41; 10.19 Rev.; 10.26 at 31-32)

Rock Island responded to IAA's argument that Dr. McDermott was unable to identify a prior case in which the Commission granted a CPCN to an applicant that did not unconditionally commit to build its proposed transmission line but rather indicated that it would not build the line if customer demand for it did not materialize. (IAA IB at 11) Rock Island responds that, to the best of its knowledge, the Project is the first merchant transmission line for which a CPCN has been requested from this Commission. (RI RB at 59)

In response to IAA's assertion that "Rock Island is waiting to see if there is a need for the transmission line before it seeks financing, then it will hire employees to construct and manage the Project" (IAA IB at 12), Rock Island asserts that the need for high voltage transmission linking the wind-rich Resource Area to northern Illinois and PJM has been demonstrated in this case. (RICL RB at 59-60) Rock Island further states that it has already hired the personnel for its construction management organization who perform the activities that need to be performed now or in the near future, such as route development, engineering and design studies, and initiation of easement acquisition, and will hire personnel for the remaining positions as the tasks for which those positions will be responsible need to be performed. (*Id.* at 60)

In response to IAA's argument that Rock Island has presented no evidence that Illinois will be adversely affected if the Project is not built. (IAA IB at 12), Rock Island argues that such a showing is not one of the statutory criteria of §8-406(b). Rock Island contends it has demonstrated 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; is needed to provide an efficient transmission link between the wind-rich Resource Area and the

northern Illinois electricity market; and will provide significant reliability benefits to Illinois. (RI RB at 60-61)

Response to ILA

Rock Island responded to ILA's argument that the benefits the Project will provide are too speculative, that the Project has not been shown to be needed for reliability purposes, and that there are too many remaining uncertainties concerning the interconnection of the Project to the ComEd grid, to support issuance of a CPCN at this time. (ILA IB at 16) According to Rock Island, it has identified many benefits of the Project, as described above. (RI RB at 61, citing RI Ex.10.14 Rev. at 34) Rock Island also states that while the PJM interconnection process is not fully completed, the necessary network upgrades have been identified and are not a significant cost, and any operating limitations on the Project that PJM may require will not materially impact the operation of the Project or the economic benefits it produces. (*Id.*)

Rock Island refers to "discussion in ILA's Initial Brief that it would be useful for PJM or MISO to review the need for the Rock Island Project." (RICL RB at 62, citing ILA IB at 18-22) Rock Island reiterated that PJM and MISO do not review and determine the need for merchant transmission projects such as Rock Island, but would only review the reliability need for or public benefits of transmission projects for which the owners are seeking cost recovery via allocation to load through the RTO tariff. Rock Island also states that PJM has no comprehensive planning process to meet RPS requirements in a least-cost manner. (*Id.*, citing RI Ex. 10.14 Rev. at 58) Rock Island states that ILA's statement that "Rock Island is circumventing the regional planning process normally utilized for new interstate electric transmission projects" is irrelevant and misleading, because Rock Island is a merchant project and is not seeking cost recovery through cost allocation to load, and PJM and MISO do not have a regional planning process for merchant transmission projects. (*Id.* at 62-63)

In response to ILA's assertion that Rock Island cannot meet the first prong of the §8-406(b)(1) criteria because it has no customers under contract or specifically identified prospects (ILA IB at 22), Rock Island asserts that customers cannot be expected to commit to long-term transmission contracts until the Project has obtained the major regulatory approvals, including state certifications, that establish that the transmission owner will be allowed to build it. Rock Island also states that it does have specifically identified prospects, with whom it is engaged in commercial discussions, and there are numerous wind farm developers active in the Resource Area. (RI RB at 63, citing RI Exs. 10.0 at 11; 10.14 Rev. at 41; 10.19 Rev.; 10.26 at 31-32; and Tr. 1031, 1117)

In response to ILA's argument that ComEd witness Naumann pointed out many ways in which the Project could harm system reliability (ILA IB at 23), RI asserts that ILA has misstated Mr. Naumann's testimony. According to RICL, what Mr. Naumann pointed out were reliability issues relating to interconnection of the Project to the PJM grid that have been identified in the PJM SIS for Rock Island's requested

interconnection. Rock Island states that any potential reliability issues identified by the PJM studies will be resolved satisfactorily to PJM before Rock Island is allowed to interconnect to the grid and operate the Project. Rock Island reiterates that PJM has identified concrete, workable solutions for each potential reliability issue identified in the August 2013 SIS. (RI RB at 64, citing RI Exs. 2.11 Rev. at 8, 24, 31; and 2.15 at 6-7, 14-15, 32-33)

Rock Island addressed five reasons cited by ILA as to why it contends the Project fails to satisfy the "will promote the development of an effectively competitive electricity market" criterion of §8-406(b)(1). ILA's "first reason" is that the Project would impose significant negative land use impacts and externalities on the Illinois public for the primary benefit of "the eastern PJM states" to meet their RPS goals. (ILA IB at 25, 26) According to RICL, ILA witness Dr. Gray never identified any "externalities," and did not suggest any alternatives that would reduce purported externalities. To the contrary, RICL argues, the Project will significantly reduce the externalities associated with the production of electricity, including emissions, waste by-products and water use. (RI IB at 119; RI RB at 64-65) The "negative land use impacts" that Dr. Gray referred to were the concerns expressed by ILA witnesses about the impacts of the Project on their individual properties. However, Rock Island contends that it has shown it has appropriate plans in place -- including its obligations under the Agricultural Impact Mitigation Agreement -- to mitigate, remediate and, where necessary, compensate for, the issues identified by the ILA landowner witnesses. (RI RB at 65)

Rock Island also contends that the land use impacts of the Rock Island transmission line in Illinois, which will connect 4,000 MW of wind generation facilities located in northwest Iowa and nearby areas, will be much less than the land use impacts of constructing 4,000 MW of new wind farms in Illinois. (RI Ex. 10.14 Rev. at 64) Finally, Rock Island states that while the Project will assist other PJM states in addition to Illinois in meeting their RPS requirements, Mr. Moland's and Dr. McDermott's studies specifically measured the Project's substantial benefits for Illinois, and that Staff witness Zuraski's analyses were also specific to Illinois. (RI RB at 65-66, citing RI Exs. 3.3 at 1-3; 3.5 at 2-3; 4.0 Rev. at 20-24; and Staff Ex. 3.0 at 16-33)

ILA's "second reason" is that in the absence of actual subscribers, Rock Island's assumed traits and characteristics about generators that could potentially connect to the Project cannot be substantiated. (ILA IB at 25, 26) Rock Island claims its expectation that all the generators connected to the Project will be wind generators is reasonable. (RI RB at 66) With respect to ILA's argument that "we do not know the operating or other characteristics of any wind farms that may materialize" (ILA IB at 26), Rock Island states that the operating characteristics of the wind farms used in Mr. Moland's studies and in Mr. Zuraski's studies were taken from the Eastern Wind Integration and Transmission Study ("EWITS study") that was conducted by a leading meteorological firm, AWS Truewind, under the sponsorship of the National Renewable Energy Laboratory ("NREL"), to create production data for potential wind farms located throughout the Eastern Interconnection. According to RICL, these production data were created using detailed computer models of weather patterns and have been used by numerous

utilities and RTOs, including PJM, the Southwest Power Pool and the New England Independent System Operator, in their wind generation integration studies. Rock Island states that the principal and most important "operating characteristic" of the wind farms to be constructed in the Resource Area is the wind energy profile (i.e., the amount of electricity production), which is based on the wind speeds in the area. In addition to the information from the EWITS data set, wind speed information is available from publicly available wind maps produced by the NREL and AWS Truewind based on computerized weather models developed by the National Weather Service. (RI RB at 66, citing RI Ex. 10.0 at 5-6, 11-12)

Rock Island also states that in performing its cost-benefit studies for the MISO MVP lines, MISO made assumptions about the locations of new wind generation based on where the lowest cost generation could be sited, and did not include in its assumptions only wind generators with signed contracts or interconnection agreements; rather, MISO used similar third-party data sources to those used by Rock Island to identify locations where wind generation is likely to be developed. (RI RB at 67, citing RI Ex. 10.14 Rev. at 45-46)

ILA's "third reason" is that Rock Island has reserved the right to seek to switch the Project from merchant status to one in which its costs are allocated to Illinois electricity consumers. (ILA IB at 25, 26-28) Rock Island reiterates that it has no plans to seek to recover the costs of the Project from retail customers by cost allocation to load through RTO cost recovery processes, and has proposed a CPCN condition on cost allocation. (RI RB at 67-68, citing RI Exs. 10.14 Rev. at 29 and 10.26 at 21-22)

In response to ILA's contention that certain questions remain unanswered with respect to Rock Island's proposed cost allocation condition, RICL argues that ILA failed to offer any constructive suggestions or comments on the condition. In response to ILA's assertion that it is unknown what section of the PUA would govern a subsequent proceeding initiated by Rock Island seeking cost allocation treatment, what showing Rock Island would be required to make, and the time period within which the Commission would have to make its decision (ILA IB at 28), RI claims: (1) The condition is a condition to a CPCN issued pursuant to §8-406, therefore the subsequent proceeding would be pursuant to §8-406 and the overall standard would be the public convenience and necessity, under which the Commission has broad discretion; (2) As Mr. Berry testified, the Commission would have to determine that the benefits of the Project to consumers exceed its costs to consumers in order to determine whether Rock Island should be allowed to seek cost allocation through the RTO processes; and (3) Rock Island has not proposed any limit on the amount of time within which the Commission would have to conduct the proceeding and reach its decision. (RI RB at 68-69)

Rock Island next responds to ILA's "fourth reason," that being a concern that Rock Island is not providing a decommissioning 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 IB at 25, 28-29) Rock Island states that its standard easement agreement includes a commitment to remove any structures in place when

the Project ceases operations and to restore the land that was subject to the easement. (RB at 69, citing RI Ex. 10.14 Rev. at 65) Further, Rock Island states that it has agreed to the Staff financing condition, which precludes Rock Island from commencing to construct transmission facilities on easement property unless and until Rock Island has raised the capital needed to finance the entire cost of constructing the Project. RICL argues that this condition prevents the risk of Rock Island beginning construction of the transmission facilities on landowner properties but running out of money to complete construction. Further, lenders will independently review the construction plans and budget and determine that Rock Island has raised, in total, sufficient funds to complete construction of the Project, before they will commit to advancing any of the funds. (RI RB at 70, citing RI Exs. 10.14 Rev. at 4-7 and 10.26 at 10)

Rock Island also states that its parent company has analyzed, for the transmission project of another subsidiary using structures and conductor of the same material and weight as will be used on the Rock Island Project, the scrap and salvage value of transmission structures, conductors and equipment compared to the cost of removing transmission structures and restoring the land at the structure sites, and found that the salvage value of the structures, conductor and other components equaled or exceeded the cost of removal, so that proceeds from selling materials and equipment, even if just for scrap, can be expected to cover the cost of removal and restoration. (RI RB at 70, citing RI Exs. 2.11 Rev. at 48; and 10.14 Rev. at 65)

According to RICL, ILA's "fifth and final reason" is that the modeling of temporary reductions in LMPs fails to establish that the Project will promote electricity market competition in Illinois. (ILA IB at 25, 29-30) Rock Island responds that that this criticism is "generic" and could be made in response to any showing that a transmission line reduces wholesale power prices. (RI RB at 71) Rock Island also states that Mr. Moland's and Dr. McDermott's decision to base their analyses of the impacts of the Project on LMPs and wholesale electricity costs to serve load in Illinois for only the first five years the Project is in operation was a conservative assumption, which reflects the difficulty of forecasting the specific actions of other generation market participants far into the future. (*Id.*, citing RI Ex. 4.0 Rev. at 29-30) Further, while ILA characterizes these savings as "temporary reductions in LMPs," RICL asserts that they are substantial savings for customers, amounting to \$667 million to \$1.221 billion in net present value electricity cost savings (depending on the future scenario considered) over the first five years of the Project's operation. (*Id.*, citing RI Ex. 4.0 Rev. at 23) Additionally, Mr. Berry testified, with respect to the Staff financial model which modeled the revenue requirements for the Project and the connected wind generators over a 40-year period, that LMP savings should be reflected over the same period. (*Id.*, citing RI Ex. 10.14 Rev. at 50) RICL next states that the Moland-McDermott analysis is the same analysis Dr. McDermott presented in a recent transmission line CPCN case where the Commission concluded that the transmission line would promote the development of an effectively-competitive electricity market. (RI RB at 71, citing Order in Docket 11-0661)

Rock Island further asserts that although ILA contends the Project does not produce "low entry and exit barriers" and "the absence of market power" that are characteristic of effectively competitive electricity markets (ILA IB at 29-30), the Project

will in fact improve the Illinois electricity markets in those respects. (RI RB at 71-72, citing RI Exs. 1.0 at 24-25 and 10.0 at 11) Rock Island claims the introduction of 4,000 MW of new capacity accessing the northern Illinois market will check or reduce the market power of incumbent generators. Rock Island asserts out that in addition to his analysis based on LMP and wholesale demand cost reductions, Dr. McDermott also conducted a separate analysis using the FERC's Delivered Price Test. RICL claims the analysis demonstrated the Project will increase the amount of economic capacity that can compete to serve load in the Illinois market. (*Id.* at 72, citing RI Ex. 4.0 Rev. at 3, 17-19, 32-36) Rock Island states that the Project will increase the amount of REC capacity (capacity to produce RECs) and volume of RECs produced available to the Illinois and regional markets, which should exert downward pressure on REC prices in Illinois. (*Id.*, citing RI Ex. 4.0 Rev. at 14-16, 31, 36-39; and 10.14 Rev. at 47)

Response to ComEd

In response to ComEd's argument that Rock Island has failed to demonstrate that the Project will promote the development of an effectively competitive electricity market (ComEd IB at 21-30), Rock Island states that ComEd's arguments can be reduced to a single point: that the benefits of the Project are based on speculative projections. Rock Island asserts that ComEd does not appear to be disputing the analytical method used by Dr. McDermott and Mr. Moland, which Rock Island believes is essentially the same methodology being used by ComEd to justify its Grand Prairie Gateway transmission project in Docket 13-0657. (*Id.* at 73, citing Tr. 906-908)

Rock Island states that ComEd was free to run alternative versions of Rock Island's economic benefits analyses, using PROMOD, with assumptions that ComEd considered more appropriate than those used by Rock Island and its witnesses, but ComEd chose not to do so. In contrast, Rock Island updated its studies or provided additional model sensitivities in response to concerns raised by ComEd and other parties with respect to Rock Island's benefits analyses. Rock Island states that none of these updates and sensitivity runs found anything but clear benefits from the Project. (RI RB at 73-74)

In response to ComEd's argument that the Project has no contracted customers and no committed lenders and investors for the construction phase (ComEd IB at 24), Rock Island states that it has shown there is "immense" potential for development of high capacity factor, low-cost wind generation resources in the Resource Area. (RI IB at 34-42, 49-53; RB at 74-75) Rock Island claims it has also shown there is great interest in the investment community in investing in merchant transmission projects, and that the project finance approach that Rock Island will use to raise the capital needed to construct the Project has been successfully used to raise billions of dollars of capital for electric transmission and other energy industry and energy infrastructure projects. (RI draft order at 88-89, citing IB at 104-115)

In response to ComEd's observation that the Production Tax Credit ("PTC") for wind generators expired effective December 31, 2013 (ComEd IB at 24), Rock Island asserts that neither its economic analysis nor its projections as to the amount of wind

generation that will connect to the western end of the Project assume or are based on continuation of the PTC. Rock Island also states that Congress has renewed the PTC on numerous occasions in the past, with some of the renewals being retroactive. (RICL RB at 75-76)

Rock Island responded to ComEd's argument that Rock Island has not determined how the transmission line will be connected to the ComEd-owned transmission facilities at the eastern end of the Project. (ComEd IB at 24) Rock Island states that although it discussed certain other options in testimony, it is only requesting the configuration for the AC Section of the Project described in its Petition, specifically, three-345 kV AC transmission lines -- two of them on a single circuit and the third on a separate circuit -- from the eastern converter station to Rock Island-owned transformation facilities to be placed on property to be acquired from a third party located outside Collins Substation, and a 765 kV connection into the Collins Substation. (RI IB at 125; RB at 76-77 Petition ¶¶58; Ex. 2.0 at 5-6, 33) Rock Island states that the PJM interconnection studies will determine the specific requirements for the electrical interconnection of Rock Island's facilities into the Collins Substation; and that the physical location of Rock Island's transformer facilities outside of the substation is not relevant to this determination. (RI RB at 77, citing RI Ex. 2.15 at 42)

Rock Island responded to what it refers to as ComEd's "argument" that Rock Island has not yet obtained the comparable approval for the Project from the Iowa Utilities Board ("IUB"). (ComEd IB at 24) RICL argues that there nothing in the PUA which provides that an entity must have obtained all necessary approvals from all other applicable regulatory bodies before applying for or being granted a CPCN by this Commission. (RI RB at 77)

Rock Island responded to ComEd criticism of Rock Island's assumption that the generators connected to the Project's western converter station will be all wind generators, given that the FERC's grant of negotiated rate authority to Rock Island requires it to serve any eligible customer regardless of generation type. (ComEd IB at 25-26) Rock Island contends that the FERC's ruling means only that Rock Island cannot exclude non-wind generators; it does not mean that any non-wind generators are likely to want to purchase transmission service on the Project. Rock Island states it has provided persuasive evidence to show that only wind generators will want to connect to and use the Project, because only wind generators have a cost advantage in locating in the Resource Area and using the Project to deliver their energy output to northern Illinois and PJM. (RI IB at 49-52)

Rock Island responded to ComEd's argument that Rock Island witness Mr. Moland, in conducting a sensitivity analysis that assumed 50% of the generation connecting to the Project would be natural gas generation, did not "consider or evaluate why it is, on balance, least cost to deliver gas-fired power 500 miles to Illinois as opposed to simply building it here." (ComEd IB at 25) Rock Island states that Mr. Moland was not tasked to determine why it would be least cost to build gas-fired generation in the Resource Area to have its output transported to northern Illinois; he was simply asked to determine the LMP and wholesale demand cost savings and

emissions reductions if, as suggested by ComEd and other parties, a substantial amount of new gas generation were to be constructed in the Resource Area in order to use the Project. Rock Island states it would not be cost-effective to construct new natural gas generation in the Resource Area and transport its output to Illinois, rather than building the new gas generation in Illinois. (RI IB at 51-52; RB at 78; Ex. 10.14 Rev. at 43)

In response to ComEd's contention that the wind-based hourly energy profile used to develop Rock Island's economic analyses is not supported by the record (ComEd IB at 26), Rock Island asserts that the profile used in the analyses was based on recognized government and industry data sources and that its development was explained by Rock Island witness Mr. Berry in the record. (RI RB at 79)

In response to ComEd's contention that it is unreasonable to assume that (i) 4,000 MW of new wind generation will come on line at the same time in response to the Project, and (ii) the addition of new capacity will not change plans for other projects coming on line in the 2016-2020 period (ComEd IB at 29-30), Rock Island claims the assumption that 4,000 MW of new wind capacity will come on line by the time the Project is ready for operation is reasonable because the development and construction time for a wind farm is much shorter than that of a transmission line. (RI Ex. 10.0 at 12; RICL RB at 79)

In response to ComEd's criticisms of RICL's assumption that the addition of this new capacity will not change plans for other projects coming on line in the 2016-2020 period, Rock Island cites Dr. McDermott's testimony that it is reasonable to assume that after this initial, near-term period, plans for other generation projects may change in response to the appearance of the Project and the associated new wind generation. It is for this reason that Dr. McDermott conservatively based his economic analysis solely on the LMP savings and wholesale electricity cost reductions that the Project and the associated new generation will produce in the first five years of operation. (RI RB at 80-81; RI Ex. 4.0 Rev. at 20-21, 29-30)

Rock Island responded to ComEd's argument that Dr. McDermott's economic analyses erroneously assumed that the costs of building and maintaining the Project are paid for by subscribing transmission customers and do not have to be netted against the Project's benefits. (ComEd IB at 27) Rock Island states that contrary to ComEd's assertions, the Moland-McDermott analysis does treat the wholesale energy payments paid to generators connected to the Project as a reduction in benefits to consumers. Moland and McDermott compared Illinois demand cost (which is the sum of all payments to generators, i.e., the sum for the year of the LMP in each hour multiplied by the energy supplied to meet load in each hour) in scenarios with and without the Project and the connected generators. According to Rock Island, the net consumer benefit that Moland and McDermott estimated is equal to (i) the base demand cost (without the Project) minus (ii) the demand cost with the Project, which includes all payments to generators connected to the Project. According to RICL, Mr. Moland's PROMOD analyses showed that the Project and the new generation using it to deliver energy into Illinois will lower the market clearing price. (RI IB at 43-44; Ex. 3.3 at 2; RB at 81)

Rock Island states that all generators, including the generators connected to the Project, will be paid that same market clearing price. Accordingly, the new, low-cost wind generators connected to the Project can both lower the price of energy by adding lower-cost supply and recover their costs (including their transmission service costs) by selling their output into the PJM market at the market clearing price. RICL asserts that these two results are in no way exclusive. (RI RB at 81-82)

Rock Island "points out" that (i) wind generators have no "energy" costs and can bid their output into the PJM market at zero or near-zero marginal cost, and (ii) by bidding in at zero or near-zero marginal cost, the wind generators will "almost always" be selected by the grid operator as resources to be dispatched. PJM's Security Constrained Economic Dispatch ("SCED") operates to determine which generators are dispatched to minimize the cost of electricity to consumers while maintaining security of the grid. (RI RB at 82, citing Exs. 2.15 at 17-18; 10.26 at 15) Because other (thermal) generators bid into the market at a positive marginal cost, the market clearing price set by the grid operator almost always will be above zero. For example, Mr. Moland's PROMOD analyses purport to show, under the "Business as Usual" scenario, that the average LMP in PJM Illinois in the first year of the Project's operation is \$33.90 per MWh with the Project and \$36.46 per MWh without the Project. In the fifth year of the Project's operation, the LMP in PJM Illinois is \$43.68 per MWh with the Project and \$45.67 per MWh without the Project. (*Id.*, citing RI Ex. 3.3 at 2)

With zero "energy" costs, the revenues that the wind generators receive for their electricity, at the market clearing price, goes to recover their capital and maintenance costs and their transmission charges-- even though their participation in the market lowers the market-clearing price. According to Rock Island, in addition to the revenues they receive from wholesale market sales of energy, wind generators will receive additional revenues from selling RECs and may also receive revenues from selling capacity. (*Id.*) Rock Island also asserts out that the analyses performed using the revenue requirements model developed by Commission Staff demonstrate that revenues received by the wind generators from selling energy and capacity are likely to be sufficient to recover the costs of the Project and the connected wind farms. Rock Island states that these analyses show that the Project and the connected generation produce net present value revenue requirement reductions in almost all cases, which means that no additional revenues beyond these market based revenues are needed to recover the costs of the wind farms and the Project. (*Id.* at 82-82, citing RI Ex. 10.26 at 39-40 and 10.29) Further, the analyses performed using the Staff "financial model" showed that, considering the range of scenarios analyzed, the Project's benefits exceed its costs by billions of dollars on a net present value basis. (RI at 83)

Rock Island disputed ComEd's argument that Rock Island has not taken into account the operating guides that PJM may impose on the Project to address reliability concerns identified by PJM and which, according to ComEd, will restrict the amount of energy that can be transported on the line. (ComEd IB at 26-27, 29) Rock Island claims it has demonstrated that the potential operating guide identified in PJM's August 2013 SIS Report is feasible and achievable. Rock Island provided a "detailed, step-by-step explanation" of the potential operating procedure requiring redispach of the

generation connected to the Project within 30 minutes, showing that this operating procedure, if it in fact is required by PJM, is feasible and readily achievable within 30 minutes. (RI IB at 91-93; RB at 83-84, Ex. 2.15 at 26-32; Ex. 2.20)

Rock Island claims it also demonstrated that the other potential reliability issues identified in PJM's August 2013 SIS can be satisfactorily addressed by the installation of additional fast-acting voltage support equipment, which Rock Island plans to install and has included in the Project cost estimate; these other potential reliability issues will not require operating limitations on the Project. Dr. Galli went through each potential reliability issue identified in the PJM August 2013 SIS report and explained how each potential issue would be mitigated, whether through network upgrades, the installation of dynamic reactive power equipment on the Project, the operation of PJM's SCED, the implementation of a specific operating procedure, or a combination of these approaches. (RI IB at 86-91; RB at 84; RI Exs. 2.15 at 14-26; and 2.18) Rock Island Ex. 2.18 is a table prepared by Dr. Galli which purportedly lists each potential reliability issues identified in the PJM August 2013 SIS, the technical resolution of the issue, the economic impact of the technical resolution on the Project, and where in the evidence each issue and its resolution is discussed. (RI RB at 84)

Rock Island disputed ComEd's argument that Mr. Naumann is a more qualified witness than Dr. Galli on the question of whether the operating limitation indicated by the PJM August 2013 SIS -- in the event of an outage of a ComEd 765 kV line connecting to the Collins Substation -- is feasible. (ComEd IB at 29) Rock Island states that Dr. Galli holds a Ph.D. in Electrical Engineering, is a Senior Member of the Institute of Electrical and Electronics Engineers, and has over 15 years of experience in the electric transmission industry in both technical and managerial roles including power system planning and operations. His experience includes "substantial work" with HVDC transmission lines. (RI Ex. 2.0 at 1-2) Dr. Galli's analyses in this case of the possible need for operating restrictions to meet PJM requirements were supported by the work of Siemens, Rock Island's technology vendor for the Project's converter stations and a "world leader" in HVDC technology with over 17,000 MW of HVDC capacity installed worldwide. (RI RB at 84-85) Rock Island states that studies conducted by Siemens demonstrate that the need for most, and possibly all, of the potential operating restrictions identified in the PJM August 2013 SIS can be eliminated by the dynamic reactive power equipment that Rock Island will install on the Project. (RI Ex. 2.15 at 11, 19-20; RI RB at 85) Finally, Rock Island states that the record shows that a senior executive of PJM told a senior executive of Exelon, in writing, that based on PJM's prior operating experience, generator redispatch to reduce the injection level from 3,500 MW to 700 MW could be completed within 30 minutes of the triggering event. (RI Ex. 2.17 at 3; IB at 88-89; RB at 86)

Moreover, RICL asserts, the economic benefits of the Rock Island Project are based on the delivery of low-cost renewable energy from wind generators in the Resource Area to PJM. Its studies assume that the Project will deliver about 15,000,000 MWh of electricity on an annual basis, which represents about a 49% utilization factor for the line. Thus, any implication that the Project must be delivering

3,500 MW into PJM at all times in order to produce its anticipated economic benefits would be erroneous. (RI RB at 86-87)

PROMOD, the modeling software used by Mr. Moland, explicitly incorporates transmission limits based on North American Electric Reliability Corporation power flow cases, and uses an economic dispatch of generation subject to reliability constraints that mimics the operation of the PJM SCED. Therefore, the substantial benefits calculated by Mr. Moland, based on the Project's delivery of low-cost energy, include the limits of the PJM grid to accept the Project's energy deliveries. (RI RB at 87-88, citing RICL Ex. 3.0 at 3, 5-6, 9; Ex. 2.18)

Rock Island responds to ComEd's "unfounded" assertion that Rock Island has failed to include in its economic studies network upgrades originally assigned to Rock Island that will cost hundreds of millions of dollars because of the PJM retool facilities study, which -- according to ComEd -- will be required if generators want to actually inject levels of energy like that assumed in RI's economic models. (ComEd IB at 28-29) Rock Island states that PJM's August 2013 re-tool SIS showed that only \$24 million of network upgrades are needed. According to RICL, this outcome was not the result of PJM re-assigning system upgrade costs to other market participants, as ComEd suggests, but rather was the result of substantially revised and updated study assumptions made by PJM. Rock Island states that the only evidence ComEd cites for its assertion are two lines from Mr. Naumann's rebuttal testimony that make a very general reference to unspecified network upgrades required to operate above 700 MW of FTIR, and one answer in cross-examination. (RICL RB at 89, citing RI Ex. 2.11 Rev. at 12, 15-18)

In Section IV.A.1.4 of its reply brief, RICL takes issue with ComEd's argument that the Project is not necessary to provide adequate, reliable and efficient service to customers. (ComEd IB at 30-32)

As part of its argument, Rock Island disputed ComEd's assertion that there is no evidence that without the Project, customers will be unable to access adequate generation or the types of generation and/or RECs required to satisfy the Illinois RPS. (ComEd IB at 32) Rock Island states that the amounts of electricity from renewable resources needed to meet the RPS requirements of Illinois and other PJM states when they reach their maximum levels -- in 2025 for Illinois -- far exceed the currently installed renewable generation capacity in the region. (RI RB at 92, citing RI Ex. 10.0 at 15-18; and WOW Exs. 1.0 at 8-9, 22, 1.9, and 3.0 at 5) Second, assuming that sufficient additional wind generation could be built in Illinois or Indiana to meet the 2025 RPS requirements, RICL claims the electricity and RECs provided would be higher-cost than the electricity and RECs that would be produced by new wind generation in the Resource Area, which has higher average wind speeds and therefore higher capacity factors and lower costs per MWh generated. (Id, citing RI Ex. 10.0 at 7-8, 20)

Finally, Rock Island states that ComEd's argument is that because the Illinois RPS can be satisfied by the purchase of RECs from Illinois or adjoining states without a requirement that the electricity be delivered into Illinois, the new wind generation plants

that could be developed in northwest Iowa could sell their RECs to Illinois buyers without delivering their electricity into Illinois, and therefore do not need the Project. (ComEd IB at 32, citing ComEd Ex. 3.0 at 6) Rock Island responds that ComEd's argument ignores the fact that new wind generation will not be developed in the Resource Area unless new transmission infrastructure such as the Project is constructed to connect the Resource Area with load and population centers like northern Illinois and thereby enable the wind generators to deliver their electricity to and sell it into a market where there is a demand for it. (RI RB at 92-93, citing RI Exs. 1.0 at 24-25 and 10.0 at 6-7, 9-11; and WOW Ex. 1.0 at 10-12)

Response to Staff

In response to Staff, Rock Island notes that the final two sentences in the section of Staff's Initial Brief on the §8-406(b)(1) state, "Staff believes that the evidence supports a finding that the Project would promote an effectively competitive electricity market, but that the preponderance of evidence in favor of such a finding is not a strong preponderance and is subject to "considerable uncertainty." Staff notes that there is no evidence suggesting that the Project would prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects." (RICL RB at 93, citing Staff IB at 60)

RICL also cites the following language on pages 24-25 of Staff's Initial Brief:

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

Rock Island argues that despite its somewhat "equivocal nature," Staff's conclusion, standing alone, is sufficient basis for the Commission to find that the Project satisfies §8-406(b)(1). Rock Island also states that Staff's conclusion is based "solely" on Mr. Zuraski's original analyses that were presented in his direct testimony. Rock Island contends that Staff's statement that the Project's net benefits are subject to "considerable uncertainty" does not reflect the full record in this case. Rock Island states that, using Staff's financial model, Rock Island witness Mr. Berry ran additional sets of analyses with certain corrections and updates.

In total, Mr. Berry made seven updates or assumption changes to Staff's model, and otherwise left it unchanged. Mr. Berry: (1) modeled the Project's transmission charges as paid by wind generator customers; (2) added the latest interconnection cost information for new wind generation in Illinois, based on the latest data for the PJM

interconnection queue; (3) updated the wind generation capital costs in the model based on the latest data from Lawrence Berkeley National Laboratory's 2012 Wind Technologies Market Report; (4) revised the model to use PJM's capacity value methodology for wind generation; (5) corrected several tax treatments in the model; (6) updated the Project's capital cost to reflect Rock Island's latest estimate; and (7) changed the number of years of LMP savings reflected in the model from 5 years to 40 years, so that the period of LMP savings matched the period over which the Project's capital costs were assumed to be recovered. (RICL RB at 94, citing RI Exs. 10.14 Rev. at 50-53, and 10.26 at 39)

Rock Island states that Mr. Zuraski had the opportunity to comment on changes (1) through (5) in his rebuttal testimony and did not take issue with them. Rock Island states that change (6) was an "uncontroversial" update made after Mr. Zuraski filed his rebuttal testimony. RICL says the only change with which Mr. Zuraski did take issue was item (7), and in response, Mr. Berry also ran analyses with only five years of LMP savings incorporated as preferred by Mr. Zuraski. (*Id.* at 94-95 citing RI Ex. 10.26 at 38)

Rock Island claims the results of these updated model runs, including only the changes with which Mr. Zuraski did not take issue, show that the uncertainty cited by Staff is actually inconsiderable, because the average benefits to consumers are many billions of dollars and the Project is the least cost alternative in over 90% of the sensitivity cases analyzed. The average consumer benefit of the Project (net present value revenue requirements savings) was \$6.9 billion under Staff's "Model A" and \$8.6 billion under Staff's "Model B," using a 5% discount rate, which Mr. Zuraski also used. Further, under Staff "Model A," the "Rock Island Project + Iowa Wind" scenario had a lower revenue requirement (compared to the "Illinois Wind" scenario) in the "base case" and in 93% to 97% of the sensitivity cases, depending on the discount rate used. (RI RB at 95, citing RI Ex. 10.26 at 38-40)

Rock Island also contends that its merchant business model means that RI and its investors, not the public, take the risk of incorrect future projections. (Rock Island RB at 95)

RI addressed a statement in Staff's Initial Brief that Mr. Zuraski questioned Rock Island's inclusion, in its analysis of the Project's benefits, of the increase in employment, revenues of manufacturing and service enterprises, landowner wealth and State and local tax revenues that will result from construction and operation of the Project and the associated wind farms, as detailed in the economic impact study presented by Rock Island witness Dr. Loomis. Staff then quotes Dr. Loomis's response on this point, which "makes it clear" that his economic impact analysis "is a separate but complementary analysis to the other benefits of the Project described by other Rock Island witnesses." Rock Island believes that at this point there is no issue with Staff as to how the economic impacts of the Project, estimated in Dr. Loomis's study, should be taken into account. (RI RB at 99, citing Staff IB at 24)

Rock Island takes issue with Staff's "uninformative characterization" of Dr. McDermott's and Mr. Berry's testimony on the appropriate economic analysis where

Staff states that, "In effect, these RICL witnesses argue that the Commission need not concern itself with the cost or the viability of RICL's Project because RICL is a 'merchant transmission company' and not a traditional public utility." (Staff IB at 27)

In response, Rock Island states Dr. McDermott testified that the competitive market will determine whether the Project is needed, justified and least cost by the decisions of generators and wholesale power purchasers to utilize the Project to transport power. (RI Ex. 4.2 at 10) Rock Island "points out" that Dr. McDermott's analysis focuses on the prices actually paid by consumers, which is not the same as ignoring costs. (RI RB at 100, citing RI Ex. 4.0 Rev. at 2)

Rock Island addressed Staff's statement that ComEd witness Mr. Naumann "described how the cost of wind farms interconnecting to [Rock Island] could be 10 times what Mr. Berry cited as the cost of connecting Illinois wind farms to the existing PJM grid." (Staff IB at 28) Rock Island states that in making the calculations that supported this assertion, Mr. Naumann selected the two potential wind farm sites -- out of 16 listed on Rock Island Ex. 10.19 -- that were the farthest distance from Rock Island's western converter station site, and so his calculation was "deliberately skewed." (RI RB at 100-101, citing RICL Ex. 10.26 at 30) Second, Staff "apparently missed" that Mr. Naumann's calculation was based on erroneous information in Rock Island Exhibit 10.19 about the locations of potential wind farms in the Resource Area which was corrected in Rock Island Exhibit 10.19 Rev.) According to Rock Island, when Mr. Naumann took this correction into account and revised his calculation, his figure of connection costs of \$800,000 per MW for the two wind farms in the Resource Area that he had analyzed was reduced to \$100,000 per MW (Tr. 888-889), which "simple math" shows reduces "10 times the cost of connecting Illinois wind farms to the existing PJM grid" to a much more modest 1.25 times. (RICL RB at 99-100)

Third, Rock Island states that Mr. Naumann's numbers were further skewed because he assumed each wind farm would build its own generator tie line, when in fact, groups of nearby wind farms would likely share the costs of a tie line, thereby reducing the tie-line costs per MW of wind generation capacity. Mr. Berry testified that based on his experience, a more reasonable estimate of connection costs for wind farms in the Resource Area would be \$80/kW (\$80,000/MW), which is similar to the generation tie line costs for wind farms in Illinois and Indiana. (*Id.*, citing RI Ex. 10.26 at 28-31)

In summarizing ComEd's position, Staff stated that ComEd witness Naumann stated that hundreds of millions of dollars of upgrade costs may be required for the Project. (Staff IB at 41) Rock Island responds that Staff cited Mr. Naumann's direct testimony, which reflected the November 2012 PJM SIS for the Project; whereas, PJM issued the August 2013 re-tool SIS which concluded that only \$24 million of system upgrades are required. Rock Island states that these costs have been included in the current Project cost estimate of \$1.833 billion. (RI RB at 101, citing RI Exs. 2.11 Rev. at 11-12; 10.14 Rev. at 36; 10.26 at 37)

Staff also cited Mr. Naumann's testimony that although the transmission capacity of the Project is 3,500 MW, Rock Island has only requested 1,192 MW of FTIR into PJM. RI responds that the economic benefits of the Project are based on the delivery of low-cost energy, not a constant 3,500 MW of capacity, and therefore do not require that RI have 3,500 MW of FTIR into PJM. (*Id.* at 101-102)

Rock Island disputed Staff's assertion that "existing and future MISO-approved projects, like transmission projects anywhere else in the United States, can be considered substitutes for the [Rock Island] Project." (Staff IB at 46) First, Rock Island states that the existing MISO-approved transmission projects -- the MISO MVPs -- are not substitutes for the Project; these projects have different objectives and will accomplish different things. Rock Island states that the MISO MVPs are intended, among other things, to enable the construction of new renewable generation to meet RPS goals in the MISO footprint. According to Rock Island, the rationale for the MISO MVPs does not include providing renewable energy to northern Illinois or the PJM system; nor do the MISO MVPs increase transfer capacity from the wind-rich areas of MISO in to PJM in an amount sufficient to displace the need for the Project. Rock Island states that the MISO MVPs create additional transfer capability into PJM equal to only about 12% of the capacity of the Rock Island Project, and therefore, would be able to serve only a small fraction of PJM demand. (RI RB at 102-103, citing RI Exs. 10.14 Rev. at 59-61, and 10.26 at 35)

Second, Rock Island states that a transmission project "anywhere else in the United States" cannot be a substitute for the Project, and Staff does not explain how this could be the case. Rock Island states if Staff is intending to convey that under the Illinois RPS, Illinois utilities can buy RECs from Illinois or adjoining states -- and ARES can buy RECs from anywhere within MISO or PJM -- then a transmission line "anywhere in the United States" may be a partial substitute for the Project to the extent that such transmission line stimulates the development of new wind generation in states from which either Illinois utilities or Illinois ARES can buy RECs to meet their Illinois RPS requirements. However, Rock Island argues, RECs produced by wind generators located in areas with higher average wind speeds can be expected to be lower cost than RECs produced by wind generators in areas with lower average wind speeds because the basic economics of producing electricity are superior at higher wind speed sites. (RI RB at 103, citing RI Ex. 10.0 at 8)

Rock Island next argues that only a transmission line delivering energy into Illinois, such as the Project, will allow new generating capacity to access the Illinois electricity markets and increase competition in those markets and provide, potentially, lower cost supplies of electricity to Illinois, as the Project will do. (RI RB at 104) Rock Island further argues that the Project will enable and stimulate the construction of significant new, high-capacity factor, cost-effective wind generation resources in the Resource Area; a transmission line "anywhere in the United States" will not. (*Id.*)

Rock Island asserts that in evaluating Staff's statement that a transmission line "anywhere in the United States" would be a substitute for the Project, the Commission should consider the goals and objectives of the General Assembly in establishing the

RPS provisions in IPA Act. Rock Island states that the legislative findings and declarations for the IPA Act call for "procuring a diverse electricity supply portfolio" that "includes cost-effective renewable resources in that portfolio" in order to "ensure the lowest total cost over time for adequate, reliable, efficient, and environmentally sustainable electric service" and "decreas[e] environmental impacts." (RICL RB at 104-105), citing 20 ILCS 3855/1-5(5) and (6)) Rock Island submits that it was not the General Assembly's intent in enacting the RPS requirements to simply require Illinois electric utilities and ARES to buy RECs, from "anywhere in the United States," equal to a stated percentage of their MWh sales; rather, the intent was to force the inclusion of significant amounts of electricity from renewable resources in the electricity supply portfolio serving Illinois consumers and to stimulate the actual use of electricity from renewable resources to serve electricity requirements in Illinois. (*Id.*)

Rock Island responds to Staff's statement that "Dr. McDermott's analysis actually does not show how the Project directly promotes the development of a competitive market." (Staff IB at 49) Rock Island claims Dr. McDermott's analysis showed that the Project will enable thousands of MWs of new generation resources to access the electricity markets in Illinois and compete to serve load, and that the amount of "economic capacity" available to serve load in Illinois, based on the FERC's Delivered Price Test, will increase. Rock Island states that because the new generation resources will be lower cost, as evidenced by the reduction in LMPs and wholesale demand costs they will produce, there will be downward pressure on market prices. In addition, the amount of REC capacity for Illinois and the region will increase. (RI RB at 105, citing RI Ex. 4.0 Rev. at 2-4, 31-33, 34-39) Rock Island argues that an increase in capacity competing to serve demand, and downward pressure on market-clearing prices, are indicators of the further development of an effectively competitive electricity market. Rock Island states that these data are also indicators of a competitive market that operates efficiently (because the introduction of new, lower-cost competitors lowers prices) and is equitable to customers -- because the reductions in LMPs and wholesale costs to serve load will be ultimately reflected in the prices paid by retail electricity customers. (*Id.*, citing RI Ex. 4.0 Rev. at 5-6, 8-12)

B. Staff Position

1. Necessary to Provide Adequate, Reliable and Efficient Service

The first heading in Section IV.A.1 of Staff's initial brief is titled, "Whether the Project is necessary to provide adequate reliable, efficient service." Staff witness Yassir Rashid concluded that the proposed project is not needed to provide electric service adequacy, efficiency, or reliability. (Staff Ex. 1.0 at 8) He said "RICL's main argument for the proposed project is that it will promote the development of competitive electricity markets...." According to Staff, RICL does not argue or demonstrate that the reliability of the electric transmission system in Illinois will be compromised if the proposed project is not built. (Staff IB at 20, citing Staff Ex. 1.0 at 8) Furthermore, Staff argues, RICL has not provided an independent study, such as load flow study, from transmission system operators in Illinois, namely PJM and MISO, that would demonstrate the need for the

project, or any studies, such as load flow studies, from its witness. (*Id.*; Staff Ex. 4.0 Rev. at 2-3)

Staff says Petitioner "admits" in its testimony that no public need has been established for its proposed project. Specifically, Rock Island witness Berry states that "permanent installation of facilities cannot and will not commence unless and until the need for the Project is actually established through the market test of transmission customers contracting for sufficient service on the transmission line to support and justify financings that raise sufficient capital to cover the total Project cost." (RI Ex. 10.13 at 3-4)

As such, Staff "believes that Rock Island has not demonstrated that the Project is the 'necessary to provide adequate reliable, and efficient service' test based on any tendency of the RICL to maintain or improve the reliability of the electric system in Illinois." (Staff IB at 20-21)

Staff states that it also examined whether RICL demonstrated that the project is necessary within the meaning of Section 8-406(b)(1) in some other way. (Staff IB at 21)

In direct testimony, Mr. Rashid stated that RICL did not provide information on whether it examined alternatives to the proposed project to ensure that the proposed project met the least-cost criterion defined in Section 8-406 of the Act. (Staff Ex. 1.0 at 9.) To address Mr. Rashid's point, in his rebuttal testimony, Mr. Galli presented a "hypothetical exercise" that compares a transmission line project similar to the RICL proposed project to different projects that utilize AC transmission lines. (RICL Ex. 2.11 at 3-4) Mr. Galli's conclusion of that exercise was that it showed "the clear cost benefit of an HVDC project to an AC project." (*Id.* at 7) Staff states in its initial brief that the hypothetical exercise "did not factor in the increased cost of interconnecting to HVDC transmission lines as opposed to AC transmission lines and the implications of that increased cost given that the proposed project is supposed to offer open access transmission services." The Commission notes that Staff does not provide a citation to the record for this statement. (Staff IB at 21)

Mr. Rashid took issue with the potential difficulty that Illinois generator and loads along the DC portion of the transmission line will face both to access and to making sound and economic use of the proposed project. (Staff IB at 21-22, citing Staff Ex. 1.0 at 7-8.) Mr. Galli stated that RICL plans to "provide open access transmission service" to the proposed project. (RICL Ex. 2.0 at 5) In addition, RICL witness David Berry stated, "Rock Island will be obligated to provide non-discriminatory, open access transmission service to all "eligible customers..." (RICL Ex. 10.13 at 4)

In its initial brief, Staff argues, "Although RICL plans to provide open access to the transmission line, this offer is only feasible outside the HVDC portion of the transmission line." Staff adds, "Theoretically, interconnection with high voltage alternating current ("HVAC") generators or other transmission lines along the HVDC portion of the project is attainable; however, it requires installation of AC-to-DC and/or

DC-to-AC converters at each location where interconnection with the HVDC transmission line is sought." Staff further argues that the addition of these converters will increase the interconnection cost significantly, making such an endeavor impractical and economically infeasible, and that "this economic disadvantage will likely hinder Illinois electricity producers' and electricity users' ability to access the HVDC transmission line." (Staff IB at 21-22; Staff Ex. 1.0 at 7-8)

According to Staff, RICL's proposed project is best suited to serve energy producers who access the HVDC transmission line at the west end of the transmission line -- in O'Brien County, Iowa -- and deliver their energy production to consumption centers at the east end of the HVDC transmission line (PJM Interconnection). (*Id.* at 22, citing Staff Ex. 1.0 at 7-8) In that sense, "for optimal use of the proposed project, it should be seen as analogous to a one-way highway with no entry or exit ramps that starts in northwestern Iowa and ends in northeastern Illinois." (*Id.*) The manner in which the RICL is technically configured "would impose costs on Illinois electric producers -- the installation of AC/DC and/or DC/AC converters at each location at which they wish to interconnect -- that would likely to render use of the facility economically infeasible and thus inequitable to such Illinois producers in practical terms." (*Id.* at 22-23)

RICL witness David Barry indicated that RICL's latest Project cost estimate is \$1.833 billion. (RICL Ex 10.26 at 37) In Staff's view, RICL has not shown whether this is the least-cost means of satisfying a service need. (Staff IB at 23)

Staff states that Mr. Rashid testified that RICL had failed to establish that Project is needed to maintain the reliability of the electric systems in Illinois. (Staff Ex. 1.0 at 3, 8) He also testified that it was not clear whether the proposed project, which RICL estimates will cost \$2 billion overall, is the least-cost project that would further the cause that RICL identifies for implementing the proposed project. (*Id.* at 9) Mr. Rashid suggested that one such alternative would be an AC transmission line of equal load capacity as RICL's proposed DC line. (*Id.*; Staff IB at 28-29)

2. Zuraski Analysis

In its initial brief, Staff next addresses the testimony of Staff witness Zuraski. He testified that, to the extent the growing demand for renewable energy cited by RICL is based on Illinois renewable portfolio standards, that demand "is bounded and generally incapable of justifying, by itself, new transmission resources such as the RICL Project." (Staff Ex. 3.0 at 7-11) This is because: (1) the Illinois RPS includes budget constraints; (2) physical delivery of energy to Illinois is not a requirement of the Illinois RPS; and (3) the location of renewable energy resources within a state adjoining Illinois (like Iowa) is not required. (*Id.*) On the other hand, Mr. Zuraski noted that the project may be justified on the basis of an economic analysis comparing the Project's benefits and costs. (*Id.*, Staff IB at 23-24)

Mr. Zuraski stated that the testimony presented by RICL witnesses focuses only on benefits, and fails to compare those benefits to the costs of the Project. (Staff Ex.

3.0 at 11) Furthermore, RICL included several "benefits" that Mr. Zuraski said he would exclude from an economic analysis of the benefits and costs of the project. Specifically, he recommended against taking into account RICL's claims that project will increase employment, revenues of manufacturing and service enterprises, landowners' wealth, and tax revenues at the State and local levels. (*Id.* at 13-16; Staff IB at 24)

Notwithstanding the exclusion of the effects estimated by Dr. Loomis, Staff witness Zuraski testified that, based on his evaluation, he expects that the Project's benefits would outweigh its costs. (Staff Ex. 3.0 at 5) He also expects that the additional costs of RICL-dependent wind farms in the Resource Area would not significantly exceed the maximum allowable budget for incremental renewable resource expenditures by utilities and ARES in Illinois. In his view, both of these factors favor a finding that the benefits of the Project are "needful and useful to the public," and that they are likely to be at least commensurate with the costs of the Project. On the other hand, Mr. Zuraski testified that his analysis is subject to considerable uncertainty. (*Id.* at 5-6, Staff IB at 25-26)

In his evaluation, Mr. Zuraski employed a sensitivity analysis to determine how sensitive his overall results were to various individual factors, such as Project capital costs, the cost of renewable energy facilities, future market prices for electric energy, and the capacity factor of wind farms. While other inputs were held constant, some of these variables are still subject to uncertainty. (Staff IB at 25, citing Staff Ex. 3.0 at 16-46)

For example, Mr. Zuraski assumed the continuation of the \$22 per MWH federal production tax credit, "which, based on NYMEX settlement prices as of May 31, 2013, is roughly two-thirds of the average price of PJM Northern Illinois Hub futures contracts for the 12 month delivery period from June 2013 through May 2014". Staff states, "However, Congress permitted these tax credits to expire on December 31, 2013. If these tax credits are not renewed, it could significantly affect the financial viability of new wind farms, and thus the viability of the Project." (Staff IB at 25)

Furthermore, for purposes of conducting his analysis, Mr. Zuraski assumed that the Project would be utilized to its full extent, thus enabling Project costs to be spread out over a large volume of capacity and energy sales. Staff adds, "However, this assumption may not be borne out; as ILA witness Gray and ComEd witness Naumann indicated ..., there are no guarantees that the Project will be fully subscribed or that PJM will permit power injections nearing the Project's full capacity." (*Id.* at 25-26)

Staff also states that Mr. Zuraski's analysis relied on Project cost estimates provided by RICL. (Staff Ex. 3.1) He addressed neither the concerns of additional upgrade costs raised by ComEd witness Naumann nor the cost implications of the various concerns raised by witnesses for the land owner interests, relating to the impact of the Project on land values, wildlife, quality of life, historically-significant lands, and the legacies left behind by the affected land owners. (Staff IB at 26)

Staff states that in rebuttal testimony, RICL witness Berry agreed with Staff witness Zuraski's observation that RICL had presented certain claimed benefits of the Project, but had failed to compare those benefits to the cost of building, operating and financing the Project. (Staff IB at 26, citing RICL Ex. 10.14 at 47-48) Mr. Berry defended RICL's approach, stating, "Rock Island is not asking electric consumers (or their retail electric providers) to pay for the cost of the Project and, as I explain above, Rock Island's business model requires that the users of the Project's capacity recover the cost of their capacity contracts from the proceeds from selling wholesale energy (along with capacity and RECs). Thus, the costs actually incurred by consumers related to the Project (buying wholesale electricity, capacity and RECs) are analyzed and discussed by Dr. McDermott." (Staff IB at RICL Ex. 10.14 at 48)

RICL witness Dr. McDermott testified, "[T]he costs associated with the Project are paid through market- based rates not through a regulated cost of service approach. A revenue requirements analysis, like Mr. Zuraski's, is appropriate for a cost of service project that a traditional utility builds. It may not be relevant to a merchant transmission line like the Rock Island Project." (Staff IB at 26, citing RICL Ex. 4.2 at 9-10)

Dr. McDermott further testified, "[W]hile this may be an obvious point, it bears stating that a market- based transmission line must be the least-cost approach or the line will not obtain sufficient contracts to justify building it. If, for example, shippers could reach their desired markets using an alternative lower-cost resource they will not sign contracts." (RICL Ex. 4.2 at 10)

According to Staff, these RICL witnesses in effect argue that the Commission need not concern itself with the cost or the viability of RICL's Project because RICL is a "merchant transmission company" and not a traditional public utility. Staff responds that there are real concerns that ratepayers may ultimately bear the Project costs. (Staff IB at 27) In support of its position, Staff cites testimony from Mr. Zuraski, who stated:

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

He next stated:

Second, RICL is more likely to seek such non-market assistance if it finds that it is unable to cover its costs (which in regulatory parlance, we usually call "revenue requirements"). This is why I relied on a revenue

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

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

(Staff IB at 27-28, citing Staff Ex. 6.0 at 2-4)

In other words, Staff argues, the viability of the Project and the viability of the renewable resources that RICL expects to use the transmission resource are inextricably linked; and all the costs and all the benefits of these inter-related endeavors should be considered as fully as possible in order to determine whether the Project is sufficiently needful and useful. (Staff IB at 28) Staff cites a "similar point" made by ComEd witness Mr. Naumann, who stated, "While these costs will not be faced by the Rock Island Project, the costs to interconnect to the Project, together with the cost of construction of the wind resources, plus the cost Rock Island will charge the wind resources for use of its line, all impact a decision as to whether connection to the Project is economic, and thus impacts the economics of the Project." (ComEd Ex. 4.0 at 32)

3. Other Parties' Assessments

In its initial brief, Staff next describes other parties' "assessments of the need for the project." (Staff IB at 29-44)

4. Argument and Staff Conclusions regarding whether Project is Necessary

After that, Staff provides "Argument and Staff Conclusions." (Staff IB at 44-48) Staff believes that the degree to which RICL's Project is necessary, or whether the Project is "needful and useful," should be ascertained, among other things, by comparing the Project's benefits to its costs. In this case, the proposed construction project is a long-distance DC transmission line that has the potential to contribute to both national and state objectives of greater reliance on renewable energy. In addition,

the Project has the potential to reduce the price of electric energy and provide other benefits to consumers. On the other hand, there are questions regarding whether the Project will succeed in attaining these goals. There is some question whether the Project will succeed at all and whether the potential benefits justify these risks.

Staff cites by testimony from Mr. Zuraski that in its direct testimony, RI did not demonstrate that the Project's benefits outweigh the costs. (Staff IB at 44-45, citing Staff Ex. 3.0 at 11) Specifically, he testified that, "The direct testimony presented by RICL witnesses focuses only on certain alleged benefits of the project. RICL has not compared the benefits to the project's expected costs." (*Id.* at 45, citing Staff Ex. 3.0 at 11) Staff states, "This is tempered somewhat by the Project's merchant transmission status." (*Id.*) If RICL were a traditional public utility, with a well-defined service territory and existing duty to serve customers within that territory, or a traditional public utility with a plan to provide service to a new community, Staff would be more concerned with RICL's potential for failure because of the direct rate consequences. Unlike those traditional cases, however, this proceeding involves a sole-purpose entity. Aside from Illinois landowners who do not want to transfer ownership of their property to the entity, and possible environmental consequences, "Project failure appears less likely to have serious immediate consequences for Illinois consumers or other Illinois utilities, unless RICL seeks rate recovery for any resulting stranded costs." (*Id.*)

Staff comments that RICL fashions itself a "merchant" transmission company. RICL states that it will set its transmission rates through negotiation with its client subscribers, rather than through a regulatory authority's translation of revenue requirements. In theory, Staff states, this merchant model provides some protection to retail ratepayers within Illinois, but witnesses for ILA, ComEd, Staff, and BOMA expressed concerns that retail ratepayers within Illinois are not entirely free of risk. Further, RICL has not ruled out the option of pursuing recovery of costs through retail rates. (Staff 46, citing Tr. at 1073-1076; RICL Ex. 10.14 at 29-30) Notwithstanding the potential benefits from the Project that RICL has identified, Staff believes it is noteworthy that the Project has not been determined to be necessary by either MISO or PJM. Since the Project, as planned, would deliver all of its transmitted power to the ComEd Zone within PJM, it is reasonable to focus on the PJM transmission expansion planning process. According to Mr. Naumann, the RICL Project has not been found by the PJM process to be necessary for either reliability, operating efficiency or market efficiency reasons. Staff suggests, "While not controlling under Illinois law, this has probative value and is a factor the Commission should consider." (*Id.*)

Staff also finds it "noteworthy" that, while MISO specifically looks for projects to accommodate the renewable portfolio standards of MISO states, PJM's transmission planning process has no analogous goal to accommodate the renewable portfolio standards of PJM states. On the other hand, as ILA witness Dr. Gray noted, existing and future MISO-approved projects could contribute to the attainment of Illinois renewable portfolio standard goals in both Ameren (MISO) and ComEd (PJM) service territories. (Staff IB at 46, citing ILA Ex. 4.1 at 5-6) Staff adds, "For that matter, this could be true of transmission projects anywhere in the United States, since the Illinois

renewable portfolio standards do not require delivery of energy into Illinois.” (*Id.*, citing ILA Ex. 4.1 at 6)

Staff agrees that existing and future MISO-approved projects, “like transmission projects anywhere else in the United States,” can be considered substitutes for the RICL Project. However, they can also be considered complements. That is, “there is no compelling evidence in the record of this proceeding showing that the RICL Project and these other projects are mutually exclusive; nor is there evidence that they do not all contribute toward attainment of the nation’s and the State’s renewable energy goals.” (Staff IB at 46-47)

As for costs, Staff comments that RICL appears to take the position that its costs should be considered irrelevant to the Commission. In Staff’s view, the Commission should reject this argument. RICL urges the Commission to consider costs “too narrowly.” According to Staff, the Commission needs to consider the impact of the Project on the public, not just RICL; for example, the Commission needs to exercise its judgment to determine whether the impact on landowners and the environment have been adequately taken into account. (*Id.* at 47)

With respect to landowners, Staff believes RICL presents a “convincing case” that the compensation that it will purportedly offer to affected landowners is within, or at least approaching, a reasonable level; and that these costs have already been accounted for in the total cost figures that RICL presented. (Staff IB at 47, citing RICL Ex. 7.30 at 3, et seq.; RICL 7.31; RICL Ex. 10.13 at 3)

With regard to the environment, RICL addresses concerns raised by landowner interests about the Project’s potential to damage existing wetlands, forests, historical sites, and other conservation areas. Staff states, “First, the route development process identified potential wetland areas crossed by the Preferred Route and the Proposed Alternative Route, and RICL claims that it will avoid adverse impacts to wetlands to the extent possible and employ measures to minimize impacts where those impacts are unavoidable” (*Id.*) Staff next states, “Second, RICL must comply with the Clean Water Act and relevant regulations; and RICL must obtain permits from USACE, IDNR, and the IEPA. RICL also claims it will cooperate with the IHPA and USACE concerning any historical or archeological sites along the Project’s route.” (*Id.* at 47-48) Staff adds, “Finally, if the Project is successful in encouraging the construction of new wind farms in the Resource Area, those new wind farms may displace electricity production from less environmentally friendly generating resources.” (*Id.* at 48)

In the final paragraph of the section of its brief titled, “Whether the Project is necessary to provide adequate reliable, efficient service,” Staff asserts, “Nevertheless, it cannot be confidently stated, based on this record, that Rock Island has shown here that the Project is necessary to provide adequate, reliable, efficient service and is the least-cost means of satisfying the service needs of its customers as required under the first prong of Section 8-406(b)(1).” (Staff IB at 48)

5. Promotion of Development of Effectively Competitive Market

The next heading in Section IV.A.1 of Staff's initial brief is named, "Whether the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives." (*Id.*)

In its initial brief, Staff first summarizes the positions of RICL, IBEW, WOW, BOMA, ILA and ComEd on this issue. (Staff IB at 48-51)

With regard to the RICL position, Staff comments in part, "[RICL witness] Dr. McDermott acknowledges that the PJM wholesale market and the interchange between PJM and MISO are already competitive. He further acknowledges that his analysis assumes this existing competitive market. (*Id.* at 49, citing RICL Ex. 4.0 at 12) Staff adds, "Thus, Dr. McDermott's analysis actually does not show how the Project directly promotes the development of a competitive market. Rather, it shows how the reduction in prices resulting from the Project are due, in part, to the existing competitive market." (*Id.*)

Staff next addresses the "Staff Analysis." Mr. Zuraski stated, "With respect to whether or not the proposed construction will promote the development of an effectively competitive electricity market, it is my opinion that an effectively competitive electricity market already exists. However, it is also my opinion that the RICL Project would not threaten the competitiveness of the electricity market. (Staff IB at 51, citing Staff Ex. 3.0 at 5)

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

According to Staff, the results were "inconclusive and varied widely." (*Id.* at 52) For example, in Mr. Zuraski's Model A, the average results with a real discount rate of 5% was negative \$1.8 billion when counting all LMP "savings." (*Id.*, citing Staff Ex. 3 at 32) It was a positive \$100 million when counting only Illinois LMP savings. (*Id.*) Staff states that In Mr. Zuraski's model, negative results correspond to a decrease in net costs, meaning that the project would lead to net economic benefits. (*Id.*, citing Staff Ex. 3 at 30) Mr. Zuraski explained that around these averages, the results of the sensitivity analysis vary between negative \$7.9 billion and positive \$5.8 billion when counting all

LMP "savings" and between negative \$5.9 billion and positive \$7.8 billion when counting only Illinois LMP "savings." (Staff IB at 52) In general, the range between low and high is larger with lower real discount rates and smaller with larger real discount rates. (*Id.*, citing Staff Ex. 3 at 30)

Staff next summarizes RICL's response to ILA, ComEd, and Staff. On the issue of what constitutes a competitive market analysis, Dr. McDermott's responded to Mr. Zuraski as follows: "First, a competitive market analysis should look at the difference between market outcomes (or equilibria) under various assumptions such as with the line and without the line which is the approach I used in my Direct Testimony." Dr. McDermott added, "That is a proper market analysis of the value of the line. Comparing outcomes to hypotheticals, as Mr. Zuraski does, is a less theoretically sound approach, since the competitive market, not a theoretical model, will decide which alternatives actually proceed." (RICL Ex. 4.2 at 9)

In response to RICL witness Dr. McDermott, Mr. Zuraski stated, "It is not clear what Dr. McDermott means by 'competitive market analysis.' There are many forms of economic analysis concerning competitive markets. Some concentrate on 'market outcomes (or equilibria),' while others concentrate of the behavior of economic actors or the structure of the market."

Mr. Zuraski continued, "Which type of analysis should be performed depends on what questions are being asked and the purpose of the analysis. In the case of Dr. McDermott's analysis, the apparent purpose was to identify the likely difference in electric energy prices between a world with the Project and a world without the Project. He was not attempting to address the likelihood of a world with the Project coming into existence, and he was not attempting to identify the factors that would impinge on such likelihood, as was I." (Staff IB at 53-54, citing Staff Ex. 6.0 at 1-2)

Mr. Zuraski next stated:

Dr. McDermott's focus seems to be due to his contention that "the competitive market ... will decide which alternatives actually proceed." (RICL Ex. 4.2 [at] 9) However, this contention is only partially true. Presently, in this country, decisions to construct electric transmission lines and power plants are not the products of unfettered unregulated undisturbed competitive markets. For instance, decisions to construct electric transmission lines and power plants are heavily influenced by government intervention. In part, the success or failure of projects is determined by government subsidies and involuntary ratepayer subsidies. Thus, it is not unreasonable to pick apart these factors and determine the extent to which a project is bound to succeed, versus the extent to which it is bound to fail without additional largesse. (*Id.* at 54, citing Staff Ex. 6.0 at 1-2)

Dr. McDermott also stated, "Second, the costs associated with the Project are paid through market-based rates not through a regulated cost of service approach. A revenue requirements analysis, like Mr. Zuraski's, is appropriate for a cost of service project that a traditional utility builds. It may not be relevant to a merchant transmission line like the Rock Island Project. Mr. Berry discusses this issue further in his rebuttal testimony." (*Id.* at 54, citing RICL Ex. 4.2 at 9-10)

In response, Mr. Zuraski stated:

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

He then stated:

Second, RICL is more likely to seek such non-market assistance if it finds that it is unable to cover its costs (which in regulatory parlance, we usually call "revenue requirements"). This is why I relied on a revenue requirement model in my analysis. An axiom in competitive market analysis is that, in the long run, firms break even (i.e., they cover their costs, including a normal rate of return). I fear that this point was not made clear in my direct testimony, but I will make it now: I am not suggesting that RICL's services should or will be priced using a set of revenue requirement calculations. Rather, I was using those calculations in a sensitivity analysis to judge the likelihood that the Project would fail to succeed with market-based rates, and hence the likelihood that RICL would seek a different means of cost-recovery.
(Staff Ex. 6.0 at 2-4)

Dr. McDermott also stated, on rebuttal, "Third, while this may be an obvious point, it bears stating that a market-based transmission line must be the least-cost approach or the line will not obtain sufficient contracts to justify building it. If, for example, shippers could reach their desired markets using an alternative lower-cost resource they will not sign contracts." (RICL Ex. 4.2 at 10)

Mr. Zuraski responded, "I agree that the Project must appear to RICL's potential customers (to the extent they are profit-seeking enterprises) to be part of profit-

maximizing business plans, in order for RICL to obtain commitments from those potential customers. However, what RICL considers 'sufficient contracts to justify building' the Project depends on the risk-taking appetite of RICL's managers and investors and RICL's hopes and expectations for obtaining a bailout if plan A goes awry." (Staff IB at 55, citing Staff Ex. 6.0 at 4)

Dr. McDermott also stated, "Fourth, my analysis directly addresses the question raised by Sections 8-406 and 8-503 of the PUA concerning a proposed project's ability to promote competitive markets by looking at the net direct economic benefits (lower energy prices) and the effect on creating a larger regional generation market (by increasing import capacity)." (RICL Ex. 4.2 at 10)

Mr. Zuraski responded, "I take no issue with Dr. McDermott's conclusion that the Project would promote competitive markets and, in the short run, may lower energy prices. The Project certainly will not weaken competitive markets. However, the infusion of any other set of new generators with or without any other new transmission projects coming on-line would have similar impacts." (Staff IB at 55-56, citing Staff Ex. 6.0 at 4-5)

Dr. McDermott further stated, "Fifth, while there is uncertainty in projecting any future benefits, especially long-term benefits, my analysis focuses on the shorter-term and, therefore, more certain benefits. Further, because the Project is not recovering its costs through rates, there is no risk to ratepayers that the benefits to ratepayers are lower than the costs they must pay. The investors who back Rock Island bear that risk." (RICL Ex. 4.2 at 10)

Mr. Zuraski responded, "RICL's investors may face the brunt of the risk. However, due to the potential, discussed above, for RICL to seek government assistance to resuscitate the Project if it begins to financially falter, it is an overstatement to say 'there is no risk to ratepayers.'" (Staff Ex. 6.0 at 5)

Argument and Staff Conclusion

The final heading in this subsection of Staff's initial brief is called, "Argument and Staff Conclusion." (Staff IB at 56-60)

Staff states that RICL maintains its Project will enhance competition for electric energy and capacity and renewable energy credits. Staff comments, "However, this would be true of any and all transmission projects within MISO or PJM. Interpretation of the 8-406(b) requirement that a project "will promote the development of an effectively competitive electricity market..." in this proceeding (or any transmission upgrade case), cannot be so literal that any and all transmission projects would meet the requirement, automatically." (Staff IB at 57)

Thus, in considering whether the utility has shown that the Project "will promote the development of an effectively competitive electricity market that operates efficiently,

is equitable to all customers, and is the least cost means of satisfying those objectives," Staff argues, without citation to the record, that "the Commission may consider whether the utility has shown that: (a) the Project contributes to increasing the degree of competition for electric energy, capacity availability, renewable energy credits, or other electricity market goods and service; (b) the benefits of the increased competition outweigh the costs of the Project; and (c) the Project will not prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects." Staff further states, "In Staff's view, substantial uncertainties exist as to whether the evidence supports such a finding." (Staff IB at 57)

On the one hand, Staff states, RICL witnesses present theoretical arguments supporting its contention that the project enhances competition, along with the results of market model simulations measuring the impact of the added resources on competition. (*Id.* at 57-58) In addition, Mr. Zuraski presented a financial model supporting his expectation that "the RICL Project will promote or contribute to an effectively competitive electricity market that operates efficiently ... and is the least cost means of satisfying those objectives," but also noted that "this assessment is subject to considerable uncertainty." (*Id.*, citing Staff Ex. 3.0 at 5-6)

On the other hand, Staff states, ComEd and ILA witnesses focused on the uncertainties. Mr. Naumann's argument is that the impact of the Project on competition is unknown because "the Project is not sufficiently developed and has too many critical unknown factors." Dr. Gray's argument is that the impact of the Project on competition is unknown for several reasons noted by Staff. (Staff IB at 58)

Staff agrees that there is significant uncertainty about whether the Project will successfully promote or contribute to an effectively competitive electricity market that operates efficiently and is the least cost means of satisfying those objectives. (Staff IB at 58-59, citing Staff Ex. 3.0 at 3) As described above, under the "Staff Analysis" subsection, in assessing the projected benefits and costs, Mr. Zuraski considered three ways through which approximately 15 million MWhs of additional RECs per year could be made available to Illinois firms subject to the State's RPS, and additional revenues that would be needed to cover the costs. (Staff Ex. 3.0 at 16-17, 27-28)

According to Staff, the results were inconclusive and varied widely. (Staff IB at 59) Staff cites the same examples described under the "Staff Analysis" subsection above.

In the final paragraph in this subsection of its brief, Staff states, "With respect to whether the proposed construction will promote the development of an effectively competitive electricity market, an effectively competitive electricity market already exists, but the RICL Project would not threaten the competitiveness of the electricity market." (Staff IB at 59-60, citing Staff Ex. 3 at 5) Whether the RICL Project will promote or contribute to an effectively competitive electricity market that operates efficiently and is the least cost means of satisfying those objectives largely depends on whether the project's benefits outweigh the costs. (*Id.*, citing Staff Ex. 3 at 6)

In conclusion, Staff "believes that the evidence supports a finding that the Project would promote an effectively competitive electricity market, but that the preponderance of evidence in favor of such a finding is not a strong preponderance and is subject to 'considerable uncertainty.'" [Staff Ex. 3 at 6] Staff states that there is no evidence suggesting that the Project would prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects. (*Id.* at 60)

C. ComEd Position

1. Promotion of Development of Effectively Competitive Market

ComEd argues, "RI has not demonstrated 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.'" (ComEd IB at 22)

RI's Petition stated, "The Rock Island Project will be able to connect over 4,000 MW of wind turbine capacity in the wind-rich Resource Area and to deliver up to 3,500 MW of this power to Illinois, to meet the demand for electricity from renewable resources and the demand for electricity generally in Illinois.

It then stated, "The Project will have the capability to deliver approximately 15 million megawatt-hours ("MWh") of electricity per year from the Resource Area to Illinois. By providing over 4,000 MW of capacity with access to the Illinois wholesale power markets, the Rock Island Project will increase available capacity and energy in the wholesale power markets and, ultimately, in the retail power markets in Illinois." (ComEd IB at 22-23, citing Petition at ¶ 15)

According to ComEd, the evidence did not develop as the petition alleged. RI witness Dr. McDermott "evaluate[d] whether the proposed construction of the Rock Island Project will satisfy the statutory criterion in §8-406 that the Project will 'promote the development of an effectively competitive electricity market that operates efficiently [and] is equitable to all customers..." (ComEd IB at 23, citing RI Ex. 4.0 REV. at 2)

Dr. McDermott states that his analysis shows that "that the Project will allow lower cost generation to enter the Illinois market, which will create competitive downward pressure on prices in the wholesale market." He further states that the Project "promotes an effectively competitive electricity market by increasing the size of the supply side of the market competing to serve load in Illinois and opening the Illinois market to lower cost generation resources." (RI Ex. 4.0 REV. at 2)

In ComEd's view, the record developed in this case fails to support the findings necessary to grant a CPCN pursuant to Section 8-406(b)(1) because the Project is "far too indefinite and speculative to support such findings, and the analyses conducted by

Dr. McDermott and others are based on unsupported and flawed assumptions regarding generation type, deliverability, costs, and benefits.” (ComEd IB at 23)

ComEd argues that the Project is, at this stage, “little more than a concept.” (*Id.*) To function, the Project must have transmission service subscribers, i.e., generators or load customers, accounting for a majority of the line’s capacity. To be financed and built, the Project must have transmission customers willing to guarantee or support, for project finance purposes, “sufficient capital to cover the total Project cost.” (RI Ex. 10.13 at 4) The Project, however, “has attracted no customers,” and has attracted “no committed lenders and investors” to finance construction of the Project in the first place. (ComEd IB at 24, citing Tr. 122, 273 and 820)

ComEd next argues that customers are not all that is required. To deliver power in the quantities and types modeled – largely wind – new generation must be developed, constructed, and interconnected. The generation projects are not built, no binding commitments to build generation are in place and the Production Tax Credit recently expired. (ComEd IB at 24, citing Tr. 759, American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 407, 126 Stat. 2313, 2340 (2013)) ComEd asserts that the risks are sufficiently great that Staff insisted upon a condition that major construction activity not start until full financing is procured. (ComEd IB at 24)

Furthermore, to be built in Illinois, the Iowa portion of the Project must be first approved by the Iowa Utilities Board. The Iowa process is in its “infancy.” The first filing was not made until July, 2013. According to RI’s CEO, the related franchise petition was not even filed as of the time of the hearing. Moreover, RI does not expect an Iowa decision until 2015, and there is “not a statutory clock associated with the Iowa process.” (ComEd IB at 24, citing Skelly, Tr. 234-235)

In addition, ComEd argues, RI cannot afford to build the Project. RI has no construction financing, and if RI, its siblings, and Clean Line spent their “last dollar,” they would have less than 2% of the funds required. But, ComEd asserts, RICL will not do that, because the evidence also shows that RI will not commit to fund and build Project. (*Id.* at 24-25, citing Berry, Tr. 1060-1061)

Section IV.A.1.b of ComEd’s initial brief is titled, “The Project is Based on Assumptions Regarding Generation Type, Deliverability, Costs, and Benefits that are Unrealistic, Speculative, and/or Otherwise Flawed.” (ComEd IB at 25)

Subsection IV.A.1.b.i is called, “Not 100% Wind Generation.” RI witness Dr. McDermott “assumes that a hundred percent of the generation that will provide the power that will flow on the line is wind.” (Tr. 122) ComEd states that other RI witnesses also confirmed that the input data for their analyses are based on an hourly energy profile “equivalent to 100% wind.” (ComEd IB at 25, citing Galli, Tr. 757-758)

In response, ComEd states that RI is prohibited from limiting the line to carrying only wind and FERC denied RI’s request to give wind generation a preference. Rock

Island Clean Line LLC, 139 FERC ¶ 61,142 at 31. RI witness Dr. Galli acknowledged that RI must serve any generator that seeks to inter-connect, no matter how non-renewable. (ComEd IB at 26, citing Tr. 758)

According to ComEd, the record shows that neither the Commission nor any party can know today which type of generators will become subscribers of the line, if any ever do. ComEd argues, "The 100% wind assumption and the wind-based hourly energy profile used to develop RI's economic analyses are not supported by the record. As a result, the conclusions from such analyses cannot be relied upon to demonstrate compliance with the requirements for a CPCN." (*Id.*)

Subsection IV.A.1.b.ii of ComEd's initial brief is titled, "Delivery Quality and Limitations." ComEd asserts that RI's economic analyses also fail to take into account the delivery limitations that will result from the "to be determined" operating guides that PJM has indicated will be necessary to ensure system reliability. Rather, RI assumes that the line is able to provide full delivery of all energy reflected in the applicable hourly energy profiles used to conduct the economic analyses. ComEd witness Mr. Naumann testified that the analyses of benefits presented by RI's witnesses are incomplete and based on a speculative assumption about the Project's ability to deliver power. (ComEd IB at 26, citing ComEd Ex. 4.0 REV at 18-19)

According to ComEd, RI assumes the Project will permit the delivery and injection into the Illinois market, on a regular basis, of far more than the 1,192 MW of firm transmission capacity that would be available to RI under both of its queue positions. (ComEd IB at 26-27, citing ComEd Ex. 1.0 2nd REV at 28, and ComEd Ex. 4.0 REV, at 18 -- assuming delivery of approximately 15 Million MWh of wind generation per year). ComEd states, "To arrive at this assumption, RI posits that "operating guides" (a series of actions including generator redispatch that must be able to be completed within 30 minutes in case of a triggering event) will be able to relieve limitations on the import of power into Illinois so that far more than 1,192 MW can be delivered on a regular basis over the proposed line." ComEd asserts that those guides are yet to be determined and RI's assumption that they will have no effect on deliverability is premature, speculative, and not supported by the record. (ComEd IB at 27)

Subsection IV.A.1.b.iii of ComEd's initial brief is called, "Excluded Costs." The economic analysis undertaken by RI witness Dr. McDermott assumes that the cost of building and maintaining the line are completely paid by subscribing generators and therefore do not have to be netted against projected Illinois benefits. (ComEd IB at 27, citing Tr. 122) In other words, RI's studies "presume that Illinois customers pay none of the costs of the Project, but that those costs are borne by out of state generators -- presumably wind." ComEd argues, "These economic assumptions underpinning RI's arguments are not valid. The assumption that those generators will fund the \$2 billion Project without any ultimate cost to Illinois consumers is simply not credible." (*Id.* at 27; ComEd RB at 19-20)

ComEd cites testimony by Staff witness Mr. Zuraski that “[t]o be a financial success, the costs of the Project and the costs of those wind farms utilizing the Project must be recovered.” (Staff Ex. 6.0 at 6) The generators will not “eat” them, but will pass them on “in the same way that sale tax, even though nominally ... [o]n the seller, it eventually finds its way to the customers through the workings of the market.” (Zuraski, Tr. 681) ComEd argues that RI’s economic analysis ignores this “inevitable reality.” (ComEd IB at 27-28)

ComEd also states that Dr. McDermott acknowledges that RI’s “economic analysis does not incorporate the cost that wind generators would have to incur to interconnect to [the] western interconnection point of the line” (Tr. 133)

ComEd next cites testimony from Mr. Zuraski that the direct testimony of RICL witnesses “focuse[d] only on certain alleged benefits of the project...” and that RICL “has not compared the benefits to the project’s expected costs.” (ComEd IB at 28, citing Staff Ex. 3.0 at 11)

ComEd also contends that RI persists in excluding from its economic studies network upgrades originally assigned to RI that will cost hundreds of millions of dollars because of the retool facilities study. (ComEd IB at 28-29, citing RI Ex. 2.11 REV at 12) According to ComEd, the better evidence is that the hundreds of millions of additional dollars of network upgrades that were originally identified by PJM and attributed to RI will be required if generators want to actually inject, on a consistent basis, levels of energy like that assumed in RI’s economic models. (*Id.* at 29, citing ComEd Ex. 4.0 at 3, and Naumann, Tr. 965; see also ComEd RB at 20)

ComEd claims the evidence shows that the injection of more than the anticipated 1,192 MW of energy, firm or not, poses a very real risk to system stability that must be mitigated. (ComEd Ex. 4.0 REV at 8-9) ComEd states that RI believes an “as yet incomplete and untested” PJM/ MISO “operating guide” can safely address this problem on a permanent basis. ComEd argues, “On this key point, the testimony is in sharp dispute: RI’s claim is made solely by Dr. Galli, an RI ‘developer’ who has no experience operationally in PJM, let alone ComEd’s transmission zone, and whose institutional interest is developing the Project.” (ComEd IB at 29) ComEd offers the testimony of Mr. Naumann, who has “decades” of experience, including in operations and security coordination in PJM and Illinois, in particular, and whose institutional interest is the protection of the system. ComEd asserts, “Mr. Naumann points out – and RI witnesses admit, as they must – that the consequences of error are potentially catastrophic.” (*Id.*, citing ComEd Ex. 4.0 REV at 9-12)

In Subsection IV.A.1.b.iv of its initial brief, ComEd addresses “Other Questionable Assumptions.” ComEd states that RICL asks the Commission to assume that -- notwithstanding RI’s claim that it will connect over 4,000 MW of new wind turbine capacity in the Resource Area and deliver up to 3,500 MW of this power to Illinois -- there would be “no changes to investment decisions by other investors for projects coming online in the 2016-2020 period as a result of the Project, and likewise units that

are close to closing do not accelerate their retirement plans in these years as a result of the Project.” (ComEd IB at 29-30, citing RI Ex. 4.0 REV at 21) According to ComEd, it is irrational to assume that 4,000 MW of new wind turbine capacity will come online all at once at the same time, and it is even more questionable to assert that no other projects will be impacted by the very large increase in capacity and delivery that RI asserts will occur. ComEd argues, “Such an assumption is neither reasonable nor rational, and the costs or loss of benefits to Illinois resulting from the impact of this project on other projects are not reasonably reflected in RI’s economic studies.” (ComEd IB at 29, citing ComEd Ex. 4.0 REV at 36)

2. Necessary to Provide Adequate, Reliable and Efficient Service

Section IV.A.2 of ComEd’s initial brief is titled, “The Project is Not Necessary to Provide Adequate, Reliable, and Efficient Service to Customers.”

According to ComEd, RI has emphasized throughout this Docket that its project is a market venture that will be built if the market supports its construction, not a project that must be built to satisfy any planning or operational standard. (ComEd IB at 30, citing RI Ex. 10.13 at 4) Indeed, RI “makes clear” that unless it contracts with transmission service customers, “the project will not go forward.” (*Id.*, citing RI Ex. 1.0 at 32) At the same time, RI does “not clearly eschew” seeking a CPCN under the “necessary to provide adequate, reliable, and efficient service” provision of the Act. Its Petition invokes this portion of Section 8-406. (Petition at ¶ 21) However, ComEd argues, no deficiency in the reliability of the transmission system is alleged in the Petition and the references to reliability are simply generic statements that transmission reinforcement is desirable (ComEd IB at 30, citing Petition at ¶ 34)

In ComEd’s view, RI has not shown that the Project is required to provide adequate, reliable, and efficient service to customers. RI acknowledges that it did not submit the Project to be reviewed and prioritized on the basis of any public need by PJM and stakeholders. (ComEd IB at 30, citing RI Ex. 10.14 at 57-58)

ComEd asserts that the Project is not required to overcome any overloaded circuit, instance of instability, low voltage, or other system condition. (ComEd Ex. 1.0 2nd REV at 6, 47) ComEd adds, “Nor does RI claim that it is.” Dr. Galli, RI’s “technical witness,” stated:

- Q. And in your testimony you're not testifying that the electric system in Illinois is not reliable, correct?
- A. That is correct.
- Q. You're not testifying that the proposed addition of the Rock Island Clean Line is required to make the Illinois system more reliable, correct?
- A. That is correct.

Q. And it remains to be correct that Rock Island has not provided independent studies from PJM or MISO demonstrating need for this project in this proceeding, is that correct?

A. That is correct.

(ComEd IB at 31, citing Tr. 749-750)

ComEd argues that the testimony of RI concerning "loss of load" risk, apart from its "serious flaws," neither claims there is any elevated risk of loss of load without the Project and the additional generation, nor explains why the existing RTEP process would not be the appropriate means to identify the best and least cost means of remedying any such deficiency, if one were to actually exist. (ComEd IB at 31) ComEd states, "Nor does RI present any study or other evidence showing that the Project is the least cost means of providing additional reliability or security." (*Id.*, citing ComEd Ex. 1.0 2d REV at 39)

ComEd asserts that the "vast majority" of what RI claims as adequacy, reliability, or efficiency benefits are unrelated claims about how the Project will promote access to wind energy or allegedly reduce its costs; and that there is no evidence that customers, absent the Project, will be unable to access adequate generation or the types of generation and/or RECs required to satisfy the Illinois RPS. (*Id.* at 32, citing ComEd Ex. 3.0 at 6) ComEd contends the Project is simply too indefinite and uncertain to reliably support any claim of increased access to any particular generator or type of supply.

3. Reply Brief

In ComEd's reply brief, Section IV.A.2 is titled, "The Project is Unnecessary to Promote Competition or Reliability." In Section IV.A.2.a, ComEd argues, "The Project itself is uncertain and speculative." (ComEd RB at 15)

In ComEd's view, "The absence of customers is not, as WOW, Environmental Intervenors, and IBEW suggest, a formality flowing from differences in timing between generation and transmission projects." (*Id.* at 16, citing WOW IB at 15-16; IBEW IB at 9-10; Environmental Intervenors IB at 15-16) ComEd argues, "To the contrary, they cite no evidence assuring future customers; their argument is optimistic speculation." (*Id.*)

ComEd asserts that this "is a critical failure with long-reaching implications" that sheds considerable doubt over the Project's viability. (*Id.*) ComEd argues, "Though RI and its supporters have continually highlighted the theoretical demand for renewable resources, RI's witnesses also have acknowledged they are unsure whether demand will be sufficient to complete the Project." (*Id.*, at 16-17, citing RICL Ex. 10.13 at 4 ("[P]ermanent installation of facilities cannot and will not commence unless and until the need for the Project is actually established through the market test of transmission customers contracting for sufficient service on the transmission line to support and justify financings that raise sufficient capital to cover the total Project cost."))

Section IV.A.2.b of ComEd's reply brief is titled, "RI's Claim that the Project Will 'Promote Development of an Effectively Competitive Electricity Market' Also Fails Due to Its Flawed Underpinning." (ComEd RB at 18)

ComEd states that RI and its supporters posit that the Project will increase the supply of low-cost renewable energy to Illinois customers, suppressing energy and REC prices. (RI IB at 30, 42-49, 69; Environmental Intervenors IB at 4-13; WOW IB at 6-13; IBEW IB at 6-7) In response, ComEd argues, "However, RI cannot even establish the Project will carry renewable energy. Rather, RI and its supporters speak only to their belief that future customers will be renewable resources." (ComEd RB at 18) RI does not, and cannot, assert that it has any commitments from any generators now in development. ComEd also states that the Production Tax Credit that subsidized wind development has expired, and that FERC held that RI must serve all customers – whether wind or coal powered – equally. ComEd adds, "Prohibited by federal law from giving preference to renewable resources, RI cannot predict the resource mix or the cost of the resources developed in the Resource Area." (ComEd RB at 19-20)

ComEd states that RI promises that Illinois customers will pay none of the costs of building and maintaining the line because these costs will supposedly be paid for by subscribing wind generators (RI IB at 6). According to ComEd, "That unrealistic assumption is fatal. To begin with, without customers, generators, or market interest, there can be no assurance of such 'merchant' funding. Indeed, RI expressly leaves open the possibility of turning its back on this premise and directly recovering the Project's costs from retail ratepayers." (ComEd RB at 19, citing Skelly, Tr. 277)

In its reply brief, ComEd also argues that Section 8-406(b)(1) not only requires a proven reliability need, but requires the Project be proven to be the "least-cost" means of addressing it. RI's least-cost evidence is "directed solely" at showing its line is the least-cost way of delivering new wind power. For instance, RI compares the Project to the status quo and the prospect of building additional wind resources in Illinois. (ComEd RB at 22, citing RI IB at 68-69) According to ComEd, this has nothing to do with whether the Project is the least-cost means of reducing LOLE or increasing reliability. Likewise, ComEd argues, RI's comparison between high-voltage direct current ("HVDC") and traditional alternating current technology is directed solely to the best way to build a line to western Iowa, and it sheds no light on the best way to reduce LOLE or to improve any other measure of reliability. (*Id.*, citing RI IB at 69-72)

In ComEd's view, the studies "highlighted" in RI's Initial Brief do not show that the Project will even enhance system reliability. (*Id.*, citing RI IB at 61-67) RICL argues that the Project will improve reliability by delivering more supply to load and increasing transmission transfer capability. (RICL IB at 61-65) However, ComEd asserts, the record is "entirely unclear" whether sufficient demand exists for the Project in the Resource Area; unless generators are constructed in the Resource Area, the Project will be incapable of delivering electric energy during periods of a shortfall. (ComEd RB at 23) ComEd claims the Project's contribution to system reliability is questionable in this respect. Additionally, because the Project is nothing more than a lengthy, high-

voltage generator "lead line," its ability to support the system if a transmission outage occurs is limited to injecting energy at ComEd's Collins substation – the electrical equivalent of installing a generator at Collins. Further, ComEd argues, if relies on its newly proposed 765kV interconnection, it will have reintroduced a single point of failure into a project that RI's reliability claims assume is redundant. (ComEd RB at 23, citing RI Ex. 2.15 at 42, RI IB at 10, 36)

D. ILA Position

1. Necessary to Provide Adequate, Reliable and Efficient Service

According to ILA, "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." (ILA IB at 16) ILA argues, "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 [ComEd] facilities at the Collins substation." (*Id.*)

The ILA contends that Rock Island has not shown that this project is needed to supply Illinois with reliable electric power. (*Id.*, citing ILA Ex. 1.0 REV at 3)

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

Dr. Gray testified 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 ensure the reliability of the transmission system over the planning horizon; provide market efficiency and other economic benefits; facilitate public policy objectives, such as renewable portfolio standards ("RPS"); and 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 IB at 17, citing ILA Ex. 7.0 at 4)

Dr. Gray further testified that 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. Dr. Gray stated, "According to the 2012 MTEP, these 17 MVPs promise the delivery of 41,000,000 MWh of renewable energy each year." (*Id.*, citing ILA Exs. 7.0 at 5 and 7.1 at 5-6)

Dr. Gray stated that the area where Rock Island expects wind generation to be developed to connect to the Project, referred to as the Resource Area, is located in the MISO footprint. He said the Project would operate as an "unusually long generator lead line" connecting such generators to the PJM alternating current transmission system operated by PJM, and therefore, would not contribute to the high voltage transmission expansion of the MISO transmission network. (ILA Ex. 7.1 at 6) He testified that 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 DC Project, which would move power exclusively in one direction and would not be a fully integrated part of the regional AC network. (ILA IB at 18, citing ILA Ex. 7.1 at 6-7)

Dr. Gray stated that, even though the Project was not a product of the MISO MTEP process, Rock Island had expected the Project would be reflected in the MISO MTEP for 2012 but that it was not; that a MISO planning appendix had identified it as conceptual. (*Id.*, citing ILA Ex. 7.0 at 5-6)

ILA states that the MISO MTEP process, and resulting MVPs, were recently addressed in the context of another major electric transmission project. According to ILA, in the Order in Docket 12-0598 -- the Ameren Transmission Company of Illinois ("ATXI") Illinois Rivers Project -- the Commission determined the ways many of the factors and considerations pertaining to a MISO-undertaken planning process and resulting project feed into and relate to the utility's presentation of the project when it seeks a CPCN. ILA states that the Commission, and parties, benefitted by the ATXI Project having been vetted through a thorough process, with review by technical experts at MISO and elsewhere who understand the regional grid and could consider the Project in the context of the overall MISO region. (ILA IB at 18-19)

ILA contends that even though the ATXI Project arose out of the MISO MTEP process, the 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. (ILA IB at 19) ILA believes 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. In ILA's view, 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. (*Id.*)

ILA states that in contrast to the Rock Island Project, the ATXI Project ICC Docket 12-0598 was developed through a multi-year MISO planning process beginning with a Regional Generation Outlet Study in 2008, the start of a detailed analysis of the transmission system that led to the implementation of the ATXI Project along with other MVPs. ILA asserts that 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. The ICC 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, which included 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)." (ILA IB at 19-20)

Dr. Gray also described the corresponding structure and processes for PJM. He said PJM administers wholesale electricity markets and coordinates transmission planning for the PJM region, which, while including the ComEd service territory, mainly encompasses eastern states. The PJM RTEP process is similar to MISO's MTEP process, considering the effects of system trends such as long-term electricity load growth, generator retirements, patterns of generation development, demand response, and energy efficiency. (ILA Ex. 7.0 at 6) He stated that PJM has not evaluated, and will not evaluate, through its RTEP process, whether the Rock Island Project is needed. (ILA IB at 21, citing ILA Ex. 7.2 at 1)

ILA states that in ICC Docket 13-0657, ComEd is seeking approval for its Grand Prairie Gateway Project, and that ComEd's Petition 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. (ILA IB at 21)

ILA states that the Project was also not included in PJM's RTEP for 2012, despite Rock Island's expectations that it would be included (even though not a project resulting from the PJM RTEP process), and that and it was not apparent to Rock Island why it was excluded. (*Id.* at 22, citing ILA Ex. 7.0 at 6-7) Dr. Gray stated that PJM is unlikely to treat the Project as potentially real, rather than conceptual, unless and until the Project has adequate subscribers. (ILA Ex. 7.0 at 7)

Dr. Gray stated that under the first prong of Section 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" -- the statutory standard appears to place the burden on RICL to demonstrate customer need for the Project before RICL is eligible for a CPCN; whereas, "because the Project has no customers, RICL appears to be requesting a different sequence, whereby the Commission issues a CPCN first, and then RICL attempts to demonstrate customer demand, or need, for the Project." (ILA IB at 22-23, citing ILA Ex. 7.0 at 8)

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. ILA states that Dr. Gray, in his rebuttal testimony, responded to Rock Island's argument by stating that Rock Island's argument highlights a significant weakness in its business model, by which Rock Island is circumventing the regional planning processes normally utilized for new interstate electric transmission projects. Dr. Gray stated that, regardless of Rock Island's business model, the PUA Section 8-406 requirements still apply and must be satisfied in order for a CPCN to be granted, and that the need to be shown is "customer" need, not needs of the public in general. (ILA IB at 23, citing ILA Ex. 7.2 at 3)

ILA also states that Staff engineering witness Yassir Rashid and ComEd witness Steve Naumann both testified that the Project is not one that is needed for electric service reliability. (ILA IB at 23)

2. Promotion of Development of Effectively Competitive Market

Dr. Gray next 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."

In his view, Rock Island has failed to satisfy this second prong requirement for several reasons. (ILA IB at 25, citing ILA Exs. 7.0 at 10 and 7.2 at 8) First, he said the significant negative land-use impacts and externalities that Rock Island and the Project would impose on the Illinois public for the primary benefit of the eastern PJM states to meet their RPS goals.

Second, Dr. Gray testified that 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. He said Rock Island witness Berry used of eight hypothetical wind farms, with assumed locations and operating capacity factors, from which he derived hypothetical production data that was 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. Gray testified that because the operating or other characteristics of any wind farms that may materialize are unknown; and 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 IB at 26, citing ILA Ex. 7.0 at 11-12)

Third, Dr. Gray stated that Rock Island has reserved the right to seek to switch the project from merchant status and have allocated to Illinois electricity consumers, future transmission costs, of unknown amounts. He testified that Rock Island President Michael Skelly, in his direct testimony, left open the possibility of seeking cost recovery for the Project through the regional cost allocation process. Such a change in the way the Project is financed would result in Project costs being allocated to load-serving entities, such as ComEd, and their customers. As Dr. Gray pointed out, a transmission project designed as a cost recovery or cost allocation project would normally go through the RTO planning process (MISO MTEP or PJM RTEP) and be subjected to a broad group of stakeholders and enhanced scrutiny. He added, "A post-development cost-allocation request would lack the discipline, openness and scrutiny it should." (ILA IB at 26-27, citing ILA Ex. 7.0 at 25-27)

The subject of the possible re-classification of the Project to one whereby Rock Island is able to recover Project costs through tariffed rates rather than through negotiated contracts with willing subscribers was the subject of 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. (ILA IB at 27, citing RI Ex. 10.26 at lines 486-497)

ILA argues, "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 is 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". (ILA IB at 27-28) ILA states that Staff witness Mr. Zuraski acknowledged that certain questions remain unanswered by Mr. Berry. ILA states, "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. (ILA IB at 28, citing Tr. at 687-688) ILA stated that Mr. Zuraski could not think of a reason Rock Island 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. (*Id.*, citing Tr. at 689)

Fourth, Dr. Gray contended that Rock Island is unwilling adequately to protect the Illinois public from the risks of failure of the Project. (ILA IB at 25, citing ILA Ex. 7.0 at 10) Dr. Gray stated that a wind energy project 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. (*Id.* at 28-29, citing ILA Ex. 7.0 at 13) In its initial brief, ILA states that Rock Island pointed out that it is uncommon for electric transmission line developers to have to post financial security to protect against the possible decommissioning of the project. ILA argues, "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." (ILA IB at 28)

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 prices, due to importation of low marginal cost wind energy into northern Illinois, is not tantamount to demonstrating that the Project will promote the development of an effectively competitive electricity market in Illinois. (ILA IB at 25, citing ILA Ex. 7.2 at 8) Dr. Gray stated 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. 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 IB at 29-30, citing ILA Ex. 7.2 at 7-8)

In its initial brief ILA next addresses the Building Owners and Managers Association's ("BOMA") support of the Rock Island project insofar as it "is market-based and does not increase costs to BOMA/Chicago members." (ILA IB at 30, citing BOMA Ex. 1.0 at 3) ILA states that BOMA also conditions its support to the extent it increases reliability. ILA argues, "In fact, a decrease in reliability is a factor mitigating against BOMA's support for the project. With this said, BOMA has absolutely no opinion as to the technical aspects of the project." (ILA IB at 30, citations omitted)

E. IAA

IAA, also known as the Farm Bureau, did not put on witnesses. IAA did cross-examine other Parties' witnesses. IAA also filed initial and reply briefs, in which it addresses "whether [the Project is] necessary to provide adequate, reliable, efficient service or will promote development of an effectively competitive electricity market." IAA's position is that "no need exists for the Project." (IAA IB at 9)

IAA argues, "By Rock Island's own direct admissions, it does not assert that the Illinois electricity market is inadequate, unreliable, inefficient, or uncompetitive" or that "the Project is required, or necessary, to make the Illinois electricity market adequate,

reliable, efficient, or competitive.” (IAA IB at 9, citing Tr. 162 and 749-750) According to IAA, the effect of the Project on the reliability of the electric system is unknown at this time, and Rock Island has presented no evidence demonstrating that that reliability will be adversely affected without the Project. In addition, economist Richard Zuraski of the ICC Staff has opined that a competitive electricity market already exists in Illinois. (*Id.*, citing Staff Ex. 3.0 at 5)

IAA cites testimony by ComEd that Rock Island “has not claimed or shown that the Project is necessary for reliability, operating efficiency, or market efficiency in the regional planning process...” (IAA IB at 10, citing ComEd Ex. 1.0 at 6) IAA asserts that RICL has not provided a single study, such as a load flow study, to demonstrate that the reliability of the Illinois electric transmission system will be compromised if the Project is not completed. (*Id.*, citing Staff Ex. 1.0 at 3) IAA also contends that as a merchant project, Rock Island currently has incomplete re-tooled System Impact Studies and Facility Studies in PJM, and an incomplete “no harm” study from MISO, and that the estimated costs of the new facilities for interconnection into the PJM system are unknown. (*Id.*, citing ComEd Ex. 1.0 at 20-21) IAA argues, “Plus, the Commission does not have the typical benefit of evidence of a demonstrated public benefit from the regional planning process for this Project.” (*Id.*)

On the subject of the need of the Project, RICL witness Mr. Berry testified that the “permanent installation of facilities cannot and will not commence unless and until the need for the Project is actually established through the market test of transmission customers contracting for sufficient service on the transmission line to support and justify financings that raise sufficient capital to cover the total Project cost.” (RI Ex. 10.13 at 4) Further, Mr. Skelly stated the supplying wind farms on the western side of the Project in Iowa do not exist because “it would be foolhardy to build them unless you had a transmission path to get to market.” (Tr. 235) IAA argues, “So, when asked whether (1) transmission customers exist that need this proposed transmission line, (2) transmission customers exist needing this proposed line in a sufficient quantity to economically justify the Project, (3) the capital markets will finance the Project, (4) wind farms will spring up in Iowa to supply electric load, and (5) PJM and MISO will arrive at a positive or negative decision on the Project’s effect on the reliability of the electric systems, the answers are all: ‘I don’t know.’” (IAA IB at 11)

IAA states that when pressed on the “I don’t know” issues, Rock Island provides no precedent for the Commission to rely upon. IAA states that Rock Island’s expert Karl McDermott characterized the Petition for a merchant line as a matter of first impression, and is unaware of any situation where the ICC has (1) issued a CPCN where the applicant indicated it would not construct a transmission line if customer demand did not materialize; and, (2) issued a CPCN where the applicant had not unconditionally committed to build a transmission line if granted a CPCN. (IAA IB at 11-12, citing Tr. 140-141) In IAA’s view, Rock Island is asking the Commission to take a “leap of faith” on a first-impression merchant transmission line project with no clear evidence of need. (*Id.*)

Rock Island is choosing to wait to hire the necessary employees until they are needed, stating "we do not hire people who have nothing to do." (Tr. 239, Skelly) IAA states that Rock Island is waiting to see if there is a need for the transmission line before it seeks financing, then it will hire employees to construct and manage the Project. IAA argues the Commission should insist that RI establish a need for the Project prior to issuance of a CPCN. (IAA IB at 12)

IAA argues, "The ICC Staff's position on need is correct: the project is needed if 'the reliability of the electric systems in Illinois will be adversely affected if the proposed project is not built.'" (IAA IB at 12-13, citing Staff Ex. 4.0R at 3, Rashid) IAA contends that Rock Island has presented no evidence that Illinois will be adversely affected if the Project is not built, and has presented no evidence that the Project is required to make Illinois' electric system competitive and reliable. IAA states, "ILA witness Jeffrey Gray, PhD, is also correct in stating that Rock Island 'might be able to demonstrate need if it could show that the Project is adequately subscribed. Until then, the demand, or need, for the Project is speculative.'" (*Id.*, citing ILA Ex. 7.0 at 7)

F. Wind on Wires Position

Wind on the Wires presented the testimony of Michael Goggin, who is a Senior Electric Industry Analyst at the American Wind Energy Association ("AWEA")

WOW's briefs are limited to the issue of how Rock Island promotes a competitive electric market within Illinois. (WOW IB at 4) WOW states that a competitive electricity market includes, but is not limited to, wholesale electricity prices as well as prices for renewable electricity, and that Rock Island provides additional low-cost electricity supply, which reduces the price of electricity in Illinois. (*Id.*)

According to WOW, Rock Island also reduces the cost of renewable energy used by Illinois ratepayers. Illinois has a renewable portfolio standard ("RPS") that requires a minimum percentage of the total electricity supply used to serve the load of ComEd and Ameren Illinois ("Ameren") (jointly referred to as "Illinois utilities") and alternative retail electric suppliers ("ARES") to come from renewable energy resources. (*Id.* at 5, citing 20 ILCS 3855/1-75(c) for utility requirements, and 220 ILCS 5/16-115D for ARES requirements) WOW states that Illinois also has a geographic preference provision stating that after June 1, 2011, the standard must be met by renewable energy resources located in Illinois and in states that adjoin Illinois, which includes Iowa, where much of the wind development enabled by Rock Island will be located. If renewable resources are not available in those states or found to be cost effective, then the IPA can accept renewable energy resources from "elsewhere" for compliance. (WOW IB at 5, citing 20 ILCS 3855/1-75(c)(3))

The procurement of renewable energy and renewable energy credits for the utilities is managed by the Illinois Power Agency ("IPA"), whose procurement proposals are reviewed and approved by the Illinois Commerce Commission. The standard is to procure "cost-effective renewable energy resources." There are two components to

being cost-effective. First, the bid price of the product must be below a benchmark value established pursuant to section 1-75(c)(1). Second, the total cost of procuring renewable energy resources do not exceed the limit stated in section 1-75(c)(2). (WOW IB at 5)

ARES can self-procure up to 50% of their requirement, and they can also make annual alternative compliance payments ("ACP") into a Renewable Energy Resources Fund managed by the IPA. The relevant statutory language regarding a competitive market relates to the ACP rate, which effectively sets a cap on what utilities will pay for their renewable energy resources. (WOW IB at 5-6, citing §5/16-115D(d))

In Section IV.A.1.ii, "Argument," WOW contends that Rock Island meets the finding required by Section 8-406(b) by "delivering more wind energy into Northern Illinois, keeping both wholesale electricity prices and the cost of renewable electricity low for Illinois ratepayers." In addition, WOW argues that "providing a larger supply of renewable energy helps to ensure that the required procurement of renewable energy or renewable energy credits ('RECs') is cost effective [which] promotes a 'competitive renewable electricity market' in Illinois." (WOW IB at 6)

Another benefit to Illinois consumers is that the transmission facility will lower consumer electricity costs and provide a hedge to fuel price volatility, both of which facilitate an effectively "competitive electricity market that operates efficiently." (*Id.* at 6-7)

Section IV.A.1.ii(a) of WOW's initial brief is titled, "Wind Energy and RICL Promote a Competitive Electricity Market in Illinois." (*Id.* at 7)

WOW states that the RICL Project is intended to facilitate wind development in Iowa, Nebraska, South Dakota and Minnesota, and deliver that wind energy to load centers in Illinois. According to WOW, wind energy reduces production costs and wholesale market prices by displacing more costly forms of generation in the supply curve. (*Id.*, citing WOW Ex. 1.0 at 13-14) WOW asserts that this reduction in market prices applies to all market transactions, as it lowers the overall wholesale market prices, and that the New York State Energy Research and Development Authority ("NYSERDA") found that each megawatt-hour of renewable energy produced within New York resulted in \$100 worth of consumer electric savings. (WOW IB at 7, citing WOW Ex. 1.0 at 14)

WOW submits that further support for the price-reducing value of wind energy is the IPA report on the costs and benefits of renewable resources. One of the conclusions of the IPA report from 2012 was:

Renewable resources, in particular wind, have played a dramatic role in reducing electric energy prices in Illinois and the entire Eastern Interconnection, as measured by the impact on Locational Marginal Prices (LMPs). Modeling work commissioned by the IPA and corroborated by

similar findings in Massachusetts suggests that for 2011, the integration of renewable resources into the power grid has lowered Illinois' average LMPs by \$1.30 per mega-watt hour (MWh), from \$36.40 to \$35.10 per MWh. The aggregate result is a savings of \$176.85 million in total load payment for generation in Illinois. While this does not directly translate to dollar for dollar savings in consumer bills for the same time period, due to the fact that utility consumers are served via a portfolio of resources of different vintage, it points out the magnitude of the benefits accruing to all consumers in lowered underlying electric energy cost drivers. Over time, the effect of lower LMPs due to growing renewable capacity will be reflected in procurement outcomes."

(WOW IB at 8; WOW Ex. 1.0 at 12-13 citing IPA Report at 3-4)

WOW next argues that "transmission promotes a competitive market in Illinois."
(WOW IB at 8)

In WOW's view, transmission is essential in delivering wind energy from wind-rich areas into Illinois, reducing the potential for generators to exercise market power and protecting customers against unpredictable fuel price volatility. WOW asserts that a weak grid makes it possible for generation owners to exert market power and charge excessive prices, and that the more supply options there are the less likely it is that a particular supplier will be able to exert market power. (*Id.*, citing WOW Ex. 1.0 at 16) WOW asserts that a transmission provider does not have an incentive to relieve congestion that restricts the output of a competing merchant generator if doing so will make the transmission provider's own generation less competitive. (*Id.* at 8-9, citing WOW Ex. 1.0 at 17) WOW states, "In this instance the RICL line would lower wholesale costs in Northern Illinois and reduce the profits of generators in the area, such as Exelon and others." (*Id.*, citing RICL Ex. 4.0 at 25-28)

According to WOW, numerous studies have found that the benefits of transmission are multiple times larger than the cost. WOW states that a study of a high-voltage transmission line across Kansas, Oklahoma and Texas, by Charles River Associates concluded transmission would provide economic benefits of around \$2 billion per year for the region, which was four times the amount of transmission investment. (WOW IB at 9, citing WOW Ex. 1.0 at 17) WOW states that Synapse Energy Economics studied the addition of 20 to 40 gigawatts of wind capacity to new transmission lines in MISO and found that a typical household would save between \$63 and \$200 per year. (*Id.*, citing WOW Ex. 1 at 18)

In addition, WOW argues, transmission is an important mechanism to protect consumers against unpredictable volatility in the price of fuels used to produce electricity. Transmission can alleviate the negative impact of fuel price fluctuations on consumers, and can cost-efficiently move electricity over large regions, such as within or between Regional Transmission Organizations, thus enabling consumers with the ability to buy power from areas in which it might be cheaper than local prices, and move it efficiently across a large region. According to WOW, this increased flexibility helps

modulate swings in fuel price by making demand for fuels more responsive to price. Utilities can decrease the use of electricity from more expensive fuel sources when they can respond to price signals. WOW contends that fluctuations in the price of fossil fuels are likely to continue, particularly if the electric sector becomes more reliant on natural gas. (WOW IB at 10, citing WOW Ex. 1.0 at 15-16)

Section IV.A.1.ii(b) of WOW's initial brief is titled, "RICL Promotes a Competitive Renewable Electricity Market in Illinois." (WOW IB at 11)

WOW states that Illinois has a statutorily-driven demand for renewable energy that requires a certain percentage of electricity supplied to customers come from renewable energy resources and wind generation, and that RICL will make it easier for electric suppliers to meet their statutory requirements by delivering wind energy into Northern Illinois from an area with very high capacity factors and energy potential. According to WOW, NREL's data indicates that those states -- Iowa, Minnesota, Nebraska and North Dakota -- have a combined wind potential that is 26% of the entire U.S. onshore wind potential and 45 times greater than the current electricity demand of Illinois. (WOW IB at 11, citing WOW Ex. 1.0 at 3) WOW submits that while RICL has a capacity of 3,500 MWs, the far larger potential for wind capacity near the O'Brien County terminus would promote competition for access to RICL and would help keep the renewable energy and REC costs low. (*Id.*)

The Illinois RPS drives the need for renewable energy in Illinois. Utilities and ARES are required to procure an amount of renewable energy or RECs equal to a certain percentage of their overall delivered energy. Utilities are to procure cost effective renewable energy or RECs from Illinois or adjacent states. If they cannot meet their target percentage from resources within that area, then the utilities may procure it from anywhere within the United States. (WOW IB at 11, citing 20 ILCS 3855/1-75(c)(3)). The ARES do not have the two-tier geographic preference that is applied to the utilities procurement, and are allowed to procure RECs from anywhere within PJM or MISO. (*Id.*, citing 220 ILCS 5/16-115D(a)(4))

WOW states that to meet the Illinois RPS requirements in a cost effective manner through 2026, more renewable energy supply, such as wind generation, needs to be placed into operation. WOW estimates that approximately 3,000 to 4,000 megawatts of incremental wind capacity, beyond what is installed as of the end of 2012, will be needed for the utilities and ARES to satisfy the requirements of the Illinois RPS. (*Id.*, citing WOW Ex. 1.0 at 8-9)

According to WOW, MISO's analysis indicates that Illinois' incremental need for wind generation, in addition to what is available in 2012, would be most efficiently met with a combination of in-state and out-of-state wind generation. (WOW IB at 12; WOW Ex. 1.0 at 6 citing MISO Multi Value Project Portfolio: Results and Analyses ("MISO MVP Report") at 65 (January 5, 2012)) WOW states that RICL will provide Illinois access to high capacity areas in Western Iowa, Southwestern Minnesota and Eastern North Dakota, which are areas with higher wind capacity factors than Illinois.

Consequently, WOW submits, the cost per megawatt-hour of wind energy produced in those states is lower than the cost of wind energy produced in Illinois. (WOW IB at 12, citing WOW Ex. 1.0 at 5-6)

WOW states that wind energy generated in Iowa is eligible for satisfying the ARES compliance obligation, and it is within the utilities' first/primary tier for geographic preference. The resources in the other states near the Resource Area (i.e., North Dakota and Minnesota) also satisfy the ARES compliance obligation, and will qualify for the Utilities' compliance obligation if they cannot meet the need with cost effective resources from the first/primary tier. WOW claims this additional supply of wind energy will tend to lower the price of renewable energy or RECs that are bought by utilities or ARES in Illinois. As a result, WOW argues, RICL promotes renewable energy competition by lowering the prices of renewable energy and RECs which will lower the cost of compliance with the Illinois RPS. (WOW IB at 12-13)

Section IV.A.1.ii(c) of WOW's initial brief is titled, "The Costs and Benefits of the Rock Island Project are Equitably Allocated." (WOW IB at 13)

WOW asserts that high-capacity transmission lines inherently provide benefits across a large area because the large amount of energy they carry provides price-reducing benefits and resolves constraints across a wide area, and that the FERC noted this fact when approving MISO's MVP cost allocation proposal. (WOW IB at 13, citing WOW Ex. 1.0 at 23)

WOW argues that another benefit of wind that is broadly distributed is wind's role in offsetting water consumption by other forms of electricity generation. WOW states that RICL witness Moland's analysis indicates that the wind enabled by RICL would reduce water consumption across the eastern U.S. by 3.5 billion gallons in 2016 and 3.1 billion gallons in 2020. (WOW IB at 14, citing RICL Ex. 3.4)

WOW makes other assertions without citation to either the record or to citable authority.

Section IV.A.1.ii(d) of WOW's initial brief is called, "Lack of Contracts with Interconnecting Generators Should not Delay the Project." (WOW IB at 15)

According to WOW, RICL's proposed finance plan is sufficient to warrant approval for purposes of a certificate of public convenience and necessity. WOW contends that Rock Island has secured sufficient initial capital to fund the development and permitting activities for RICL; RICL will finance the remainder of the construction and operations through an anchor tenant purchasing up to 75% of the capacity on the Rock Island Project and the remaining capacity being sold to customers through long term contracts; and that the costs of the Rock Island Project will be recovered the anchor tenant and customers through negotiated rates charged for access to RICL's transmission capacity. (*Id.*, citing RICL Exs. 1.0 at 8 and 10.0 at 31 and 38) WOW states that as a condition of approval of the CPCN, RICL will agree to not commence

construction until it has obtained sufficient funding commitments to build the project, and that this condition is subject to Commission verification of such funds. (*Id.*, citing RICL Ex. 10.13 at 2-3)

In WOW's view, delaying the approval of the line beyond what is required in the conditions agreed to by RICL causes undue delay to wind projects in or near the Resource Area and delays the millions of dollars in savings to Illinois ratepayers as calculated by RICL witnesses. (WOW IB at 15-16, citing RICL Exs. 3.3 and 4.0) WOW argues that developing transmission prior to the development of wind plants is common, if not a necessity, since a wind plant needs the transmission outlet in place prior to being built (*Id.*, citing WOW Ex. at 10-11), and that there are plenty of developers ready to build in areas with high capacity factors such as the Resource Area. (*Id.*, citing RICL Ex. 10.19 Rev.)

WOW also submits that another check on the potential demand comes from the interconnection queues in the states neighboring the Resource Area. WOW states that Iowa has 3,956 MW in the interconnection queue, zero of which are listed as "under construction;" that Minnesota has 3,294 MW of proposed wind projects; and that South Dakota has 989 MW of proposed wind projects. WOW also states that the Southwest Power Pool ("SPP") maintains the interconnection queue for the state of Nebraska, and its queue indicates 1,659 MW of proposed wind projects with active interconnection applications in Nebraska. (WOW IB at 16, citing WOW Ex. 1.0 at 6)

WOW argues, "Thus, there are plenty of potential customers for RICL that make it highly likely that RICL will be able to secure financial commitments to build the line. However, even if RICL does not get sufficient financial commitments, Illinois ratepayers are protected by the condition that RICL would not be allowed to start construction until they've obtained sufficient financial commitments to build the project -- as reviewed and monitored by staff." (*Id.*)

Reply Brief

In its reply brief, WOW responds to an assertion by IAA that Rock Island has not met the first finding in section 8-406(b)(1) because, among other reasons, it has not shown that "transmission customers exist that need this proposed transmission line" and that "the transmission customers exist needing the proposed line in a sufficient quantity to economically justify the Project." (WOW RB at 6, citing IAA IB at 11, 13)

According to WOW, the primary purpose of the line is really to improve the existing competitive electricity market in Illinois, which is the second or alternative finding in section 8-406(b)(1), and that the first finding of Section 8-406(b)(1) that IAA is "basing its entire argument upon" is typically used for transmission lines built for reliability, not an economic or public policy driven project such as this. (WOW RB at 7)

WOW argues, "The existence of transmission customers is not a fundamental requirement of the analysis under the 'effectively competitive electricity market' analysis.

That analysis turns on the market analysis.” WOW adds, “The issue of having subscribers can be met through a condition, such as the one that Rock Island has accepted from Staff” which “requires Rock Island not begin construction in easements in Illinois until Rock Island has secured binding financial commitments for the entire cost of the project and made a filing with Staff.” (WOW RB at 7, 9, citing See Rock Island IB at 7; and RI Ex. 10.13 at 2-4 and 10.14 Rev. at 5)

WOW asserts, “Further, it is highly likely that RICL will be able secure sufficient subscribers. Wind on the Wires’ witness Goggin explains that transmission commonly precedes wind development and that pro-active coordination of transmission development to high wind resource areas has been an effective way to bring wind projects to market.” (WOW RB at 7-8, citing WOW Ex. 1.0 at 10-11)

Furthermore, WOW asserts, its members include the largest wind developers in the Midwest. (WOW Ex. 1.0 at 1) In response to a statement by ComEd witness Naumann about evidence whether wind generators will enter into contracts with Rock Island, WOW’s witness Goggin stated, part, “While I cannot predict the future with 100% certainty, all available evidence indicates that wind generators will enter into contracts to use the RICL project.” (WOW RB at 8-9, citing WOW Ex. 3.0 at 2)

WOW also responds to an assertion by ILA that Rock Island fails to meet the alternative finding in section 8-406(b)(1) – that the project will promote an effectively competitive electricity market. ILA states that “we do not know the operating or other characteristics of any wind farms that may materialize.” (ILA IB at 25)

WOW responds that Rock Island witness Berry prepared a competitive market analysis using modeled production data -- for eight potential wind farmers in northwest Iowa – that was obtained from the Eastern Wind Integration and Transmission Study (“EWITS Study”), which is a publically available report that had been sponsored by the Department of Energy National Renewable Energy Laboratories. WOW states that the EWITS Study has been used by a number of utilities and regional transmission organizations for their analyses. (WOW RB at 9-10, citing RICL Ex. 10 at 11-12)

In response to Staff, WOW states that on pages 56-57 of its initial brief, Staff offered the following three-part test to evaluate whether RICL had made the “effectively competitive electricity market” showing: (a) the Project contributes to increasing the degree of competition for electric energy, capacity availability, renewable energy credits, or other electricity market goods and service; (b) the benefits of the increased competition outweigh the costs of the Project; and (c) the Project will not prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects.

WOW responds that Staff’s three-part test was first proposed in Staff’s brief and should not be adopted. According to WOW, parties have provided facts to address prong (b) but are now foreclosed from introducing facts that would address prongs (a) and (c). WOW argues, “Moreover, it is unclear what Staff intends parties to prove in

prong (a) and how they would prove prong (c) since that would require analyzing a wholly separate transmission line. In addition, it doesn't appear that Staff addressed prong (a) and while staff witness Zuraski performed an analysis looking at two alternatives to RICL it doesn't appear that his analysis evaluated whether a greater degree of competition would not be prevented by RICL, as the test is framed in prong (c)." (WOW RB at 10-11)

Furthermore, WOW asserts, there would be potential for any test developed via this Order to be binding on all subsequent petitions brought pursuant to section 8-406 and Section 8-406.1 since it requires the same finding. (*Id.* at 11)

In WOW's view, there are sufficient facts in the record for the Commission to evaluate and conclude whether Rock Island met its burden regarding the alternative finding in section 8-406(b)(1), and "the issue of whether the project will promote an effectively competitive electricity market should be left to the Commission to decide based on the facts presented by the parties." (*Id.*)

G. Environmental Intervenors' Position

Environmental Intervenors did not present testimony. They did file briefs. In their view, RICL has demonstrated that its Project will promote the development of an effectively competitive electricity market. (EI IB at 3)

In Section IV.A.1.i, Environmental Intervenors argue, "The Project will increase the supply of renewable energy credits necessary to comply with the Illinois renewable portfolio standard." (*Id.* at 4)

Pursuant to Section 1-75(c) of the PUA, utilities must comply with the Illinois RPS. 20 ILCS 3855/1-75(c). The RPS requires that at least 10% of a utility's total supply come from renewable resources by June 1, 2015. 20 ILCS 3855/1-75(c)(1), and that each year after 2015, utilities must increase the total percentage of supply coming from renewable resources by at least 1.5%. By 2025, utilities must receive 25% of their total supply from renewables. (EI IB at 4)

Illinois utilities use renewable energy credits to meet their RPS obligation. Environmental Intervenors argue, "Therefore, as REC prices fall, the cost of complying with the RPS will also fall." (EI IB at 4)

They also state, "As observed by Mr. Berry, in 2011, 'total renewable generation [in Illinois] . . . was about 7.0 million MWh.' RICL Exhibit 10.0 at page 19. As Mr. Berry stated, 'the Project could deliver almost twice as much wind energy as is currently being produced in Illinois.'" (EI IB at 5)

Environmental Intervenors contend that the rise of alternative retail electric suppliers ("ARES") in the state could drive additional demand for supply from renewable resources. (EI IB at 5, citing RICL Exhibit 10.0 at 16-17)

Section IV.A.1.ii of Environmental Intervenors' initial brief is titled, " The Project will lower REC prices." (EI IB at 6)

RICL Witness McDermott stated, "The Project is projected to provide access to new and currently untapped potential renewable resources that should have the effect of providing competitive pressure on prices in [REC] markets as well as competitive pressure on prices in markets for renewable energy." (EI IB at 6, citing RICL Ex. 4.0 Revised at 3-4)

Environmental Intervenors assert that most states have either renewable energy standards or goals. RICL witness Mr. Berry stated that within the PJM footprint, the District of Columbia, Delaware, Maryland, Michigan, New Jersey West Virginia, North Carolina, Ohio, and Pennsylvania all have enacted renewable portfolio standards, and that RECs associated with generation in one state can used to satisfy RPSs in multiple states, which means, "the prices of RECs in states tend to be linked." (*Id.*, citing RICL Ex. 10.0 at 17) Mr. Berry stated, "A shortfall in the supply of RECs to satisfy the RPS in one PJM state will tend to cause supply shortfalls in other states as well," which will raise REC prices for all states. Mr. Berry asserted, "This effect was observed in 2009, when REC's traded in both New Jersey and Illinois reached a high of over \$10/MWh due to limited supply but declined in a highly correlated fashion throughout 2010 and 2011. The price declines in 2010 and 2011 were a result of additional wind installations and the associated increase in REC supply." (*Id.*, citing RICL Ex. 10.0 at 17)

RICL witness Dr. McDermott conducted a study of the REC market as defined by REC facilities located in Illinois and adjoining states. Section 1-75(c) of the PUA requires non-ARES utilities to give preference to RECs from Illinois and adjoining states. 20 ILCS 3855/1-75(c). Dr. McDermott also investigated the broader REC market defined as the REC facilities located within the entire Eastern Interconnection, which consists of "the entire Alternating Current ("AC") transmission system east of the Rocky Mountains, including parts of Canada and Texas." (EI IB at 7, citing RICL Ex. 4.0 Rev. at 6) Dr. McDermott concluded that the supply of RECs in both REC markets would increase as a result of the project, and that the project would increase the supply of RECs in the Illinois and adjoining States Energy REC market by as much 28% in 2020. (*Id.*, citing RICL Ex. 4.0 Rev. at 37-39) Copies Dr. McDermott's tables of market effects are contained on pages 8-9 of EI's initial brief.

Dr. McDermott also testified that "the differential wind speeds between Illinois and the area that will be served by the Project strongly suggests that potential wind resources served by the Project will have higher capacity factors than similar wind resources sited in Illinois." (EI IB at 9, citing RICL Ex. 4.0 at 31) Mr. Berry stated that a higher capacity factor "substantially reduces the cost of wind energy produced by facilities located in areas with higher average wind speeds. As more energy is produced by a wind turbine, the unit cost of energy decreases, because the upfront capital cost can be recovered over a large number of megawatt-hours." (*Id.*, citing RICL

Exhibit 10.0 at 7) These lower prices are passed on to Illinois ratepayers in the form of cheaper RECs. (EI IB at 10)

Section IV.A.1.iii of Environmental Intervenors' initial brief is titled, "The Project will increase generator competition and will exert downward pressure on wholesale energy prices, which will in turn result in lower retail electricity prices. (EI IB at 10)

Dr. McDermott summarized, "The additional transmission capacity promotes an effectively competitive electricity market by increasing the size of the supply side of the market competing to serve load in Illinois and opening the Illinois market to lower cost generation resources." (*Id.*, citing RICL Ex. 4.0 Rev. 4.0 at 2)

Environmental Intervenors state that RICL Witness Moland used the PROMOD production cost modeling software package to perform simulations of future energy markets for two representative study years, 2016 and 2020, to assess the economic and environmental impact of the Project on system operations in Illinois. Mr. Moland's modeling relied on four different futures scenarios: (1) Business as Usual; (2) Slow Growth; (3) Robust Economy; and (4) Green Economy. (EI IB at 10, citing RICL Ex. 3.0 at 3, 6-7)

According to Environmental Intervenors, Mr. Moland's analysis shows that "just as the Project will lower emissions under all four futures scenarios," it will also lower the total demand costs, locational marginal prices, and variable production costs, all of which result in lower retail prices for Illinois ratepayers. Mr. Moland also concluded that the Project will reduce the congestion costs to Illinois ratepayers in seven of eight scenarios. (*Id.* at 10-12, citing RICL Exs. 3.0 at 10-11 and 3.5 at 3)

Dr. McDermott calculated the net present value of these reduced wholesale prices. He concluded that the benefits to Illinois consumers under four futures scenarios through 2020 would be in the range of \$667 million to \$1.2 billion. (EI IB at 12, citing RICL Ex. 4.0 Rev. at 22-23)

Dr. McDermott also quantified the benefit to competition using the Delivered Price Test ("DPT"). According to his calculations, the Project is expected to increase the Economic Capacity available to supply the Illinois market by between 0.4% and 2.4%. (EI IB at 13, citing RICL Ex. 4.0 Rev. at 36)

Environmental Intervenors conclude, "All of the evidence in this case points to the RICL Project as being an effective tool for increasing competition in the Illinois electricity market." (EI IB at 13)

H. IBEW Position

IBEW asserts that the Project will improve reliability in Illinois by increasing the amount of generating capacity available to Illinois, reducing Loss of Load Expectation, and increasing transfer capability into Illinois. (IBEW IB at 6, citing RI Ex. 6.0 at 17-19)

IBEW contends that the Project will also facilitate integration of wind energy from the "wind rich" geographical areas outside of Illinois with wind resources within Illinois, and that the geographical diversity in wind resources will reduce variability of the wind resources and improve reliability. (*Id.*, citing RI Ex. 10.0 at 4 and IBEW Ex. 1.0 at 6) Overall, construction and operation of the Project will strengthen and improve the transmission grid by providing a high capacity direct interconnection from the Resource Area to northern Illinois and PJM. (*Id.*, citing IBEW Ex. 1.0 at 4, and RI Exs. 1.0 at 6, 10.0 at 9-10 and 2.11 at 6-7)

IBEW next argues that the RICL Project "will also promote the development of an effectively competitive electricity market in Illinois" by increasing the supply of electricity into Illinois, lowering electricity prices for consumers, and assisting utilities and other power suppliers in meeting the Illinois Renewable Portfolio Standards. (IBEW IB at 6-7, citing IBEW 1.0 at 6) IBEW contends that the development of wind generation facilities in the Resource Area depends upon the construction of new, long-distance transmission infrastructure, particularly interstate, inter-regional transmission facilities, such as the Rock Island Project (*Id.*, citing RI Ex. 1.0 at 18). IBEW submits that by accommodating the construction of wind facilities in the Resource Area, the Project will increase the electricity supply available to Illinois customers, and that the increase in supply from renewable resources from the Resource Area will also assist utilities and power suppliers in meeting the Renewable Portfolio Standards requirement in Illinois, which specifies that a certain percentage of their electricity must be generated from renewable resources. (*Id.* at 7, citing IBEW Ex 1.0 at 6 and RI Ex. 10.0 at 3, 15-17)

IBEW states that Rock Island witness Karl McDermott provides further analytical detail as to how the Project expands the set of generators that are able to compete to serve load in Illinois and opines that such increased economic import capability allows a greater level of lower cost generation resources to compete in the Illinois market, thereby resulting in greater competitive pressure on prices. (*Id.*, citing RI Ex. 4.0 Rev. at 7-8, 17-18) IBEW adds that Dr. McDermott concludes that the Project lowers the cost to serve energy in Illinois by lowering wholesale electricity prices that will in turn flow to all retail customers in an equitable fashion. (*Id.*, citing RI Ex. 4.0 Rev. at 24-25, 31-32)

I. BOMA Position

The Building Owners and Managers Association of Chicago ("BOMA") presented the testimony of its Executive Vice President, Michael F. Cornicelli. BOMA did not file a brief.

Mr. Cornicelli testified that BOMA aims to enhance the competitive landscape by attracting new market entrants in Illinois and promoting projects that can lower operational expenses for large commercial buildings and provide access to sustainability options. He stated that increasing access to generation resources enhances the competitive marketplace, which can help temper rising capacity costs,

and that a large-scale merchant transmission line enriches the Illinois electric market landscape and should be supported from BOMA's competitive market point of view.

The witness further stated, "With that said, BOMA/Chicago is supporting this project to the extent it enhances competition, lowers costs to our members, increases reliability, and, to the extent that it *does not* increase costs." (BOMA Ex. 1.0 at 3, emphasis in original)

J. Commission Conclusion

Section 8-406(b) provides in part as follows, "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."

Section 8-406(b) then provides alternative tests for demonstrating the proposed construction will promote the public convenience and necessity. It states, in part:

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....

As noted above, the FERC accepted Rock Island's proposal "to pre-subscribe up to 75 percent of transmission capacity to anchor customers." The FERC also approved Rock Island's request "to sell the remaining 25 percent of the Project's capacity using an open season auction." The FERC did not approve Rock Island's request "to apply a preference for energy from renewable resources in its open season." 139 FERC ¶ 61,142 at 10-11.

According to Rock Island, it has shown that the proposed transmission line project satisfies both of the alternative showings identified in Section 406(b)(1). IBEW agrees.

In addition to Rock Island, several parties presented witness testimony substantively analyzing this issue, among them ComEd, Staff, ILA and WOW.

ILA, ComEd and IAA argue that Rock Island has failed to satisfy either of the alternative showings in Section 406(b)(1).

Wind on the Wires and Environmental Intervenors, who support the application, argue that Rock Island has met the second test – that it will promote the development of an effectively competitive electricity market.

Preliminarily, the Commission observes, as it has with respect other issues in this case, that an assessment of the issue at hand is a particularly challenging undertaking given the “merchant” nature of the proposed transmission line project and the many unknowns associated with it.

With regard to the first alternative test in Section 406(b)(1), Staff, ComEd, ILA and IAA contend that Rock Island has not demonstrated that the proposed Project 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.

Except for Rock Island and IBEW, no other Party has taken the position that Rock Island has met that test.

In fact, Wind on the Wires, which supports the application, observes that while Rock Island has addressed the first test in Section 8-406(b)(1), “the primary purpose of the line is really to improve the existing competitive electricity market in Illinois, which is the second or alternative finding in section 8-406(b)(1).” (WOW RB at 6-7) Similarly, the Staff witness stated that “RICL’s main argument for the proposed project is that it will promote the development of competitive electricity markets.”

Having reviewed the record, the Commission finds, with regard to the first alternative showing in Section 8-406(b)(1), that Rock Island has not demonstrated that the Project is necessary to provide adequate, reliable, and efficient service to customers within the meaning of Section 8-406(b)(1).

As explained in Staff and ComEd testimony and briefs, Rock Island did not provide any independent studies from transmission system operators in Illinois. While Rock Island may not be required to vetter this merchant project with such operators for that purpose, RI also did not provide, as an alternative to such an independent study, any load flow studies or similar analysis to substantiate its position.

On this issue, the Commission also notes that ComEd cites testimony from RI’s expert witness. The witness was asked, “You’re not testifying that the proposed addition of the Rock Island Clean Line is required to make the Illinois system more reliable, correct?” He responded, “That is correct.” (Tr. 749-750)

Accordingly, the Commission finds that Rock Island has not demonstrated that the Project is necessary to provide adequate, reliable, and efficient service to customers within the meaning of Section 8-406(b)(1).

On a somewhat related point, ComEd witness Mr. Naumann raised a concern that Rock Island has not identified the network upgrades required to properly connect

the proposed line to ComEd's existing 765 kV transmission system at the Collins substation and ensure the reliability of the ComEd system. (ComEd Ex. 1.0 Rev. at 21) While the Commission agrees with ComEd's emphasis on the importance of ensuring the integrity of the interconnection, the Commission believes that the PJM interconnection process, which will involve a number of studies to determine the reliability impact of a project on the system and the necessary facilities and network upgrades to accommodate the project before interconnection will occur, will be sufficient to avoid adverse impacts on reliability. The Commission notes that an informative description of how that PJM process works for a merchant project process is contained in Mr. Naumann's testimony. (*Id.* at 16-18) As a condition of this Order, Rock Island shall not attempt to effect the interconnection until it has fully complied with the applicable requirements of PJM and the other conditions in this Order, and has signed all interconnection agreements.

The Commission will next address the second alternative test, also referred to as the "competition prong" in Section 8-406(b)(1).

Rock Island witnesses testified that the Project will promote the development of an effectively competitive electricity market and they presented economic analyses purporting to show that the Project is the least cost means of doing so. They also critiqued Mr. Zuraski's analysis.

Rock Island's testimony and argument on this issue is described at length above and will not be repeated here.

WOW presented testimony and argument in support of its contention that the record shows the competitive prong has been satisfied. Environmental Intervenors and IBEW concur.

ILA and ComEd contend that RI failed to make the showing required under the competitive criterion. In support of their respective positions, ILA and ComEd rely on the testimony of ILA witness Dr. Gray and ComEd witness Mr. Naumann. These witnesses criticized the assumptions in and results of RI's studies, as described above. IAA reaches the same conclusion in its briefs

Staff witness Mr. Zuraski focused on the benefits and costs of the Project. He also offered comments with respect to the Project's impact on competition.

Mr. Zuraski reviewed the purported benefits of the Project as calculated by Rock Island's witnesses. He testified that the Rock Island had not demonstrated that the Project's benefits outweigh its costs, noting that the direct testimony of Rock Island witnesses focused only on certain alleged benefits of the project, and did not consider the costs. (Staff Ex. 3.0 at 11)

Mr. Zuraski performed a study comparing the benefits and costs of the project, and he described the methodology and assumptions used in his analysis. (Staff Ex. 3.0

at 16-29) He examined three scenarios through which approximately 15 million MWHs of additional RECs per year could be made available to Illinois firms subject to the State's RPS, and the additional revenues that would be needed to cover the costs.

Mr. Zuraski took into account, and explained, a source of benefits that he called "LMP savings." He also explained the capacity factor assumptions used in his analysis, and its significance. In an appendix, he identified the assume values of inputs used in his analysis.

Mr. Zuraski also described the results and conclusions of his analysis. (Staff Ex. 3.0 at 5-6, 29-46)

He summarized his testimony as follows:

Based on my evaluation, I expect that the project's benefits will outweigh its costs, and that the additional costs of the renewable energy resources that would utilize the RICL Project will not significantly exceed the maximum available budget for renewable energy resources pursuant to the Illinois renewable portfolio standard. However, this analysis is subject to considerable uncertainty. Therefore, there is a risk that the project will not be financially viable as a subscription service sold at market-based rates, in which case RICL would be more likely to seek FERC approval to recover its costs through a more general levy on electric market participants, such as an 'inter-regional allocation of the costs,' as described by RICL witness Skelly in his direct testimony.

He next stated:

With respect to whether or not the proposed construction will promote the development of an effectively competitive electricity market, it is my opinion that an effectively competitive electricity market already exists. However, it is also my opinion that the RICL Project would not threaten the competitiveness of the electricity market. Whether the RICL Project will promote or contribute to an effectively competitive electricity market that operates efficiently ... and is the least cost means of satisfying those objectives depends on whether the project's benefits will outweigh its costs, as addressed in the previous paragraph. ..."
(Staff Ex. 3.0 at 5-6)

Based on that testimony, "Staff believes that the evidence supports a finding that the Project would promote an effectively competitive electricity market, but that the preponderance of evidence in favor of such a finding is not a strong preponderance and is subject to 'considerable uncertainty.'" (Staff IB at 60)

Having reviewed the record regarding the studies provided by Rock Island and Staff, the Commission finds, for the reasons explained by Staff and as summarized

above, that the analysis presented by Mr. Zuraski is the more reliable and provides a better comparison of the benefits and costs of the Project in the context of assessing whether the Project will promote the development of an effectively competitive electricity market that operates efficiently, including with respect to renewable energy; is equitable to all customers; and is the least cost means of satisfying those objectives. The Commission also believes Mr. Zuraski's findings may be relied upon in making the necessary determinations on this issue.

ILA witness Dr. Gray testified that 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. Similarly, ComEd argues that the Project is little more than a concept, has attracted no customers or committed lenders and investors. IAA makes similar arguments.

As observed above and elsewhere in this Order, the uncertainties associated with this merchant project present many challenges in assessing and deciding the issues in this proceeding. The competitive prong criterion in Section 8-406(b)(1) is obviously no exception to this "chicken-egg" dilemma.

Rock Island has presented analyses purporting to show that the wind-rich conditions in the targeted resource area will prompt the development of wind farms there if transmission service becomes available. The WOW witness agrees with this assessment.

Based on the evidence, particularly the analysis of Mr. Zuraski, who explained the significance of favorable capacity factors in the wind-rich resource area and expressed his expectation, albeit with reservations, that the Project's benefits will exceed the costs, and will promote the development of an effectively competitive electricity market, the Commission believes there is a strong potential for such wind-farm development and use of the proposed line if such a line is available. While such potential alone is arguably not sufficient to satisfy Section 8-406(b)(1) in light of the many uncertainties, the Commission believes that important safeguards in that respect are provided by the financing condition which is imposed below in order to satisfy Section 406(b)(3).

Under that condition, "Rock Island will not install transmission facilities for the Project on easement property until such time as [it] has obtained commitments for funds in a total amount equal to or greater than the total project cost."

The Commission believes that this condition also provides a level of assurance on the Section 8-406(b)(1) issue, since lenders and investors will presumably assess the status of wind-farm projects and of RI's efforts to obtain commitments from those developers before agreeing to lend or invest such large sums of money. As stated by the FERC in 139 FERC ¶ 61,142 at page 10, "As Rock Island points out, it must secure long-term commitments from creditworthy anchor customers to support financing the

Project.” Accordingly, the findings on Section 8-406(b)(1) are subject to fulfillment by RI of the financing condition.

ComEd also challenges the assumption that 100% of the generation flowing on the line will be wind energy. The Commission notes that the line has been characterized as a 500-mile lead line from O’Brien County, Iowa, where the potential wind farms would be located, to the Collins substation in Grundy County, Illinois. In view of this and other information in the record, it seems reasonably likely that the line would be used primarily if not entirely for delivery of wind energy from O’Brien County to the Collins substation.

Staff, ComEd, ILA and IAA also take issue with RI’s repeated claims that Illinois customers will pay none of the cost of Project, because, as a merchant project, all such costs will be paid by the generators. On this point, FERC stated, “Rock Island meets the definition of a merchant transmission owner because it assumes all market risk associated with the Project and has no captive customers. Rock Island has agreed to bear all the risk that the Project will succeed or fail based on whether a market exists for its services. Rock Island also has no ability to pass on any costs to captive ratepayers.” 139 FERC ¶ 61,142 at 6.

Mr. Zuraski testified that “there is a risk that the project will not be financially viable as a subscription service sold at market-based rates, in which case RICL would be more likely to seek FERC approval to recover its costs through a more general levy on electric market participants, such as an ‘inter-regional allocation of the costs,’ as described by RICL witness Skelly in his ... testimony.” (Staff Ex. 3.0 at 5-6, Zuraski; see also ILA Ex. 7.0 at 9-10, Gray)

To mitigate this concern, RI has proposed a condition which states:

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.

ILA and ComEd view this condition as superficial and inadequate. Staff witness Zuraski also has misgivings, although he suggests the outcome of concern – where ratepayers would end up bearing the costs of the Project -- would be less likely if Rock Island were to make the type of assurances discussed in the condition proposed by Rock Island.

As a condition of this Order, the Commission finds that Rock Island shall abide by the terms of the condition set forth above. Prior to recovering any Project costs from Illinois retail ratepayers through PJM or MISO regional cost allocation, Rock Island shall seek and obtain the permission of this Commission in a proceeding initiated or sought by Rock Island. Absent such approval, Rock Island shall not be entitled or permitted to recover any such costs.

In conclusion, upon consideration of the record and the determinations contained above, and subject to the conditions set forth above and elsewhere in this Order, the Commission finds that the Project will provide an opportunity for the delivery of more renewable energy into Illinois, and will promote the development of an effectively competitive electricity market that operates efficiently, including with respect to renewable energy; is equitable to all customers; and is the least cost means of satisfying those objectives, within the meaning of Section 8-406(b)(2).

VII. MANAGING AND SUPERVISING THE CONSTRUCTION PROCESS

One of the requirements in Section 8-406(b) is that the utility demonstrate that it is "capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof."

A. Rock Island Position

Rock Island contends that it is capable of efficiently managing and supervising the construction process for the Project because (i) it is engaging experienced contractors to carry out the tasks associated with constructing the Project and placing it into operation; (ii) it will enter into contracts with its contractors that will provide for effective project controls and oversight mechanisms from the project owner's perspective; (iii) Rock Island and its parent company, Clean Line, have developed a comprehensive construction management organization and are filling the positions in the organization with qualified personnel at an appropriate pace consistent with Project development achievements and the need for specific personnel; and (iv) members of Clean Line's management team, as well as one of its principal investors, National Grid, have experience in developing construction management organizations and overseeing the construction and completion of large projects in the electric utility industry. (RI IB at 94-104; RB at 105-114; RI Ex. 1.4 at 2)

Rock Island states it will retain two Engineering, Procurement and Construction ("EPC") contractors for the Project, one for the construction of the transmission line and the other for the construction and installation of the two converter stations. (RI IB at 95; RI Ex. 1.4 at 11) It has retained Kiewit Power Constructors Co. ("KPC") to provide engineering and other services during the development phase of the Project and "expects" to retain KPC as the EPC contractor for the transmission line. Rock Island states that the EPC contractor for the transmission line will provide the following

services: solicit and evaluate bids for procurement of equipment and material; solicit and evaluate subcontractor bids and manage all subcontractors for the Project; supervise development of access to construction locations; install foundations for structures, assemble and erect towers and string wire; test and commission the line; and monitor compliance with Project permits and easement grants. (RI IB at 95; RI Ex. 1.4 at 12) Rock Island also states that it has contracted with Siemens Energy, Inc. ("Siemens") for provision of the HVDC converter stations and, after the development phase is completed, that it expects to enter into an EPC contract with Siemens for the converter stations. (RI IB at 95, citing RICL Exs. 1.4 at 11-12, 15-16, and Ex. 2.0 at 15-16)

Rock Island states that KPC is an operating district of Kiewit, which is one of North America's largest construction, mining, and engineering organizations and has constructed a significant number of linear infrastructure facilities, including electric transmission lines and pipelines, and is very experienced in planning, tracking and monitoring these types of projects. (*Id.* at 95-96, citing RI Exs. 9.0 Rev. at 4, 9.4 Rev. at 4, and 9.5) RICL states that Kiewit recently completed a 345 kV, 135-mile double circuit transmission line project, most of which crossed agricultural land, which was completed on time and within budget, and that Kiewit also recently completed the installation of a 111-mile, 230 kV transmission line in Ontario, Canada, the entire length of which crossed rural, wooded lands. (*Id.* at 96, citing RI Exs. 9.0 Rev. at 4-5 and 9.4 Rev. at 3-4)

Rock Island asserts that KPC has developed the sequence of design and construction for the Project, and is "well prepared" to commence detailed scheduling and final engineering and construction activities when the appropriate development milestones are met. KPC has also reviewed the terrain across the proposed route of the Project in Illinois and determined that it will be able to use conventional construction techniques for most of the line. (RI IB at 96, citing RI Ex. 9.0 Rev. at 6-7) Rock Island asserts that the structural design of an HVDC transmission line is similar to an AC line, and the construction processes and practices applicable to each type of line are similar. For example, National Electrical Safety Code design criteria must be met on both types of lines and there must be an adherence to local meteorological and geological conditions and construction loading requirements. (*Id.*, citing RI Ex. 9.0 Rev. at 4; RB at 112-113)

Rock Island states that Staff witness Mr. Rashid testified -- based on the testimony of the KPC witness and KPC's reputation as one of the larger construction organizations -- that KPC appears capable of handling the EPC role for the Rock Island Project. (RI IB at 96, citing Staff Ex. 1.0 at 15)

Rock Island states that Siemens, the HVDC converter station vendor for the Project, is a world leader in HVDC technology and has installed more than 17,000 MW of HVDC capacity worldwide, including at least 10 projects in the U.S. Rock Island states that Siemens is providing services during the development phase of the Project, including providing detailed price estimates, technical specifications, schedules, market

price information, interconnection design, drawings and other technical input into the RTOs' interconnection studies. (RI IB at 97, citing RI Exs. 1.4 at 15-16 and Ex. 2.0 at 16) Rock Island asserts that partnering with Siemens early in the project will help to ensure early identification of any design issues and an optimal and reliable design and efficient implementation for the converter stations. (*Id.*, citing RI Ex. 2.0 at 16)

Rock Island states that it has also engaged POWER Engineers, Inc. ("POWER") to provide transmission line engineering support for the Project during the development phase, and that POWER provides engineering/design, construction, asset management and other services to the power generation, power delivery and other industries. (RI IB at 97, citing RI Ex. 2.0 at 14-15) POWER has developed preliminary design criteria and structure designs and provided engineering support in the route development process. (*Id.*, citing RI Ex. 2.0 at 14-15)

Rock Island has also retained HDR Engineering, Inc. ("HDR") as its principal consultant for route development, permitting, environmental, land use and public outreach activities for the Project; and Contract Land Staff, LLC ("CLS") to assist in contracting and negotiating with landowners to secure ROW. Rock Island describes HDR as a large, well-qualified engineering and consulting firm with more than 90 years of experience in engineering and design work for clients in the electric power industry and other infrastructure segments. Rock Island states that since 2008, HDR has provided routing studies for 10 transmission projects of 345 kV or greater, totaling over 3,000 miles of transmission lines. Rock Island states that CLS is experienced in land acquisition activities in the area where the Project will be constructed. (*Id.*, citing RI Exs. 2.0 at 14 and Ex. 8.0 at 3)

According to Rock Island, the assertion by IAA and Staff that HVDC lines are "rare" is unfounded. (IAA IB at 13; Staff IB at 62) Rock Island states that Mr. Galli testified that HVDC technology is neither experimental nor recently introduced technology, and in fact, there are over 30 HVDC installations in North America, some dating back as far as 1968. (RI Ex. 2.0 at 22-24; RI RB at 112) Mr. Galli further testified that worldwide, HVDC applications are commonplace and are continuing to increase in applications similar to Rock Island's planned use of HVDC for the Project. (RI Ex. 2.0 at 22-24; RI RB at 112)

Rock Island also states that National Grid, a principal owner of Clean Line, is one of the largest owners and operators of electric transmission facilities in the world, and that Rock Island's capability to effectively manage the construction of the Project is further supported by its ability to draw on National Grid's expertise in the planning, construction and operation of the Project. (RI IB at 103-104, citing RI Exs. 1.4 at 19 and 10.12 at 1-3; 12.0 at 2-3; Tr. 246; RI RB at 112)

Rock Island states that it will require its EPC contracts with KPC and Siemens to include provisions that provide Rock Island with effective project controls to ensure that the Project is completed on time and on budget, and RICL describes those measures. (RI IB at 98, citing RI Ex. 1.4 at 14-16)

Rock Island states that Clean Line and Rock Island have designed an effective construction management organization for the Project and are in the process of filling the positions in the construction management organization. (RI IB at 98, citing RI Ex. 1.4 at 2-10) The construction management organization structure was provided on RI Exhibit 1.5. Each of the three lead positions (EVP of Transmission and Technical Services, General Counsel and Director of Development) has been filled. (*Id.*; RI IB at 99) The responsibilities of and qualifications for each position in the construction management organization were described in Mr. Skelly's rebuttal testimony. (RI IB at 99-100, citing RI Ex. 1.4 at 3-9)

Rock Island states that an another component of its construction management organization will be an OE, who will act as the RICL's representative whose expertise and experience will supplement and support Rock Island's management of construction of the Project. An OE is a third-party entity, experienced in the engineering and construction of large-scale infrastructure projects, who is retained to assist the owner in project management and oversee the activities of the other contractors, including the EPC contractors, thereby supplementing the experience and expertise of the owner's internal team. (RI IB at 100, citing RI Exs.1.4 at 10 and 1.7 at 11)

Rock Island responded to the concern expressed by Staff witness Mr. Rashid that Rock Island's construction management organization is not yet fully staffed. (RICL IB at 100, citing Staff Ex. 7.0 at 6) Rock Island stated that there are unfilled positions at this time because at the current stage of the Project, there is not meaningful work for those positions, and that it would be uneconomical to hire individuals for positions that do not have any current or imminent duties. (*Id.* at 100-101, citing RI Ex. 1.7 at 5-7) Mr. Wynter, an officer of National Grid USA and member of Clean Line's Board of Directors, testified that positions should not be filled until there is meaningful and substantive work for the persons in these positions to perform, which will occur as additional development milestones are reached and the Project moves closer to definitive engineering and cost estimating and commencing actual construction. (RI IB at 101) Rock Island identified certain positions as filled, and stated that those positions are already filled because at the current stage of the Project, there are duties and responsibilities to be performed by those positions. (RI IB at 101, citing RI Ex. 1.7 at 6)

Rock Island responded to the arguments of Staff, ComEd, the ILA and the IAA that Rock Island may not be able to hire sufficiently experienced employees to complete its construction management organization to oversee construction of the Project. (RICL RB at 110, citing Staff IB at 61; Staff RB at 10; ComEd IB at 33; IAA IB at 13) Rock Island stated that it has a reasonable plan for filling the remaining positions of its construction management organization and is confident that it will be able to fill the positions in a timely manner. (RI RB at 110; RI Exs. 1.4 at 9-10 and 1.7 at 7) Mr. Skelly and Mr. Wynter testified that both the Clean Line management team and National Grid have extensive professional networks in the electric power industry and will work with industry professionals and other resources to find the most qualified personnel to fill these positions. (*Id.*, citing RI Exs. 1.7 at 7 and 12.0 at 14) Mr. Wynter testified that

based on National Grid's experience and knowledge of the current market for the types of personnel needed for the unfilled positions, Rock Island will be able to fill the remaining positions in the construction management organization and that National Grid will assist Rock Island in identifying qualified candidates to fill these positions. (*Id.* at 110-111, citing RI Ex. 12.0 at 14)

Rock Island responded to the arguments of the IAA that Rock Island's construction management team may not be sufficient to manage construction of the Project because some of the key members may have identical or similar duties for other subsidiaries of Clean Line and therefore may be "stretched thin." (RICL RB at 111-112, citing IAA IB at 13) Rock Island states that certain members of the Clean Line management team may work on more than one project at any given time; however, employees may do work on multiple projects but only spend a small amount of time on certain of those projects. (*Id.*, citing Tr. 242) According to RICL, Mr. Skelly testified that as the Project progresses closer to commencing construction, certain employees who have been spending time on multiple projects will have their time dedicated exclusively to the Project, and Mr. Galli testified that he anticipates the Clean Line and Rock Island organizations will grow in size as additional project milestones are achieved. (*Id.*, citing Tr. 239-240, 780)

Rock Island states that Jayshree Desai, EVP of Rock Island, and Mr. Skelly, President of Clean Line and of Rock Island, were responsible for the development and construction of more than 2,000 megawatts of wind farms and more than 180 miles of transmission lines at Horizon Wind Energy, and were responsible for hiring personnel to build that company's construction, procurement, operations and asset management departments. (RICL IB at 102, citing RICL Ex. 1.4 at 17) Rock Island states that, at the height of Horizon Wind Energy's construction activities, Mr. Skelly and Ms. Desai managed over \$2 billion worth of procurement and construction contracts. (*Id.*, citing RI Ex. 1.4 at 19) Rock Island also states that Dr. Galli, EVP of Transmission and Technical Services for Clean Line, while Director of Transmission Development at NextEra Energy Resources, was responsible for routing, siting and engineering for approximately 330 miles of new transmission lines, for vetting and awarding contracts to contractors, and participated in planning and project management for a 229-mile transmission line. (*Id.* at 103, citing RI Ex. 1.8 at 1) Rock Island provided additional information about the transmission and generation projects in which Ms. Desai, Mr. Skelly, Dr. Galli and other members of the Clean Line management team have been involved. (*Id.*)

Rock Island responded to comments by IAA, ILA, ComEd and Staff that neither Rock Island nor its parent company has ever built a transmission line. (RICL RB at 106-107, citing IAA IB at 13-14; ILA IB at 30; ComEd IB at 32-33; Staff IB at 60, 62) Rock Island stated that those arguments fail to consider the evidence presented by RICL, including that members of Clean Line's management team and National Grid, a principal investor in Clean Line, have considerable experience with organizing construction management teams and overseeing the construction of large electric industry projects, including transmission lines. (RICL IB 102-104 and RB at 106-107,

citing RICL Exs. 1.3; 1.4 at 17-19; 1.6; 1.7 at 2, 7, 9-10; Ex. 1.9; Ex. 10.12 at 5; and 12.0 at 2-3)

Rock Island also argues that National Grid, which has extensive experience constructing, owning, and operating transmission lines, is a 40% owner of Clean Line and therefore has a vested interest in Rock Island's effective management of the construction of the Project. Rock Island asserts that National Grid would not have invested \$40 million of at-risk capital in Clean Line if National Grid did not have confidence that Clean Line and its subsidiaries will be able to efficiently manage the construction of their transmission line projects and bring them to completion. Rock Island reiterated that National Grid has committed to making its engineering, procurement, licensing, construction and project management skills and resources and technical advice available to Clean Line and Rock Island. (RI RB at 107-108, citing RI Exs. 10.26 at 9; 12.0 at 2-3, 6, 12-14; 1.4 at 19; 1.7 at 3; 12.0 at 13; and Tr. 246-247, 376, 842)

Rock Island disputed IAA's argument that none of the members of the Board of Clean Line have ever been involved in transmission line projects. (RICL RB at 108-109, citing IAA IB at 13-14) Rock Island stated that Mr. Skelly, a Board member, has considerable experience in transmission line development. (*Id.*, citing RI Exs. 1.3; 1.4 at 17-19; 1.6; 1.7 at 9-10; 1.9; and Tr. 237, 799-780)

Rock Island also disputed what it characterizes as assertions of Staff, ComEd and the IAA that the individuals Rock Island has already hired to fill positions in its construction management organization do not have sufficient "relevant" experience. (RICL RB 109, citing Staff IB at 61; ComEd IB at 33; IAA IB at 14) Rock Island cites "extensive evidence" describing how these individuals' prior professional experience is pertinent to transmission line construction management and the supervision capabilities. (RI RB at 109, citing RI Exs. 1.3; Ex. 1.4 at 6, 7-9, 17-19; 1.6; 1.7 at 8-10; Ex. 1.8; and 1.9)

Rock Island states that several other state commissions have found that sister project companies of Rock Island, all of which are following the same business plan to develop long distance transmission lines to connect "wind-rich" areas to load and population centers (RI Ex. 1.0 at 13-14), have the necessary managerial and technical competence to construct their transmission line projects. (RICL RB at 114; RICL Ex 1.7 at 4-5)

Specifically, Rock Island states that: (1) the Oklahoma Corporation Commission, in granting Plains and Eastern Clean Line LLC public utility status in Oklahoma, found that Plains and Eastern possesses the financial, managerial and technical experience to build, own and operate transmission in Oklahoma (RICL RB at 114 and RICL Ex 1.7 at 4-5, citing Order No. 590530 dated October 28, 2011, Cause No. PUD 201000075, Order); (2) the Kansas Corporation Commission, in granting a certificate to Grain Belt Express Clean Line LLC, found that Grain Belt has the managerial, financial and technical experience to construct, operate and maintain the line (*Id.*, citing Order dated

December 7, 2011 Approving Stipulation & Agreement And Granting Certificate, Docket No. 11-GBEE-624-COC, In the Matter of the Application of Grain Belt Express Clean Line LLC for a Limited Certificate of Public Convenience to Transact the Business of a Public Utility in the State of Kansas); and (3) the Indiana Utility Regulatory Commission, in granting Grain Belt a certificate to operate as a transmission-only public utility in the State of Indiana, found that Grain Belt has the necessary technical, managerial and financial capability to construct, own and operate its project. (*Id.*, citing Order of the Commission May 22, 2013, Cause No. 44264, Petition of Grain Belt Express Clean Line LLC)

Rock Island also states that PJM has concluded that Clean Line and its subsidiary operating companies, including Rock Island, satisfy the pre-qualification requirements for Designated Entity status under the PJM Amended and Restated Operating Agreement. Rock Island states that PJM evaluates companies for pre-qualification based on their ability to engineer, develop, construct, operate and maintain a generic transmission facility within PJM. (RI Ex. 1.7 at 3-4; RI RB at 113-114)

B. Staff and Intervenor Positions

1. Staff Position

In its initial brief, Staff states that Staff witness Mr. Rashid, in his initial testimony, “voiced skepticism” concerning RICL’s ability to efficiently manage and supervise the proposed project, stemming from the fact that RICL had provided no evidence that it or its parent company had ever managed or supervised a transmission line project, let one of this magnitude. (Staff IB at 60, citing Staff Ex. 1.0 at 15; Staff RB at 9)

In his rebuttal, RICL witness Michael Skelly detailed RICL’s plan to manage and supervise the construction of the proposed project. In RICL Ex. 1.5, Mr. Skelly provided an organizational chart depicting the management structure of RICL, including different positions in that organizational structure. RICL plans to fill these positions with 34 to 35 individuals, but only 15 positions in that chart are currently filled. Staff states, “That means that RICL has yet to hire about 20 highly experienced employees and the Commission has no way to know whether RICL will find those essential employees.” (Staff IB at 61; Staff RB at 10)

In his rebuttal testimony, Mr. Rashid testified that Mr. Skelly described the qualifications of the individuals who occupy the 15 filled positions, but did not explain each individual’s involvement in previous transmission line projects. Mr. Skelly also attached an exhibit, which listed various projects in which he, Mr. Galli, and three other individuals were involved. Nevertheless, Staff comments, Mr. Skelly did not describe how these individuals’ involvement in those projects was pertinent to transmission line construction management and supervision as required by Section 8-406(b)(2) of the Act. (Staff IB at 61; Staff Ex. 7.0 at 6 -7; Staff RB at 10)

Mr. Rashid testified that it was important for RICL to demonstrate solid experience managing and supervising of the construction and operation of transmission lines because the Commission needed to know that RICL has the demonstrated ability to construct, maintain, and operate a reliable, high voltage, direct current, electric transmission line. (Staff Ex. 7.0 at 7)

Staff believes that RICL has not demonstrated that it is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof. (Staff IB at 61) Staff argues, "Aside from a lack of experienced employees, RICL failed to demonstrate that it has the organization to make use of those employees to succeed in this project. (citation omitted) According to the record evidence, RICL has never built a transmission line project of any kind or of any size." (*Id.*, citing Staff Ex. 7.0 at 6, 8 and Tr. 838, 840)

Staff states that the proposed project is of a large scale and uses high voltage direct current technology that is not new, but is rather rare, and that in the entire United States, there are only a few high voltage direct current lines. (Staff IB at 62) Staff believes that a startup company like RICL, which has many vacancies in its management structure, would not be able to effectively and efficiently manage and supervise the construction of this \$2.0 billion project. (*Id.*; Staff RB at 9-10)

As such, Staff argues, "Rock Island has not shown that the it is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof, as required under Section 8-406(b)(2) of the Act. 220 ILCS 5/8-406(b)(2)." (Staff IB at 62; see also Staff RB at 11)

2. ComEd Position

Section IV.A.3 of ComEd's initial brief is titled, "RI Has Not Proven that It Is Capable of Efficiently Managing and Supervising the Construction Process."

ComEd states that RI admits that neither RI nor Clean Line has ever constructed a single transmission line. (ComEd IB at 32, citing Tr. 1125, Berry) ComEd characterizes RI as a "shell company" with no assets and a very limited number of construction management personnel that would need to be supplemented to actually construct the project. RI's corporate parent, Clean Line, is similarly situated as a start-up development company with five transmission projects under similar stages of development. RI contends it will use third-party firms to provide much of the needed construction management expertise, but no construction or construction management contract has been entered into at this time. (*Id.* at 32-33, citing Tr. 854)

ComEd concurs with Staff that RI has not provided evidence establishing that it has the capability to efficiently manage and supervise the construction of the proposed project for various reasons including (1) RI has not established that it will be able to hire the highly experienced employees that it acknowledges will be needed to oversee

construction of the project; (2) the lack of experience of the individuals that have been hired with respect to major transmission line projects in general and transmission line construction management and supervision in particular; and (3) RI has no experience constructing even a single transmission line. (ComEd IB at 33, citing Staff Exs. 1.0 at 15 and 7.0 at 6-8)

In ComEd's reply brief, it states that RI's Initial Brief bases its claim on the premise that "it will enter into contracts" that will provide it with such capability. (ComEd RB at 23, citing RI IB at 94, 95, 98) ComEd responds, "At present, however, 'Rock Island and Kiewit Power Constructors ... do not have a binding [engineering, procurement and construction ("EPC")] contract.' (ComEd RB at 23-24, citing Tr. 748, Galli and Tr. 853- 854, Adam)

RI also asserts it "has contracted with Siemens Energy, Inc. ("Siemens") for provision of the HVDC converter stations." (RI IB at 95) ComEd, responds, "But what is broadly characterized as the 'contracted' for 'provision of the HVDC converter stations' in RI's brief, is only 'a memorandum of understanding ... for the development phase of the Project.'" (ComEd RB at 24, citing RI Ex. 1.4 at 15) ComEd asserts, "RI confirms, rather, that it hopes to enter into 'an EPC contract for Siemens to engineer, procure, build, install, and commission the HVDC converters and related equipment at each end of the line,' but has not yet done so." (*Id.*, citing RI Ex. 1.4 at 16)

According to ComEd, "the claim that certain key personnel at RI and Clean Line could establish the requisite capability is not supported by the record. Personnel such as RI President Mr. Skelly are supporting all five of the Clean Line development projects and there is no assurance or showing they would be available for the Project." (*Id.*) Mr. Skelly stated, "Am I going to be a construction supervisor? I have done that before, but I'm not going to be able to do that on all five of these projects." (*Id.*, citing Tr. 275) ComEd further argues, "Moreover, while RI apparently plans to have an affiliate agreement in place to obtain certain services from its parent to construct and operate the line, it has presented no such agreement. RI's President did not even contemplate the Commission approving the affiliate agreement under Section 7-101 of the PUA." (*Id.*, citing Tr. 276, Skelly)

3. ILA and IAA Positions

In its initial brief, ILA argues, "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." (ILA IB at 30)

ILA further argues, "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. 703-704] 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. 713]" (*Id.*)

In its reply brief, ILA argues that Rock Island “can only point to individuals Clean Line has hired for development, along with its chances and desires for hiring additional individuals and contractors in the future to attempt to convince this Commission that it is capable of supervising the construction process.” (ILA RB at 3)

ILA asserts that as of this time, Rock Island has engaged third-parties only for development, not construction. (*Id.* at 4, citing RI Initial Brief pp. 95, 97) ILA states that Rock Island’s Initial Brief acknowledges that it has not hired Kiewit, or any other third-party, to construct the Project. ILA argues, “Essentially, there is neither evidence on the record that Rock Island can manage the construction, nor evidence it has – or will – hire anyone capable of doing so.” (*Id.*)

Of further concern to ILA is the fact that Rock Island has filled less than half of the positions needed for its construction management organization. (ILA RB at 4)

In ILA’s view, it is not reasonable to conclude that Rock Island can efficiently manage the construction of the proposed transmission line. ILA argues, “Its construction management team is woefully understaffed for what lies ahead. If one considers the positions that have been staffed, ambitions of filling the remainder of the positions with qualified personal are unrealistic, and no qualified third-parties have been engaged to actually construct the line.” (*Id.* at 5)

According to IAA, Rock Island has presented no evidence that it is capable of efficiently managing and supervising the construction of the Project. (IAA IB at 13) Moreover, Rock Island is seeking to build a high voltage DC transmission line which is extremely rare, with only a few other similar lines existing in the country. (*Id.*, citing Staff Ex. 4.0R at 8) IAA asserts that the organizational chart of Rock Island is missing 20 of 35 key management employees, and most of these employees are also charged with identical duties for the 5 other subsidiaries of Clean Line. (*Id.*, citing Staff Ex. 4.0R at 6)

The Project is proposed to have a total cost of \$1.8B. (*Id.*, citing Tr. 121, McDermott) IAA states that the proposed cost for the other subsidiary transmission projects of Clean Line totals roughly \$8B. (*Id.*, citing Tr. 1107, Berry) IAA asserts, “According to Rock Island, the multiple projects are on similar progress timelines and, in theory, Clean Line and its subsidiaries could be constructing multiple transmission lines across the country at the same time.” (*Id.*, citing Tr. 1107)

IAA states that none of the original Board of Directors of Clean Line had ever been involved with the construction of a transmission line before. National Grid became an owner of Clean Line and assumed two seats on the Board of Directors for Clean Line. IAA submits that the National Grid representatives have transmission line experience, but no control over day-to-day management. (IAA IB at 14, citing Tr. 377, Wynter) IAA states that National Grid has the right to purchase all the Project and take

over management of the proposed transmission line pursuant to contract in the near term. (*Id.*, citing Tr. 244, Skelly) IAA argues that such facts make the Commission's ability to make a decision more complicated and confusing. (*Id.*)

IAA asserts that Rock Island is a start-up company that has never built a transmission line, and that its parent and sister companies have never built a transmission line and neither have any of the companies' senior management or key employees. (IAA IB at 14, citing Tr. 1125, Berry) IAA argues that Illinois residents should not be forced to be a part of this "new, risky business scheme" and that Rock Island is incapable of efficiently managing and supervising the construction of the Project. (*Id.*; IAA RB at 2)

4. IBEW and Environmental Intervenors Positions

As stated in its initial brief, the IBEW's position is that based on the record, the Commission should find that Rock Island is capable of efficiently managing and supervising the construction of the Project and has taken sufficient action to ensure efficient construction and supervision thereof. (IBEW IB at 8)

From the IBEW's perspective, an important component of Rock Island's capability to efficiently manage and supervise the construction process to ensure efficient construction is its decision to construct the Project in Illinois using union labor under project labor agreements. RICL witness Mr. Skelly testified that "the skills and qualifications of these union trades in Illinois provide additional assurances that the construction of the Project can and will be successfully executed." (*Id.* at 8, citing Rock Island Ex. 1.7 at 12) IBEW witness Mr. Bates stated that the use of IBEW workers is instrumental to the construction of the Rock Island Project, because the IBEW promotes a highly skilled workforce by providing extensive training and education to its members, and that this expertise results in projects being completed efficiently, safely, and reliably. (*Id.*, citing IBEW Ex. 1.0 at 4)

In their initial brief, Environmental Intervenors did not address the issue of whether RICL has shown that it is capable of efficiently managing and supervising the construction process.

In their reply brief, in response to Staff, Environmental Intervenors argue that RICL Staff is qualified to manage and supervise the construction process (EI RB at 4); that vacancies in the RICL management structure are due to a lack of need, not a lack of capability (*Id.* at 6); and that the fact that RICL has never built a transmission line is not evidence that it is unqualified to efficiently manage and supervise construction of the Project. (*Id.* at 8)

C. Commission Conclusion

One of the required showings in Section 8-406(b) is that the utility demonstrate that it is "capable of efficiently managing and supervising the construction process and

has taken sufficient action to ensure adequate and efficient construction and supervision thereof.”

Staff contends that Rock Island has not made the necessary showing. The Staff witness testified that neither Rock Island nor its parent company had ever managed or supervised a transmission line project, let alone a \$2.0 billion DC project; that many positions at Rock Island remain unfilled; and that high-voltage DC lines are rare. ComEd, ILA and IAA agree with Staff. ComEd asserts that Rock Island plans to rely on third-party firms to provide much of the needed construction management expertise, but no construction or construction management contracts have been entered into at this time.

The Commission has reviewed the argument of the parties. As with many of the issues in this case, an assessment of the issue at hand is complicated by the many unknowns associated with the “merchant” nature of the proposed transmission project.

The Commission believes that under the circumstances, Rock Island has made the required showing, subject to the conditions set out below. While the Staff witness raised several pertinent concerns, the Commission believes Rock Island has adequately addressed them in its rebuttal testimony. Rock Island has designed a comprehensive construction management organization, and members of the management team have experience in overseeing the construction of large electric projects. Many lead positions have been filled. While many positions are unfilled, Rock Island contends it would be premature to fully staff them at this point in the process. The Commission finds this explanation to be reasonable.

With respect to third-party contractors, it appears the ones Rock Island has engaged to date for various purposes have relevant experience and expertise, including transmission line and converter station design and construction. While uncertainties presented by a long high-voltage DC line are a concern for the reasons explained by Staff, Rock Island offered testimony that DC applications are not uncommon and are increasing; and that National Grid, which is a principal owner of Clean Line and is one of the largest owners and operators of electric transmission facilities in the world, including DC transmission, will be available to support RI in the Project.

The Commission also notes that its findings on Rock Island’s capability to finance the Project, addressed in the next section of this Order, are subject to a condition proposed by Staff, and approved by the Commission, whereby Rock Island will not install transmission facilities for the Project on easement property until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost. The Commission believes that this condition also provides a level of assurance on the management capability issue, since lenders and investors will presumably assess Rock Island’s capability to manage and supervise the construction of the Project before committing to lend or invest such large sums of money. Accordingly, the findings on Rock Island’s managerial and supervisory capabilities are subject to fulfillment by Rock Island of the financing condition.

VIII. FINANCING THE PROPOSED CONSTRUCTION – SECTION 8-406(b)(3)

One of the required showings in Section 8-406(b) is that the utility demonstrate that it is “capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.”

A. Rock Island Position

Rock Island asserts that it has a feasible plan for raising the capital needed to construct the Project using a project financing approach, which is frequently employed to finance capital projects in the energy industry and other infrastructure sectors. Rock Island argues that the project finance approach, coupled with the financing condition to the CPCN proposed by Commission Staff and accepted by Rock Island, will prevent adverse financial consequences. (RI IB at 104)

According to Rock Island, the key characteristics of a project financing approach are that the project is owned by a single-purpose legal entity which has no businesses, assets or liabilities other than those of the project and its business operations; and that capital is raised to construct the project based on its anticipated revenues and assets from the project. Use of a single purpose legal entity to own the project to be financed is a common approach and is the norm for project financing, including in project financings for electric generation and transmission projects. Project finance investors, and rating agencies, prefer the use of the single purpose legal entity so that the company does not have any other liabilities or business activities that could be the source of liabilities, and owns only assets relating to the project being financed. (Rock Island IB at 105, citing RI Exs. 10.14 Rev. at 15; 10.26 at 13-14; ComEd Ex. 2.06 at 8 (Standard & Poor’s credit rating criteria); Tr.1015) Rock Island states that project financing is widely used to raise capital for projects in the energy industry, as well as for non-energy infrastructure projects and that hundreds of billions of dollars of infrastructure projects have been successfully financed using this, including electric generation plants of various fuel types, including wind generation, and electric transmission lines. (*Id.*, citing RI Exs. 10.0 at 32-33, 37; 10.16; 10.26 at 6; Tr. 987-988)

The proposed transmission line is characterized as a “merchant project,” where the owner assumes the full market risk of constructing the project, pays all the costs of operating and maintaining the project, and recovers the costs through the revenues it receives from the customers who contract to take service from the project. (RI IB at 105, citing RI Exs. 10.13 at 11 and 10.14 Rev at 28, 48; Tr. 647-648, 951-952, 1007-1008, 1046) Rock Island states that the owner of a merchant project, such as Rock Island, does not look to recover its costs from a general base of retail customers, either by seeking to allocate the costs of the project to load through the cost allocation procedures of the applicable RTO, such as PJM or MISO, or through other mechanisms. (*Id.* at 105-106, citing Tr. 648)

According to Rock Island, if it were to be unsuccessful in bringing the Project to the point of being ready for construction financing, the investors' capital that was spent on development activities would be lost and this loss would be borne solely by the investors. Similarly, if the Project were completed and placed into operation but did not earn an adequate rate of return, the shortfall would be borne by the investors and would not be recovered through cost-allocated charges to ratepayers or the public. (RI IB at 106, citing RI Exs. 10.14 Rev. at 27-29, 35 and 10.26 at 8, 10)

Rock Island states that in its order granting Rock Island's request for negotiated rate authority for the Project, the FERC stated that "the developers of merchant projects assume all of the market risk of a project and have no captive customers from which to recover the cost of the project." In that order, as a condition to granting Rock Island negotiated rate authority, FERC specified that "Rock Island has agreed to bear all the risk that the Project will succeed or fail based on whether a market exists for its services. Rock Island has no ability to pass on any costs to captive ratepayers." Rock Island Clean Line LLC, 139 FERC ¶ 61,142 (2012), at PP 1 footnote 1, 16. (RICL IB at 106) Rock Island states that, in the instant proceeding, it has proposed a condition to its CPCN stating that Rock Island will not recover the costs of the Project through PJM or MISO regional cost allocation unless Rock Island first obtains the permission of this Commission in a new proceeding that would be initiated by Rock Island. (RI IB at 106, citing RI Ex. 10.26 at 18, 21-22)

Rock Island is currently in the "development phase" of the Project, which entails activities such as obtaining siting authority, interconnection studies, routing, permitting and public outreach. Capital to fund the development activities for the Rock Island Project and the transmission projects of Clean Line's other project subsidiaries is being provided by Clean Line's equity investors, which currently consist of National Grid, ZAM Ventures, Michael Zilkha, and Clean Line Investment LLC. (RI IB at 106-107, citing RI Exs. 1.0 at 13, 39; 1.1 Rev.; 10.0 at 31; 10.12 at 1-3; ComEd Cross Ex. 4)

The objective of the development phase is to bring the Project to the point of being able to enter into long-term transmission contracts with customers; on the basis of those contracts, project-specific financing arrangements can be entered into with lenders, equity investors and/or other partners that will provide the capital to construct the Project. Rock Island states that when the permitting and licensing processes for the Project have been completed, including obtaining the major regulatory approvals, it will enter into long-term contracts with customers for transmission capacity on the Project. Rock Island will then issue debt secured by the revenues from the transmission contracts to raise the capital necessary to complete the final development activities, construct the Project, and place it into operation. (*Id.*, citing RI Exs. 10.0 at 31-32, 37; 10.13 at 3-4)

According to Rock Island, the U.S. wind power industry, in particular, has raised tens of billions of dollars of project-level debt and equity to fund its projects. (RICL IB at 107, citing RI Exs. 10.0 at 37; 10.26 at 6) With respect to electric transmission projects, Rock Island witness David Berry provided a list of 12 electric transmission projects over

the period from September 2003 through March 2013 which were purportedly financed through debt and/or equity financings accomplished through the project financing model. (RI Ex. 10.16) Rock Island states that these projects were owned by a single purpose legal entity; the transactions relied only on the revenues from a particular project or group of projects rather than on a broad base of corporate assets; and the projects were independent transmission lines in the U.S. that successfully closed on construction financing and were completed and placed into commercial operation. (RI IB at 108, citing RI Ex. 10.26 at 4; Tr. 1014-1015)

Rock Island contends that the \$7.2 billion of transactions listed on Rock Island Exhibit 10.16 demonstrate that independently financed electric transmission lines, including merchant transmission lines such as the Rock Island Project, can be successfully financed. Rock Island states that pipelines financed on the basis of contracts with individual shippers, and independent power generating facilities financed on the basis of long-term power purchase agreements with customers, are other examples of projects financed on the basis of capacity sales contracts. (*Id.* at 108-109, citing RI Exs. 10.14 Rev. at 12; 10.26 at 6; and Tr. 1014)

According to Rock Island, large amounts of liquidity exist in the capital markets for investments in transmission projects that have reached an advanced stage of development. Rock Island states that significant institutional investors have made debt and equity investments in transmission projects financed through the project financing approach, or have led such transactions. (RI IB at 109, citing RI Exs. 10.0 at 33-34 and 10.16) Rock Island states that transmission projects such as the Project are attractive to investors for a number of reasons: they offer stable cash flows due to the nature of the service, a reasonable return, and an attractive risk profile, and are not subject to fuel price risks or to volumetric risks since transmission capacity charges are fixed payments. Further, transmission lines are long-lived assets which have a longer useful life than the term of the typical debt security; when the debt matures and must be repaid, a transmission line still has significant remaining value that can be used to retire or refinance the debt. (*Id.* at 109, citing RICL Ex. 10.14 Rev. at 12-14)

RICL also contends that the Project is not likely to be subject to competitive market exposure; customers are unlikely to have viable alternatives to the Project, which is being built to address the lack of transmission infrastructure to transmit electricity from the Resource Area to markets in northeast Illinois and the PJM footprint. Rock Island states that several previous financing transactions for merchant transmission projects have been over-subscribed, meaning that the demand for investment securities in these projects exceeded the supply; the sponsor could have raised more capital than needed, on the same terms. (*Id.*, citing RI Ex. 10.14 Rev. at 12-15)

Rock Island states that the construction financings will be executed on the basis of transmission customer contracts for capacity and service on the Project. Rock Island expects there will be customers wanting to contract for transmission service on the Project, because there is an increasing demand for renewable energy due to both state

RPS mandates and voluntary purchases of renewable energy; the wind resources in the Resource Area are more abundant and cost-effective than the wind resources located in Illinois and other PJM states; there are wind developers active in the Resource Area who will require additional transmission infrastructure in order to sell the output of their facilities; high capacity factor wind energy that will be delivered by the Project is the cheapest form of renewable energy generation and is cost-competitive with thermal generation; and as environmental regulation of power plant emissions increase, wind energy is likely to become even more attractive. (*Id.*, citing RI Exs. 10.14 Rev. at 33-34; 10.26 at 31-32)

According to Rock Island, members of Clean Line's management team, including CEO Michael Skelly, EVP Jayshree Desai, and David Berry, who is Executive Vice President - Strategy and Finance, are experienced in raising capital in the energy industry. Ms. Desai was Chief Financial Officer of Horizon Wind Energy, where she oversaw transactions, including project financings, which raised several billions of dollars of capital for wind farm projects. Mr. Berry has worked on project finance transactions for wind farms totaling more than \$2 billion and led the majority of those transactions. (RICL IB at 111, citing RI Exs. 10.0 at 40-41; 10.14 Rev. at 10-11) Rock Island Exhibit 10.15 lists energy industry financing, acquisition and sale transactions in which members of the Clean Line management team participated, including over \$2.4 billion of project finance transactions and \$14 billion of other transactions.

RI states that, to provide assurances that it has raised sufficient capital to finance the entire construction cost of the Project and to avoid a scenario in which it starts but cannot complete construction, Staff proposed, and Rock Island accepted, a condition to Rock Island's CPCN which will ensure that Rock Island will not start construction of the Project on easement properties unless and until Rock Island has obtained sufficient firm commitments for debt and equity financing to fund the entire Project construction cost. (RI IB at 115-116, citing RI Ex. 10.13 at 2-3) The terms of the condition are as follows:

Rock Island will not install transmission facilities for the Rock Island Clean Line Project on easement property until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost. For the purposes of this condition:

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

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

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

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

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

a) On a confidential basis, equity and loan or other debt financing agreements and commitments entered into or obtained by Rock Island or its parent company for the purpose of funding the Rock Island Clean Line Project that, in the aggregate, provide commitments for funds for the total project cost;

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

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

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

Rock Island argues that the "documentation requirements" of the condition will enable Commission Staff to verify that Rock Island has in fact secured sufficient debt and equity capital, or binding commitments for capital, to finance the entire construction cost of the Project, and that any concerns about its ability to raise sufficient financing to complete the construction of the Project are resolved by the condition. (RI IB at 116-117, citing RI Ex. 10.14 Rev. at 3, 6) Rock Island states that Alan Pregozen, Manager of the Finance Department of the Financial Analysis Division of the Commission, recommended that, to ensure Rock Island does not begin construction of the project without sufficient funding in place to complete it, the Commission should impose the condition on Rock Island's CPCN. (*Id.* at 117, citing Staff Ex. 4.0 at 2)

Response to ComEd

Rock Island states that ComEd witness Ms. Lapson testified that Rock Island's "financial resources are not currently sufficient to fund the construction of the proposed Project" (ComEd Ex. 2.0 at 5) and that Rock Island has not demonstrated that it is capable of financing the construction of the Project because it has not demonstrated "any current financial capability." (ComEd Ex. 5.0 at 1) Rock Island disputes Ms. Lapson's premise that an applicant for a CPCN must demonstrate that it currently has sufficient financial resources in place to fund the construction of the proposed project in order to demonstrate financial capability. Rock Island argues that it can demonstrate it is capable of financing the proposed construction, which is the relevant statutory test for purposes of receiving a CPCN, by setting forth a credible financing plan supported by evidence. (RI IB at 111-112, citing RI Ex. 10.26 at 2)

Rock Island states that the basis for Ms. Lapson's position falls into two areas: (1) Rock Island has not signed any transmission contracts with customers for the Project, and (2) Rock Island has not obtained any financing commitments from specific lenders and investors for construction of the Project. In response, Rock Island argues that transmission customers will not spend the time and resources to negotiate and enter into contracts for transmission service unless and until they know that the transmission provider will be able to construct the transmission line to provide the service, and this cannot be known until Rock Island receives the necessary regulatory approvals, including a Certificate from the Commission. Further, prospective transmission customers will want to know the cost of the transmission service before entering into a contract, which will require the transmission provider to have developed a firm construction cost estimate; but this cannot be accomplished until the transmission provider has an approved route and approval for its proposed transmission structures and design, and has completed various surveying and detailed design activities on the approved route. (RI IB at 112-113, citing RI Ex. 10.14 Rev. at 22-23)

Rock Island states that requiring Rock Island to demonstrate that it has financial commitments from lenders and investors for the construction of the Project is also unreasonable. Rock Island states that Ms. Lapson acknowledged, and the credit rating agencies' ratings criteria that she submitted demonstrate, that lenders and investors will not provide binding financial commitments for the construction of a project before the major regulatory approvals for the project have been obtained. (RI IB at 113, citing RI Exs. 10.14 Rev. at 21 and 10.26 at 3-4; ComEd Ex. 2.03 (Moody's rating criteria for project finance debt) at 26 and ComEd Ex. 2.04 (Fitch's rating criteria for project finance debt) at 6) Rock Island submits that Ms. Lapson agreed that "a project receiving 'binding financial commitments' prior to the project's receipt of all required permits or authorizations is contrary to practice in the financial marketplace;" and that any such commitment would be contingent upon the receipt of the required approvals in a form satisfactory to the investor. (*Id.* at 113-114, citing RI Ex. 10.26 at 2-3; Tr. 991-993) According to Rock Island, debt and equity project lenders and investors require that energy projects using project finance receive the necessary permits and approvals as a condition precedent to funding a project loan or investment. (*Id.*, citing RI Exs. 10.0 at 36, 39 and 10.14 Rev. at 22)

In response to Ms. Lapson's concern that Rock Island's transmission capacity customers would not be able to demonstrate sufficient creditworthiness for their transmission contracts to provide a basis for financing (RICL IB at 114, citing ComEd Exs 2.0 at 13 and Ex. 5.0 at 4, 8), Rock Island states that Mr. Berry described the credit conditions that will be required of Rock Island's transmission capacity customers. He testified that any of Rock Island's transmission capacity customers who do not have established credit ratings or meet designated financial metrics will be required to post additional credit support in the form of a parent guarantee, letter of credit or cash collateral. He stated that similar credit support is required by both MISO and PJM to purchase long-term transmission service. (*Id.*, citing RI Ex. 10.14 Rev. at 11-13)

Rock Island also asserts that a default by a transmission capacity customer is unlikely to occur because if the customer is a wind generator in the Resource Area, it will need the Project's transmission service to get its output delivered to market, so even if a customer were unexpectedly in financial distress, it must pay for the transmission service in order to receive any revenues from its wind generation facility. Even if a transmission capacity customer goes into bankruptcy or defaults on its obligations to its financing parties and other creditors, the customer's assets -- wind generation facilities - - may be seized by its lenders and/or sold to new owners, who would then need to pay for transmission service on the Project in order to realize value from the assets. (*Id.* at 115, citing RI Ex. 10.26 at 7) Further, Rock Island states, it will have a portfolio of transmission customers, which will diversify the Project's credit risk and reduce the impact of an individual customer default, were one to occur. (*Id.* at 114-115, citing RI Ex. 10.26 at 7)

In its reply brief, Rock Island disputed ComEd's argument that Rock Island must show that it has "present capability" to finance the Project. (ComEd IB at 34-35) Rock Island states that §8-406(b)(3) does not require this; rather, it requires Rock Island to

show that it “is capable” of financing construction of the Project, which Rock Island contends it has shown. Rock Island further states that the statute does not require an applicant to demonstrate that, at the time of certification, it has either the capital in hand to finance construction of its Project, or binding financing commitments to cover the cost of construction. Further, Rock Island states that it is not relying on or asking for a “presumption” that it will be able to secure financing in the future. Rather, it is relying on the fact that it has a credible, achievable plan for raising the capital needed to construct the Project, one that has been successfully used many times over many years to raise hundreds of billions of dollars for energy infrastructure projects; that the economics of the Project will be attractive to investors; and that its management team is experienced in executing this type of financing plan for merchant projects in the energy industry. (RI RB at 117-118)

Additionally, Rock Island contends that ComEd’s argument is undercut by §8-406(f) of the PUA, which states: “Unless exercised within a period of 2 years from the grant thereof authority conferred by a certificate of convenience and necessity issued by the Commission shall be null and void.” By this provision, Rock Island argues, the Legislature has recognized that an applicant for a CPCN cannot be expected, and is not required, to be presently able to carry out the requirements of its CPCN – including being “presently capable” of raising the capital to finance construction – at the time of certification. (*Id.* at 118)

Rock Island argues that ComEd’s reliance on the case of *Northern Moraine Wastewater Reclamation Dist. v. ICC*, 392 Ill. App. 3d 542 (2d Dist. 2009), does not support ComEd’s position, because all the court did in *Northern Moraine* was conclude that there was sufficient evidence in the record to affirm the Commission’s conclusion that the applicant was “financially capable of serving the subject [service] area.” (RICL RB at 118-119, citing *Northern Moraine* at 568) Rock Island states that the fact the court found the specific information in the record in that case on the applicant’s financial resources was sufficient, on appellate review, to sustain the Commission’s finding, does not establish an evidentiary standard that must be met in every case. Rock Island also points out that in *Northern Moraine*, the Commission relied on the testimony of Staff witness Janis Freetly that “since the developers will fund all additions to the water and sewer systems without refund, the construction of new facilities will not have adverse financial consequences for the utility or its customers.” (*Id.*, citing *Northern Moraine* at 551) Rock Island states that this is similar to its financing plan, i.e., the basis for raising the capital to finance construction of the Project is the transmission contracts that the transmission customers of the Project will enter into. (*Id.*)

Response to ILA and IAA

Rock Island responded to the arguments of IAA and ILA that Rock Island has not shown it is capable of financing the construction of the Project. (IAA IB at 15-16; ILA IB at 30-34) Rock Island states that IAA and ILA presented no witnesses on this topic and both rely on the testimony of ComEd witness Ms. Lapson, who was the only witness in this case submitting testimony that Rock Island is not capable of financing the

construction of the Project. Rock Island's response to Ms. Lapson's position is summarized above. (RI RB at 114-115)

Rock Island responded to IAA and ILA's argument that Rock Island must compete with its sister companies for the allocation of capital from Clean Line. (IAA IB at 15; ILA IB at 31-32) Rock Island states that this would be true only with respect to capital for development activities, not with respect to capital for construction, because Rock Island and each other project of a Clean Line subsidiary will be financed separately, through the separate, single-purpose entity that owns each project, based on the transmission service revenue streams of each project. (RI IB at 108; RI RB at 115; see also RI IB at 107 with cite to record)

Rock Island states that to date, Clean Line has not experienced difficulty in raising capital to fund the development activities for the projects of its subsidiaries, including Rock Island. Rock Island also states that during the course of this docket, National Grid committed to invest \$40 million in Clean Line, and ZAM Ventures has continued to invest in Clean Line beyond its original commitment. (RI RB at 115-116, citing RI Exs. 10.12 at 1 and 12.0 at 6; Tr. 819; ComEd Cross Ex. 4 Attachment 01) Rock Island states that the total amount of capital invested in Clean Line thus far and the total development expenditures on the Rock Island Project are very substantial amounts of at-risk capital that have been raised from private investors, and demonstrates the confidence of the investors that Clean Line's projects can be developed, financed, constructed and brought into operation. (RI RB at 116, citing RICL Ex. 10.26 at 9) Additionally, Rock Island states that as the Rock Island Project and Clean Line's other projects achieve additional development milestones, such as Commission approval for the Project, it will be easier, not harder, to raise additional development capital. (RI RB at 115-116, citing RI Ex. 10.14 Rev. at 10)

Rock Island responded to ILA's statement that in order to finance the Project, Rock Island needs signed capacity commitments from generators representing 4,000 MW of capacity (ILA IB at 33), and to IAA's statement that in order to obtain 70% of its funding, Rock Island "speculates" that 60% of its load will need to be contracted with customers (IAA IB at 15). Rock Island explains that it presented an illustrative calculation to show that in order to raise approximately 70% of the construction cost of the Project through debt financing (20-year loans), it would be necessary to have contracted approximately 60% of the transmission capacity of the Project. (RI RB at 116, citing RI Exs. 10.0 at 38 and 10.8; Tr. 1120) Rock Island submits that the illustrative calculation shows it will be necessary to have contracted a substantial portion, but not all, of the transmission capacity of the Project in order to secure financing for construction. According to Rock Island, the exact percentage of transmission capacity that needs to be under contract prior to obtaining full financing commitments will depend on the price, counterparty creditworthiness, and term in years of the transmission contracts. (*Id.* at 116-117, citing RI Ex. 10.0 at 37)

In response to IAA's assertion that Rock Island has "no idea" whether sufficient demand exists for its "load" to justify construction of the Project and to attract financing

and that "as such, by [Rock Island's] own admission, it has no idea if it is capable of financing the proposed construction" (IAA IB at 15), Rock Island asserts that what its witness Mr. Berry actually testified to was that if one of Clean Line's projects were not built, the investors would lose their investment in that project. Rock Island states that Mr. Berry explained why there will be sufficient customer interest in the Project to support raising the capital necessary to construct the Project, and that Rock Island will be able to finance the proposed construction. (*Id.*, citing RI Exs. 10.0 at 33-37, 39-41; 10.14 Rev. at 9-16, 18-19, 33-35; 10.26 at 3, 6, 8-9)

B. Position of Staff

Staff witness Alan Pregozen testified regarding whether RICL meets the financing condition of Section 8-406 of the Act. Mr. Pregozen testified, "To ensure that Rock Island does not begin construction of the project without sufficient funding in place to complete it, I recommend that the Commission impose the conditions set forth in RI Ex. 10.13 lines 36-94 in any order that grants a certificate of public convenience and necessity to Rock Island to construct the proposed transmission line."
(Staff IB at 62, citing Staff Ex. 4.0 at 2)

Rock Island witness David Berry described RICL's intent to raise sufficient funding to complete the Project before it permanently installs transmission towers on landowner property. (*Id.*, citing RI Ex. 10.13 at 2) Rock Island accepts the condition recommended by Mr. Pregozen to formalize its financing commitment in its Certificate of Public Convenience and Necessity.

The terms of this condition are set forth on pages 63-64 of Staff's initial brief, and they are also set forth in this order above under "RICL's Position."

In its reply brief, Staff notes that ComEd, IAA and ILA argue that RICL has not shown it is capable of financing the proposed construction, and that ILA argues that Rock Island has not shown it can raise the capital necessary to fund the project, which depends on Rock Island lining up sufficient generators as costumers that do not yet exist. (Staff RB at 12, citing ComEd IB at 33; IAA IB at 15; ILA IB at 31-34) Staff responds, "However, the Staff/RICL agreed-to condition requiring Rock Island to raise all the capital needed to construct the line addresses this issue because it prevents Rock Island from beginning construction on a project that it cannot complete." (Staff RB at 30-34)

Staff also responds to ComEd's argument that RI's and Clean Line's assets and commitments together amount to less than 2% of the total estimated costs to build the project, which does not meet the statutory requirement and is less than was the case in *Northern Moraine*. (ComEd IB at 34, citing *Northern Moraine Wastewater Reclamation Dist. v. Ill. Commerce Comm'n & Rockwell Utils.* 392 Ill. App. 3d 542, 568-569 (2nd Dist. 2009)) ComEd also states that the "unprecedented condition" does not demonstrate that the Company "has any present capability to finance the Project, as the law requires." (ComEd IB at 34) ComEd argues that RI has not provided evidence that it

could obtain financing in the future as it is a "shell company, a developer with no material current financial ability." (*Id.* at 35)

According to Staff, ComEd misreads *Northern Moraine*. In that case, the Northern Moraine Wastewater Reclamation District ("District") appealed, on several bases, the Commission's granting of a Section 8-406 CPCN to Rockwell Utilities, LLC ("Rockwell"). One of the bases for the District's appeal was that the Commission's conclusion that Rockwell satisfied Section 8-406(b) of the PUA was unsupported by the evidence. The District argued that Rockwell's financing was insufficient because it was based on a sole financial provider's promise to loan Rockwell money when needed. The Appellate Court found that the record supported the Commission's finding that Rockwell was financially capable of serving the subject area. *Northern Moraine*, 392 Ill. App. 3d at 568-569. In so doing, it observed that Staff would have an opportunity to review information on a prospective basis to assess whether rates should be reassessed to ensure there would not be a negative impact on its ability to serve the subject area. *Id.* at 569. The information the ICC Staff would review on a prospective basis included Rockwell's plant investments, revenues, and expenses. *Id.*

In Staff's view, *Northern Moraine* stands for the proposition that an applicant's showing under Section 8-406(b)(3) need not be based entirely on assets on hand, held by the applicant itself, but may consist of the backing of a parent company, affiliate or (if an LLC) a member, which assets have been pledged, committed or promised. Furthermore, the Northern Moraine Wastewater court considered ongoing oversight by Commission Staff of the company's financial health to be a significant safeguard against financial problems arising. (Staff RB at 13)

Staff argues that in the current proceeding, "the safeguards of the agreed-to condition similarly ensure that RICL must demonstrate financial viability prior to installation of transmission lines on landowner property." (*Id.* at 13-14)

Staff also argues, "Additionally, the Commission has previously granted a Section 8-406 Certificate to an entity that had no existing assets or revenues, and no existing financial ratios. (Illinois Power Company and Ameren Illinois Transmission Company, Order Docket No. 06-0179, May 17, 2007, 19.)" (*Id.* at 14)

Staff also states that Section 8-406(b)(3) requires the utility show that it "is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers." 220 ILCS 5/8-406(b)(3) Staff contends that the harm to Rock Island, if it were a utility, is limited, as it owns no other facilities in the State of Illinois, and the agreed-to condition ensures Rock Island does not begin construction without the \$1.8 billion required to carry out the Project. (*Id.*) Staff states that RICL's customers for the Proposed Project would be: (1) wind energy producers in the Resource Area; and (2) buyers of electricity at the eastern end of the line, primarily wholesale market participants. (*Id.*, citing RI IB at 6) Therefore, Staff asserts, "RICL's customers are not traditional ratepayers. This Commission has stated that it is more concerned about impacts on customers who are ratepayers. (Illinois Power Company

and Ameren Illinois Transmission Company, Docket No. 06-0179, May 17, 2007, 28.) ('Further, even assuming [Ameren Illinois Transmission Company] were adversely affected, there does not appear to be any likelihood that those adverse consequences for its 'customers' would involve actual harm to ratepayers. That is, the Commission is more concerned about impacts on 'customers' who are ratepayers than those who are not.')" (Staff RB at 14)

Staff believes that Section 8-406(b)(3) is met if the Commission adopts the Staff/RICL agreed-to condition. Staff explains, "If RICL does not raise all the capital needed to construct the entire project, construction will not begin and RICL and its 'customers' will not suffer significant adverse financial consequences. If RICL does raise all the capital needed to construct the entire project, then it follows that RICL could construct the entire project without significant adverse financial consequences to either RICL or its customers." (*Id.* at 14-15)

C. ComEd Position

In ComEd's view, RI is not capable of financing the proposed construction. ComEd argues, "The plain language of [Section 8-406(b)] requires separate showings that: (i) the utility is capable of financing the proposed construction; and (ii) the utility is able to finance the construction without adverse financial consequences for the utility or its customers. (ComEd IB at 33-34, citing *Moraine Wastewater*, 392 Ill. App. 3d 542, 551 (2d Dist. 2009))

According to ComEd, the record proves that RI has no assets or loan or equity commitments capable of financing the \$2 billion cost of the Project. ComEd, asserts, "While RI has obtained venture investments from Clean Line, those investments are only intended to finance exploration development (as opposed to construction) of the Project as well as the menu of other DC line concepts Clean Line entities are advancing around the country." (ComEd IB at 34, citing Tr. 1057, Berry) ComEd states that the bottom line is that all RI's and Clean Line's assets and commitments together amount to less than 2% of the total estimated costs to build the Project. (*Id.*, Tr. 1060-1061) ComEd argues, "This meager showing is far from sufficient to meet the statutory requirement, and stands in stark contrast to evidence of actual revenues and assets of the utility or its committed backer found sufficient to establish financial capability in *Moraine Wastewater Reclamation*, 392 Ill. App. 3d at 568-69 (Citing evidence of actual revenues, assets, and equity presently available to operate, maintain, and construct additional facilities.))" (ComEd IB at 34; RB at 25)

In ComEd's view, a condition that RICL will not install transmission facilities for the Project on easement property until such time as it has obtained commitments for funds in an amount equal to or greater than the total project cost does not demonstrate that RI has any present capability to finance the Project, as the law requires. (ComEd IB at 34-35; citing RI Ex. 10.13 at 2-3) ComEd also argues that any such condition "neither prevents harm to customers in the meantime, including being threatened with eminent

domain, nor does it prevent harm to the applicant itself, which the law also requires.” (ComEd RB at 26-27)

ComEd contends that any claim RICL “likely can, and should be presumed to be able to, secure financing in the future” is speculative and unsupported by the evidence, “even if RI had generators and customers and a means to recover the Project’s costs.” (ComEd IB at 34-35) ComEd cites testimony by ComEd witness Lapson that “all evidence highlights the fact that [RI] is a shell company, a developer with no material current financial ability. Testimony regarding the financial capability of [RI]’s parent Clean Line or the financial strength of investors in Clean Line fails to demonstrate that Clean Line or its investors and backers have any commitment to provide funds to [RI].” (*Id.*, citing ComEd Ex. 5.0 at 15)

ComEd concludes, “But even if RI’s claim that it could access financing in the future were somehow substantiated and putting aside the uncertainties and current lack of any customers to shoulder the Project’s costs, a future prediction cannot satisfy the statutory requirement that RI prove that it is capable, at the time of certification, of financing the Project. There is no doubt on this record that RI is not and, therefore, RI fails to satisfy this critical element for receiving a CPCN.” (ComEd IB at 35)

In its reply brief, ComEd responds to RI’s statement that it “plans to raise the capital needed for the construction of the Project using a project financing approach.” (RICL IB at 104-05) According to ComEd, the fact that revenues must be locked in ahead of financing inherently adds yet another layer of risk and uncertainty, as such financing depends both on success in the energy market in pre-subscribing customers and then in the financial market in inducing investors to lend based on those subscriptions. (ComEd RB at 26) ComEd asserts, “But here, RI faces even greater risk. RI admits not only that signing up such customers is necessary, but that those generation customers do not now even exist. See Skelly, Tr. 271:24 - 272:19; Davis, Tr. 235:17-24; Lapson, Tr. 1020:6-7; Berry, Tr. 1117:2-7.” (*Id.*) ComEd argues, “Thus, RI’s ‘plan’ is contingent not only on its own ability to secure financing from the capital markets, but also on the positive reaction of hypothetical future customers to RI’s plan.” (*Id.*)

D. ILA and IAA Positions

In ILA’s view, Rock Island has not met its burden to show that it is capable of financing the proposed construction without significant adverse financial consequences. (ILA IB at 30)

ILA asserts that ComEd expert witness Ellen Lapson offered testimony demonstrating that Rock Island is unable to show the requisite financial capability to satisfy its statutory burden. (ILA IB at 30, citing ComEd Exs. 2.0 and 5.0) ILA witness Paul Marshall stated that the organization has concerns with Rock Island’s financials, and whether or not the line would actually be built. (Tr. 588- 589) ILA states that 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. 597] -- would be unlikely to be financed.” (ILA IB at 31, citing Tr. 600)

According to ILA, “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.” (*Id.*)

ILA states that Clean Line Energy Partners has five separate transmission projects in early stages of development, with projected project costs as noted below:

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
- (ILA IB at 31, citing RI Petition; RI Ex. 1.1REV; Tr. 192-196, 269)

ILA submits that as can be seen from the above list, 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. (ILA IB at 32, citing Tr. 1107) 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. (e.g., ILA Group Cross Ex. 1 CONF) Beyond the 2015 projected year, as Mr. Skelly testified, Clean Line will need to continue to spend additional monies on development. (ILA IB at 32, citing Tr. 211-212) ILA states that Clean Line’s Board of Directors determines how available development capital is allocated among its subsidiaries and projects. (*Id.* citing Tr. 215- 216, ComEd Cross Ex. 10 PUBLIC) Consequently, ILA argues, “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.” (*Id.*)

ILA states that Clean Line has \$15 million left in committed development capital, that coming from National Grid. (ILA IB at 32, citing ComEd Cross Ex. 4 PUBLIC; Tr. 1110) Based on its capital available both on-hand and committed, at present rates of development spending, Mr. Berry testified at the hearing, “Based on these projections, and assuming the board allocates capital consistently with these projections, we would need to raise additional capital from our investors or other sources sometime in 2014.” (Tr. 1111)

ILA states that Mr. Berry explained how Clean Line plans to finance the actual construction of its projects (\$8 billion plus) once they reach a financeable stage. (Tr.

1087-1101) ILA submits, "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.)" (ILA IB at 33) ILA continues, "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." (ILA IB at 33)

According to ILA, "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." (ILA IB at 33) ILA contends that 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. (*Id.*, citing Tr. 1098-1101)

In ILA's view, the scenario that Mr. Berry described, seems like an "incredibly risky undertaking" for the generator-subscribers. ILA argues, "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." (ILA IB at 33-34) ILA contends, in summary, that 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. (*Id.* at 34)

In its reply brief, ILA argues that in showing that it "is capable of financing the proposed construction," it is not enough for RICL to conclude, even if it were true, that Rock Island has a "viable plan for raising the capital needed to fund the construction of the Project" through project financing. (ILA RB at 10, citing RICL IB at 33)

ILA also presented other arguments on the financial capability issue in its reply brief. The Commission observes that the purpose of reply briefs is to provide parties with an opportunity to reply to other parties' initial briefs, not to file a supplemental initial brief to which other parties would not have an opportunity to reply. Except for the one citation to RICL's initial brief noted above, the financial capability section of ILA's reply brief does not contain any citations to, or otherwise refer to, the initial briefs filed by RICL or any other party.

IAA Position

IAA argues that Rock Island has not demonstrated it is capable of financing the Project. (IAA IB at 15)

The Project is proposed to have a total cost of \$1.8B. (*Id.*, citing Tr. 121, McDermott) The proposed cost for the other subsidiary transmission projects of Clean Line totals roughly \$8B. (*Id.*, citing Tr. 1107, Berry) IAA states that Rock Island has produced financial records, but it does not have sufficient cash-on-hand to self-finance, and the monies of Clean Line are not segregated or budgeted among its subsidiary projects. (*Id.*, citing Tr. 215-216, Skelly) IAA also asserts that National Grid has not committed to investing any additional capital in the Project (Tr. 332, Wynter), and that Clean Line may or may not commit financing to a particular project, including Rock Island, and does not have sufficient cash to fund any of its transmission projects across the country. (IAA IB at 15)

Should the Project be approved by the Commission, Rock Island depends upon funding from the capital markets. According to IAA, in order to obtain 70% of its funding, Rock Island speculates that 60% of its load will need to be contracted with customers (Tr. 1120, Berry), and has no idea whether sufficient demand, i.e. need, exists for its load to justify the construction of the Project and attract financing. (IAA IB at 15, citing Tr. 1107-1109, Berry) IAA argues, "As such, by Rock Island's own admission, it has no idea if it is capable of financing the proposed construction. The Farm Bureau asserts that it does not and, at best, Rock Island's ability to obtain financing is tenuous." (IAA IB at 15)

IAA urges the Commission to attribute significant weight to ComEd witness Ellen Lapson's opinion on Rock Island's inability to finance the Project. According to IAA, after careful and detailed analysis, Ms. Lapson has correctly concluded, among other things, that (1) any "[r]esources pledged to Clean Line are not directly available to Rock Island," (2) "Clean Line may choose to support any project or withhold support from any project," including Rock Island, and, (3) "[e]ven if all of Clean Line's available and committed resources were allocated to Rock Island ..., Rock Island would still be a shell company." (IAA IB at 15-16, citing ComEd Ex. 5.0 at 10)

E. Environmental Intervenors and IBEW Positions

Section IV.A.3 of Environmental Intervenors' initial brief is titled, "The Commission should adopt Commission Staff's and RICL's financing condition." (EI IB at 13)

EI argue that under 220 ILCS 5/8-406(b), "RICL does not need to demonstrate that it has secured all of the financing necessary to construct and operate the Project. RICL must only demonstrate that it is 'capable' of securing the financing without harming itself or its customers. RICL meets this financing requirement." (*Id.* at 13-14)

ComEd Witness Lapson stated, "The information provided by [RICL] in its Petition and direct testimony demonstrates that [RICL]'s financial resources are not currently sufficient to fund the construction of the proposed Project. At best, the information regarding access to financing can only be described as 'aspirational.'"

(ComEd Ex. 2.0 at 5) According to EI, "Her testimony, even if true, is largely irrelevant. The germane question is whether RICL is 'capable' of securing the financing necessary to construct the Project, and she failed to rebut RICL's testimony that it is capable of securing the financing." (EI IB at 14)

EI argue that halting the CPCN process until RICL achieves full financing would effectively eliminate the ability for merchant transmission owners to compete with incumbent utilities, thereby harming competition in the state and eventually resulting in higher rates for Illinois consumers. They further contend, "Competitive merchant transmission owners such as RICL must get financing entirely from outside sources to fund their new projects. There is a chicken and an egg problem inherent in the merchant transmission model." As Mr. Berry explained, "Project lenders always, in my experience, mandate that receipt of the necessary permits and approvals are a condition precedent to funding project loan." (EI IB at 14, citing RICL Ex. 10.0 at 36)

According to EI, "to break this stalemate," RICL adopted ICC Staff witness Pregozen's recommended and "sensible" financing condition. Given this commitment, which would be a condition to the Commission's order in this proceeding, EI suggests the Commission can be assured that the Project will not proceed unless and until RICL has all necessary resources in place to complete the Project. (EI IB at 14-15)

IBEW

The IBEW urges the Commission to find Rock Island to be capable of financing the proposed construction taking into account the "financing condition" that has been agreed to by Rock Island and the Commission Staff. (IBEW IB at 9, citing Rock Island Ex. 10.13 at 2-3, and Staff Ex. 4.0 at 2) The IBEW believes the record is clear that receipt of a Certificate from the Commission is a necessary prerequisite to Rock Island being able to sign both transmission contracts with customers and obtain binding financing commitments from investors. (*Id.*, citing Rock Island Ex. 10.14 Rev. at 2, 21-22; and Tr. 991, 994-995) In IBEW's view, the record shows the financing approach Rock Island will be using is an established, frequently-used approach for raising capital for energy industry projects and other infrastructure-type projects. (*Id.*, citing RI Exs. 10.0 at 32-33, 10.14 Rev. at 33, and 10.26 at 2) IBEW further argues that the condition agreed to by Rock Island and Commission Staff provides protection against adverse consequences should Rock Island ultimately be unable to raise sufficient funds for the construction of the Project. (*Id.*, citing RI Exs. 10.14 Rev. at 5-6 and 10.26 at 9-13)

The IBEW is concerned that if the Commission were to require Rock Island -- or future, similar merchant project developers -- to have signed transmission customer contracts and/or binding commitments for permanent financing before being granted a certificate, this will seriously delay the Rock Island Project and discourage or eliminate future projects of this type. (IBEW IB at 9-10)

F. Conclusion

One of the requirements in Section 8-406(b) is that the utility demonstrate that it is "capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers."

Through the testimony of ComEd witness Ms. Lapson, and in its briefs, ComEd contends that Rock Island has not made the required showing. ILA and IAA agree with ComEd.

The positions of the parties are summarized at some length above and will not be repeated here.

As observed elsewhere in this Order, the assessment of statutory criteria and other issues is complicated by the many uncertainties associated with the "merchant" nature of the proposed transmission line project. The issue at hand is one of those issues that present such challenges.

In response to these challenges, Staff witness Pregozen, Manager of the Finance Department in the Financial Analysis Division at the Commission, proposed a condition. He explained, "To ensure that Rock Island does not begin construction of the project without sufficient funding in place to complete it, I recommend that the Commission impose the conditions set forth in Rock Island Ex. 10.13 lines 36-94 in any order that grants a certificate of public convenience and necessity to Rock Island to construct the proposed transmission line." (Staff Ex. 4.0 at 2)

Environmental Intervenors and the IBEW recommend adoption of the Staff condition. ComEd, ILA and IAA do not.

The terms of the Staff-proposed condition, which were accepted by RI, are set forth on pages 63-64 of Staff's initial brief, and in this order above under "RICL's Position."

The first sentence of the condition reads, "Rock Island will not install transmission facilities for the Rock Island Clean Line Project on easement property until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost." The terms used therein are defined.

The condition also provides, "To allow the Commission to verify its compliance with this condition, Rock Island shall submit [certain] documents to the Director of the Financial Analysis Division and the Director of the Public Safety & Reliability Division at such time as Rock Island is prepared to begin to install transmission facilities." All such documents are listed.

The Commission agrees with Staff's assertions that under the circumstances, the condition strikes an appropriate balance and should be imposed, and that "Section 8-

406(b)(3) is met if the Commission adopts the Staff/RICL agreed-to condition." As Staff explains, "If RICL does not raise all the capital needed to construct the entire project, construction will not begin and RICL and its 'customers' will not suffer significant adverse financial consequences." Also, Rock Island will not be able to install transmission facilities on landowner's property unless such commitments are obtained.

As noted above, the condition requires Rock Island to submit certain documents "to allow the Commission to verify its compliance with this condition." As part of its approval of the condition, the Commission finds that Rock Island shall file a petition with the Commission requesting such verification.

IX. PROPOSED ROUTES; LAND ACQUISITION; RELATED ISSUES

As proposed, the 500-mile transmission line project would originate at a converter station in O'Brien County, Iowa, "traverse Iowa" for 379 miles, cross the Mississippi River near Princeton, Iowa, and then enter Illinois south of Cordova, Illinois. (Petition at 2-3)

In Illinois, the proposed line route would extend for approximately 121 miles from Cordova to the Collins Substation in Grundy County.

A. Proposed Routes

1. Rock Island Position

Rock Island describes the Rock Island Project within Illinois as consisting of two sections: (1) the HVDC section ("DC Section") from the Mississippi River crossing to the eastern converter station located in Channahon, Grundy County, Illinois, and (2) the Alternating Current section (the "AC Section") from the eastern converter station to the interconnection with the PJM 765 kV grid at ComEd's Collins Substation in Grundy County. (RI IB at 123, citing RI Exs. 7.0 Rev. at 4 and Ex. 8.0 at 4-5) Rock Island asserts that the AC Section is needed because the electricity transmitted over the DC section needs to be converted from DC to AC in order to be delivered into the existing AC grid at the Collins Substation. (*Id.*, citing RI Ex. 2.0 at 5)

Rock Island states that it developed and presented Preferred Routes and Proposed Alternative Routes for the DC Section and the AC Section in Illinois, and that no party took the position that the Proposed Alternative Routes, rather than the Preferred Routes, should be adopted. (RI IB at 123-24) Rock Island believes that the Preferred Routes are superior to the others studied in its route development process, and therefore, the Preferred Routes should be approved as the route of the Project in Illinois. (*Id.* at 124) RI Exhibits 7.2 and 7.4 provide the legal descriptions of the Preferred Routes for the DC Section and the AC Section in Illinois. Pages 5 and 6 of Rock Island Ex. 8.2 provide one-page maps of the entire DC Section and AC Section of the Preferred Route in Illinois, and Rock Island Ex. 8.1 provides a map showing both the Preferred Routes and the Proposed Alternative Routes in Illinois.

The DC Section is a nominal ± 600 kV HVDC transmission line that starts at the Project's western converter station in O'Brien County, Iowa and runs to the proposed eastern converter station in Channahon, Illinois. The DC Section will span just over 117 miles in Illinois, crossing the Mississippi River at Princeton, Iowa and entering Illinois in Rock Island County. (Petition ¶58; RI Exs. 7.0 Rev. at 4, 6 and 8.0 at 4)

Rock Island provided the following description of the Preferred Route:

From the Mississippi River crossing at Princeton, Iowa, the Preferred Route continues east for approximately nine miles, where it enters Whiteside County. The Preferred Route continues east for approximately three miles, then turns south for approximately 4.5 miles, where it enters Henry County. The Preferred Route turns east again for approximately nine miles before turning south to run alongside State Highway 78 for approximately one mile and then east again for approximately four miles before entering Bureau County. The Preferred Route continues east for approximately 40 miles through Bureau County and then enters LaSalle County. The Preferred Route then continues east for approximately 2.5 miles before turning south for approximately one mile, turns east again for approximately 26 miles, and then south again for approximately 2.5 miles, where it enters Grundy County. The Preferred Route turns east in Grundy County for approximately 11.5 miles before turning south for approximately 4.5 miles, where it reaches the site of the eastern converter station.

(Rock Island Ex. 7.0 Rev. at 6-7; RI IB at 124)

Rock Island proposes that the AC Section consist of three circuits of 345 kV AC transmission lines that will run from the eastern converter station to the Collins Substation. (RI Exs. 7.0 Rev. at 4 and 8.0 at 4-5; RI IB at 125) The AC Section consists of one single circuit 345 kV line and a double circuit 345 kV line. Rock Island asserts that, generally, a double circuit 345 kV line is sufficient to move the expected MW over the AC Section, but a third circuit will enable any one circuit to be out for maintenance and still enable the line to deliver the full capacity of the Project. (RI Ex. 2.0 at 29-30; RI IB at 125) The Preferred Route of the AC Section is approximately 3.2 miles and begins at the eastern converter station in Grundy County. From the eastern converter station, the Preferred Route runs south for approximately 1.9 miles before turning east for approximately 1.3 miles; it ends at the Collins Substation in Grundy County. (RI Exs. 7.0 Rev. at 8 and 8.2 at 89; RI IB at 125)

Rock Island states that it only intends to build two 345 kV lines -- one single circuit and one double circuit -- on the AC Section of the Preferred Route as described in Rock Island's Petition (RI IB at 125, 136; Petition at ¶¶ 6, 58; and will not pursue other alternatives for the AC Section, such as a 765 kV line to which "ComEd objects," that were discussed in testimony. (RICL RB at 133, citing ComEd IB at 36)

Rock Island originally proposed to connect into the Collins Substation either by (i) placing transformation facilities on land to be acquired by Rock Island adjacent to or near the Collins Substation and then running a short 765 kV connection into the substation; or (ii) placing the transformation facilities inside the Collins Substation. (RI IB at 125, citing RI Ex. 2.0 at 5-6, 33) RICL states that during the course of the proceeding, ComEd indicated that it would not allow Rock Island to place its transformation facilities within the Collins Substation. (*Id.*, citing ComEd Ex. 4.0 Rev. at 25) Therefore, it will be necessary for Rock Island to locate its transformation facilities on land that Rock Island will acquire from a third party or parties, adjacent to or nearby to the Collins Substation. (*Id.*) Much of the land around Collins Substation is owned by Midwest Generation, which has entered into an agreement to sell its assets to NRG Energy Holdings. Rock Island states that it has been in discussions with Midwest Generation to purchase a parcel of land for its transformation facilities and is currently waiting for the Midwest Generation-NRG transaction to be completed. (*Id.*, citing Tr. 459-461)

As part of its filing in this case, Rock Island states that it provided the names and addresses of the landowners of record of all parcels of land that would be crossed by the Preferred Routes or the Proposed Alternative Routes of the DC Section and the AC Section in Illinois, as shown on the records of the tax collector for the applicable county within 30 days preceding the filing of Rock Island's Petition, as required by 83 Ill. Admin. Code §200.150(h). (*Id.*, citing Petition Attachment 12; RI Exs. 7.0 Rev. at 9 and 7.6)

Routing Criteria

Rock Island asserts that the Preferred Routes and Proposed Alternative Routes were developed through a detailed and comprehensive process conducted by a Routing Team comprised of representatives of Rock Island, HDR, POWER and KPC. (RI IB at 126, citing RI Exs. 7.0 Rev. at 6 and 8.2 at 11; RB at 126) According to Rock Island, the Routing Team developed Routing Criteria based upon the Routing Team's transmission line siting experience, state and federal regulations, prior Commission orders on certificate applications, and stakeholder feedback. (RI IB at 126, citing RI Exs. 7.0 Rev. at 12 and Ex. 8.2 at 11) RICL states that the Routing Criteria, which are listed in Exhibit 8.2 at 13-17, included Sensitivities, Opportunities, and Technical Guidelines, and were used to guide the route development process and determine the Preferred Routes and Proposed Alternative Routes. (*Id.*, citing RI Exs. 7.0 Rev. at 11 and 8.2 at 12)

Sensitivities were described as resources or conditions that can potentially limit transmission line development and may include areas restricted by regulations, or areas where impacts would be very difficult or impractical to mitigate. They are listed on pages 13-16 of Rock Island Exhibit 8.2, and include land use constraints such as homes, agriculture, religious facilities, schools, designated environmental areas, sensitive habitats, areas identified as conservation land, cultural resources, airports, and aeronautical and telecom structures. According to Rock Island, the Routing Team

sought to develop the Preferred Route by minimizing impacts to Sensitivities. (RI IB at 126, citing RI Ex. 8.2 at 12)

Opportunities were described as pre-existing linear infrastructure or features that may reduce impacts to Sensitivities and allow for a transmission line to be built with less disruption to the surrounding environment. They include roads, existing pipelines and transmission lines, and public land survey system divisions of land. A list of Opportunities is included in Table 1 on page 16 of RI Exhibit 8.2. Rock Island states that while paralleling existing linear infrastructure can reduce land use and visual impacts, utilizing an Opportunity may not always be desirable. For example, homes are often located along or near roads, so attempting to parallel roads may increase the number of homes that are impacted. (RI IB at 127; RI Ex. 7.0 Rev. at 29) Paralleling existing linear infrastructure may also increase the route length, because it may not be the most direct route, and may adversely impact other Sensitivities. (*Id.*, citing RI Ex. 7.0 Rev. at 29)

Technical Guidelines were described as the specific engineering requirements and objectives associated with construction of the Project, and they are listed on page 17 of RI Exhibit 8.2. (*Id.*)

Route Development Process

Rock Island developed the Preferred Route through four successive stages, which were (1) Project Area Identification; (2) Study Corridor Identification; (3) Alternative Route Corridor Identification; and (4) Route Identification and Selection. The Routing Study, Rock Island Exhibit 8.2, describes the route development process in greater detail. Rock Island states that throughout the routing process, it sought feedback from government bodies, agencies and officials, environmental and agricultural organizations, and members of the public, which along with the Routing Criteria then guided each successive stage of the route development process. (RI IB at 127-128 and RB at 125, citing RI Exs. Ex. 7.0 Rev. at 13, 8.0 at 5, 9)

In the first stage -- Project Area Identification -- the Routing Team identified a broad Project Area based on the location of converter stations at the western and eastern ends of Illinois. RICL conducted initial desktop and field surveys of the Project Area, and held initial introductory meetings with local, state, and federal government officials and agencies, as well as with conservation and agricultural organizations. According to Rock Island, after the field surveys and initial introductory meetings were completed, the Routing Team held a series of six meetings to which it invited public officials, government agencies and departments, and representatives of local environmental, conservation, and agricultural organizations. There, the Routing Team described the Project, answered questions, presented maps of the Project Area, and obtained comments and feedback on initial siting considerations and major Opportunities. (RI IB at 128, citing RI Exs. 7.0 Rev. at 14, 18-19; 8.0 at 5-6 and 8.2 at 7)

A major component of the Project Area Identification Stage was identifying the appropriate crossing point of the Mississippi River, since any potential routes considered in Illinois must start from the Mississippi River crossing point. An analysis was conducted to consider the many Sensitivities and Opportunities that can be present at potential river crossing points, and to evaluate which crossing areas would be best from environmental, engineering and construction perspectives. The area for potential crossings was constrained on the north by the U.S. Fish and Wildlife Service ("USFWS") Upper Mississippi River National Wildlife and Fish Refuge and on the south by the USFWS National Wildlife Refuges that comprise the Mark Twain Refuge Complex, since the USFWS considers a transmission line to be a non-compatible use of these areas. As a result of this consideration and the presence of other state lands such as wildlife management areas and state preserves that would constrain a river crossing, the area reviewed in detail for the location of the Mississippi River crossing extended from Cordova, Illinois to approximately four miles south of Fruitland, Iowa. (RI IB at 128-129, citing RI Ex. 8.2 at 20-21)

Eleven potential crossings within this area were identified and examined; a map of the eleven crossings is provided at page 22 of Rock Island Exhibit 8.2. Rock Island eliminated all the potential crossing points except Port Byron, Illinois and Princeton, Iowa; it conducted a detailed analysis on each crossing point and eliminated nine of the 11 identified potential crossings. The other crossing points were eliminated for reasons such as close proximity of residences, potential impacts to wetlands, and karst features being present at the crossing site. An analysis of all the potential Mississippi River crossings is contained in Appendix C of Rock Island Exhibit 8.2. Rock Island asserts that the crossing point at Princeton, Iowa was selected because it follows an existing overhead 69 kV transmission line and thereby provides an opportunity to keep similar infrastructure adjacent to each other, which minimizes land use impacts, visual impacts and environmental impacts, particularly with respect to avian species; and that USFWS expressed a preference for the Princeton crossing for that reason. (*Id.* at 129, citing RI Ex. 8.2 at 20-23; RICL RB at 130)

Rock Island states that in the second stage, Study Corridor Identification, it identified Study Corridors three to 10 miles wide within which to develop more detailed routing considerations. While developing the Study Corridors, it sought to exclude, to the extent possible, areas with relatively high concentrations of Sensitivities, such as large population centers and highly sensitive environmental areas. It also sought to include Opportunities such as lower-impact river crossings and paralleling existing linear infrastructure. ((RICL IB at 129-130, citing RI Exs. 7.0 Rev. at 14-15; 8.0 at 6; 8.2 at 29) The Routing Team continued to meet with local, state, and federal government officials to review and obtain input on the Study Corridors. The Study Corridors were then presented for public review and comment at a series of open house meetings held in the Project Area in Illinois. Rock Island also consulted with conservation groups and non-governmental organizations to identify other potential river crossing locations and potentially sensitive areas that should be avoided. (*Id.* at 130, citing RI Exs. 7.0 Rev. at 15, 19-20; 8.0 at 6; 8.2 at 7)

Rock Island further narrowed the geographic focus in the third stage, Alternative Route Corridor Identification, by identifying small route segments across the Study Corridors. It analyzed more than 1,200 route segments to attempt to identify the best route segments, then connected those segments into Alternative Route Corridors, which were refined to generally 3,000 feet wide corridors. The Routing Team again met with local and state government officials to review the Alternative Route Corridors, and then presented the Alternative Route Corridors for public review and comment at a second round of open houses. Rock Island continued to receive public comments and suggestions after the second round of open houses. (RI IB at 130-131, citing RI Exs. 7.0 Rev. at 15, 26; 8.0 at 6; 8.2 at 35, 39-40)

Rock Island states that in the Route Identification and Selection stage, it analyzed all the data obtained from the previous stages, along with public comments, to develop five Study Routes for the DC Section and three Study Routes for the AC Section. The Routing Team then met numerous times to review all the information and available options to determine which of the Study Routes should be selected as the Preferred Routes and the Proposed Alternative Routes. (*Id.* at 131, citing RI Exs. 7.0 Rev. at 15-16 and 8.0 at 6-7)

Rock Island responded to ILA's assertion that Hans Detweiler, Rock Island's Director of Development, lacked appropriate experience to supervise the Rock Island Routing Team (ILA IB at 37). RICL asserts that as Deputy Director of the Illinois Department of Commerce and Economic Opportunity, Mr. Detweiler administered the Bureau of Energy and Recycling, with responsibility for all incentive programs targeting renewable power, energy efficiency, renewable fuels, recycling, and waste reduction and was responsible for overseeing the grant application process for potential projects and supervising the review by engineers of potential candidate projects and applications for funding. The projects reviewed included large facilities such as ethanol plants and wind farms. (RI RB at 125, citing RI Ex. 7.0 Rev. at 1-2 and Tr. 517) As Director of State Policy for the American Wind Energy Association and as a policy advocate for the Environmental Law and Policy Center, he was also "active on issues relating to endangered species, habitats and other siting issues." (*Id.*, citing Tr. 513-514)

Rock Island also states that all members of the Routing Team were involved in the route development process, including HDR Engineering, Inc. ("HDR"), which conducted the Routing Study, and Matthew Koch of HDR, who was the witness sponsoring the Routing Study as an exhibit in this case. The 19-member Routing Team consisted of environmental professionals, public involvement specialists, and engineers from HDR, RI, POWER Engineering, Inc. and KPC. (RI RB at 126, citing RICL Exs. 7.0 Rev. at 1, 6; 8.0 at 1; 8.2 at 1 and at App. A) The qualifications and experience of HDR, POWER and KPC are described in RI Exhibits 2.0 at 14-15; 8.0 at 3; 9.0 Rev. at 3-5; and 9.5. (RI RB at 125-126)

According to Rock Island, the Routing Team as a whole, and HDR and Mr. Koch in particular, have experience conducting routing studies. HDR has provided engineering and environmental services for over 25,000 miles of transmission lines

nationwide. Within the last five years HDR has performed, or currently is performing, routing studies for 10 electric transmission line projects with voltages of 345 kV or greater. Mr. Koch has experience in routing, agency consultation, and public outreach gained by working on a number of electric transmission and natural gas pipeline projects. He has also performed routing studies, agency consultation, public involvement and permitting for other projects in the Midwest. (*Id.* at 126, citing RI Exs. 8.0 at 2-4; 8.2 at 7-8)

Rock Island responded to ILA's argument that because the Staff did not conduct their own investigation into possible Project routes or consult with the IDNR, the Staff's acceptance of the Preferred Route should not be interpreted as an endorsement of the Preferred Route (ILA IB at 41). RICL contends that in light of Rock Island's "thorough and extensively documented route development process," which Staff reviewed, including additional supporting information provided in discovery, there was no need for Staff to conduct an independent route development process. (RI RB at 127)

Rock Island also states that it consulted with the IDNR concerning the potential impacts of the Preferred Route and Proposed Alternative Route on threatened and endangered species and Illinois Natural Areas Inventory sites, and reported IDNR's conclusions for the record in this case, so that the Commission may take the IDNR's input into account. (*Id.*)

Railroad ROW; I-80

Section IV.B.1.d of RICL's IB is titled, "Rock Island Determined that Using the Old Rock Island Railroad ROW or the Interstate 80 ROW Would Increase Impacts on Sensitivities and Would Not Be Acceptable."

As part of its analyses, RICL considered utilizing the ROW of the former Rock Island Railroad in Iowa and Illinois; however, it determined that using this ROW would impact too many Sensitivities and this option was dismissed. (RICL IB at 131-132)

RICL disagreed with the contention in ILA's initial brief that the Routing Team dismissed the Rock Island Railroad right-of-way as a routing option without proper analysis. (RICL RB at 127-128, citing ILA IB at 39).

RICL states that the Routing Team spoke with local government officials and inspected the railroad ROW by hi-rail and car. Rock Island asserts that many municipalities developed along railroads, and the Routing Team found the Rock Island Railroad ROW to be within close proximity of a significantly greater number of homes than other alternative routes. Additionally, considerable other infrastructure, such as grain elevators and electric distribution lines, were located along the railroad ROW and would be impacted if the Project utilized the railroad ROW. Rock Island considered whether the Project could avoid these Sensitivities by departing from the railroad ROW at problematic areas and then rejoining it in more suitable locations, but determined that this rerouting would significantly increase the length -- therefore impacting more

landowners -- and cost of the line and would increase impacts to other Sensitivities in the areas through which the Project would be re-routed. Consequently, during the second stage of the route development process, the Routing Team determined that the use of the Rock Island Railroad ROW should not be used. (RI IB at 131-132 and RB at 127-128, citing RI Exs. 7.0 Rev. at 30-31 and 8.2 at 31-32)

The Routing Team performed two separate assessments of the potential for utilizing the Interstate 80 ("I-80") ROW for the Project. The Routing Team contacted the Illinois Department of Transportation ("IDOT") early in the route development process to discuss potential safety concerns and IDOT regulations on providing access to highway ROWs. IDOT advised that it does not permit transmission structures within an interstate highway ROW and that overhangs into an interstate highway ROW are allowed only in limited instances. IDOT's restrictions would only allow the Project structures to be placed on private land adjacent to I-80's right-of-way. Rock Island determined that attempts to parallel I-80 would lead to numerous conflicts with existing homes, businesses, and infrastructure. If the line were placed along I-80, the route would need to be detoured around problematic areas, which would increase the length and cost of the route and would increase the total impacts to landowners in the areas to which the Project was rerouted. Rock Island states that the possibility of paralleling I-80 was dismissed during the first stage of the route development process.

In response to suggestions made at open houses, Rock Island conducted an additional review of the I-80 area to determine if there was a viable routing option that was previously overlooked. This review determined that, compared to the DC Section Preferred Route, the potential I-80 routes increased the route length by approximately 12 miles, encountered significantly more homes, required the removal of a home in the DC Section, encountered 36 times as many non-residential structures within 100 feet of the centerline, and required more angle structures, all of which increase land use impacts and costs. Based on this additional analysis, Rock Island again concluded that routing the Project along I-80 was not feasible. (RICL IB at 132, citing RI Exs. 7.0 Rev. at 30-33; 8.2 at 32-33, 42, 48-49)

Selection of Preferred Routes

Section IV.B.1.e of RICL's initial brief is titled, "The Preferred Routes Best Meet the Routing Criteria."

After completing the route development process, RI selected a Preferred Route and a Proposed Alternative Route for both the DC Section and the AC Section. The Preferred Routes were selected as those routes that best minimized impacts to Sensitivities and maximized use of Opportunities. According to Rock Island, both the DC Section and AC Section Preferred Routes minimize impacts to Sensitivities because they have the overall lowest impact on homes, other structures, agriculture, and other land use features when compared with the other Study Routes. Rock Island states that the DC Section Preferred Route has the fewest number of homes within 200, 500, and 1000 feet of the centerline of the route, the fewest number of non-residential structures

within 100 and 200 feet of the centerline, and crosses the fewest number of parcels owned by the fewest number of landowners.

The AC Section Preferred Route requires the purchase and removal of one home, and Rock Island has already acquired an option to purchase this home. Additionally, Rock Island explains, the AC Section Preferred Route has the fewest homes within 67.6 to 200 feet of where the two transmission lines would be located, and ties with the other AC Section Study Routes for the fewest homes within 201 to 1000 feet, for crossing the fewest parcels and for impacting the fewest landowners. The ROW requested for each 345 kV line in the AC Section is 135 feet (270 feet in total for the two 345 kV lines); therefore, a home within 67.5 feet of the centerline of either 345 kV line would be within the ROW. (RI IB at 133, citing RI Exs. 7.0 Rev. at 27-28; 8.2 at 65, 99)

Rock Island asserts that the DC Section and AC Section Preferred Routes are the shortest Study Routes for their respective Sections, and "avoid or cause" the least permanent impact on currently operating center pivot irrigation systems and do not cross any designated Agricultural Preservation Areas. Further, RICL states that the Preferred Routes will not impact any schools, hospitals, daycares, airports, cemeteries or religious facilities. (*Id.* at 133-134, citing RI Exs. 7.0 Rev. at 27-28; 8.2 at 65, 99, 102, 104)

Rock Island also asserts that the Preferred Routes minimize impacts to environmental and conservation Sensitivities, and do not cross any Illinois Nature Preserve Commission lands or any historical buildings, structures, or sites, and cross the least amount of streams. Rock Island contends that there are no designated critical habitats within one mile and no known or observed eagle nests within 660 feet of either Preferred Route; that USFWS National Bald Eagle Management Guidelines recommend that any disturbances occur at least 660 feet from any eagle nests; and that the Preferred Routes also limit the acres of forested wetland areas and number of archaeological sites crossed. (RICL IB at 134, citing RI Ex. 8.2 at 78-82, 106-107, 110)

Rock Island states that both the DC Section and AC Section Preferred Routes take advantage of existing Opportunities, and that the DC Section Preferred Route will utilize existing linear infrastructure for 22.4 miles. The DC Section Preferred Route will parallel an existing transmission line crossing of the Mississippi River and an existing pipeline crossing of the Fox River. Rock Island states that paralleling the existing pipeline crossing of the Fox River takes advantage of the existing area from which trees have been cleared for the pipeline. The DC Section Preferred Route also will parallel a pipeline in LaSalle County and existing transmission lines in Grundy County. The AC Section Preferred Route will parallel an existing transmission line for approximately 1.9 miles, which is more than one-half the length of the AC Section. (RI IB at 134, citing RI Exs. 7.0 Rev. at 29, 33 and 8.2 at 94)

Rock Island responded to ILA's claim that the Routing Study is out of date because it has not been amended to include new information discovered since

September 2012. RI states that ILA identified five potential Sensitivities it alleges make the Routing Study out of date: (1) a new distribution line; (2) one new home; (3) a wind farm in Bureau County; (4) a possible commercial development near Morris; and (5) a possible private airstrip in Bureau County. (ILA IB at 37-38)

Rock Island responds that Mr. Koch of HDR viewed the new distribution line and determined that the Preferred Route will not cross the new distribution line. (RI RB at 131, citing RI Ex. 8.3 Rev. at 19) Rock Island states that the one new home that has been constructed is located approximately 300 feet from the Preferred Route, outside the ROW which will be 100 feet on either side of the centerline. (*Id.* at 131, citing RI Ex. 8.3 Rev. at 18-19) Rock Island agreed there is one new planned wind farm in Bureau County along the Preferred Route, and stated that it has been in contact with the developer of the wind farm and has coordinated with the developer on placement of structures so as not to conflict with engineering or technical standards of either project. (*Id.*, citing RI Ex. 7.35 Rev. at 24)

Rock Island also states that it is aware of the potential commercial development that may be built near the Preferred Route near Morris, Illinois. Rock Island states that is committed to negotiating with the owner regarding any specific siting concerns. (RI RB at 131, citing Tr. 395) Rock Island states that it is aware that there is a potential private airstrip in Bureau County. Rock Island also states that ILA did not raise the potential commercial development or private airstrip as a concern in its testimony, and therefore, Rock Island had no reason to discuss them in rebuttal or surrebuttal testimony; however, ILA has identified no specific concerns relating to them. (*Id.* at 131-132, citing Tr. 395-396)

Rock Island also responded to the argument in ILA's brief that when considering Sensitivities, Rock Island gave the same weight to occupied homes as to unoccupied homes (ILA IB at 38). Rock Island states that ILA identifies no situation along the Preferred Route where the route could or should have been different had an unoccupied home been given lesser weight. Rock Island argues that it was prudent in giving the same weight to unoccupied homes as to occupied homes because circumstances along the Preferred Route may change over time. (RI RB at 132)

Rock Island responded to the argument in ILA's brief that the Routing Study is "flawed" because Rock Island has not attempted to contact landowners to determine the location of any Conservation Reserve Program ("CRP") land. (ILA IB at 40-41) Rock Island states that information on CRP land is not made publicly available by the U.S. Department of Agriculture, so there is no systematic way of identifying the locations of CRP land. (RI RB at 132, citing RI Ex. 8.3 Rev. at 8) Rock Island also states that although ILA claims its members comprise a substantial portion of the landowners whose property will be crossed by the Preferred Route in Illinois, ILA identified only one landowner as having CRP land on his property. (*Id.*, citing ILA Ex. 2.0 at 5-6) Rock Island states that this landowner has informed Rock Island that he does not wish to be contacted, and so Rock Island is limited in determining the impacts the Project may potentially have on his CRP land. (*Id.*, citing RI Ex. 7.30 at 19)

IDNR Involvement

Rock Island states that it consulted with the Illinois Department of Natural Resources ("IDNR") to obtain IDNR's input and comments on the Preferred Routes and the Proposed Alternative Routes. On August 14, 2013, IDNR staff provided Rock Island with written comments on the Preferred Routes and Proposed Alternative Routes, which are provided in Rock Island Exhibit 8.8. (RI IB at 134-135, citing RI Exs. 8.8 and 7.30 at 38) RICL states that IDNR initially suggested the transmission line should cross the Mississippi River farther south, outside the Mississippi River-Cordova Illinois Natural Area. (*Id.* at 135, citing RI Ex. 8.8 at 1) The IDNR also pointed out potential areas along the Preferred Route that could entail forest fragmentation. (*Id.*, citing, RI Ex. 8.8 at 2-3)

Rock Island responded to the IDNR's August 14 letter, addressing each of IDNR's comments. In its response, Rock Island explained the considerations and reasons the Princeton, Iowa location was chosen as the Mississippi River crossing point, as well as the increased impacts if the Project crossed the Mississippi River at a different location. (*Id.*, citing RI Exs. 8.3 Rev. at 37 and 8.8 at 5-8) Rock Island also detailed the mitigation efforts it would undertake to minimize potential impacts from constructing and maintaining the Project. (*Id.*, citing RI Ex. 8.8 at 6) Rock Island met with IDNR staff on October 26, 2013 to discuss the August 14 IDNR letter and Rock Island's response. According to RICL, IDNR staff stated that they had no concerns relating to impacts on protected species. (*Id.*, citing RI Ex. 8.10 at 4)

On November 8, 2013, IDNR issued its final written comments, which stated that "it is unlikely that the project will result in any adverse impacts to state-listed species or their habitats," but expressed some concerns regarding forest fragmentation at specific locations. RICL states that IDNR also noted Rock Island was able to avoid protected species for a 120 mile project in Illinois, and stated that it recognized that other project planning and regulatory considerations factor into the final routing. (RICL IB at 135, citing RI Ex. 8.12 at 1)

Rock Island responded to ILA's assertion that the Routing Study is inadequate because Rock Island did not consult with the IDNR prior to siting the Mississippi River crossing (ILA IB at 39-40), by stating that Rock Island initiated communications with IDNR about the Project in July 2010 (RI Ex. 8.2 at 9), identified the Mississippi River crossing point in 2011, and did not complete the route determination process, as embodied in the Routing Study, and the selection of the Preferred Route and Proposed Alternative Route until shortly prior to filing this case in October 2012. (RI RB at 128) Rock Island states that it has no control over when the IDNR would respond to information provided by Rock Island, but Rock Island would not expect the IDNR to provide comments on a proposed route until the developer presented the complete, proposed route to IDNR. (*Id.*) Further, the IDNR's final consultation letter to Rock Island did not object to the Mississippi River crossing point, although it did note that the Project will cause forest fragmentation "in the vicinity of the Mississippi River." (*Id.* at

128-129, citing RI Ex. 8.12 at 1) Rock Island asserts that in Illinois, "only 5.2 miles of the Preferred Route, are in forested areas" (*Id.* at 129, citing RI Ex. 8.2 at 75)

Rock Island responded to the ILA's observation that the IDNR initially suggested that the line cross farther south than the Princeton crossing (ILA IB at 40). RI states that a reroute farther to the south would impact a significantly larger number of homes on the Iowa side. (RI RB at 130, citing RI Ex. 8.9 at 1) According to Rock Island, a reroute would also require a large amount of tree clearing along Illinois Highway 84 or be complicated by past mining activities. RICL also asserts that while the Princeton crossing does run through forested area, that area is already actively being logged as commercial timber. (*Id.*, citing RI Ex. 8.9 at 1-2)

Rock Island contends that ILA's criticisms ignore the extensive effort that went into evaluating potential Mississippi River crossings and selecting the crossing point. (RI RB at 129-130) These efforts are also described on pages 128-129 of RICL's initial brief, and are summarized above "Route Development Process."

Rock Island also states that ILA implies the overall Preferred Route in Illinois would be different if the Mississippi River crossing point were different. (RICL RB at 131, citing ILA IB at 39) In response, RICL asserts that the end point of the DC Section is the converter station site in Channahon, Illinois, so even with a different Mississippi River crossing point the route would need to converge to the Preferred Route. (*Id.*) RICL also argues that although ILA suggested a crossing point farther south on the river, after crossing the Mississippi River, the Preferred Route heads generally south and east, so, according to Rock Island, with a different, slightly more southerly crossing point, the route would likely rejoin the Preferred Route not far from the river crossing. (*Id.*)

In summary, Rock Island argues that "based on the record on the development of the Preferred Routes, the specific characteristics of the Preferred Routes with respect to impacts on Sensitivities and use of Opportunities, and the lack of specific recommendations for deviations or alternatives, the Commission should approve the Preferred Routes for the DC Section and the AC Section as set forth on Rock Island Exhibits 7.2 and 7.4, respectively." (RI IB at 136)

2. Positions of Staff and Intervenors

Staff Position

Staff provides a description of the proposed route, which extends for approximately 121 miles in Illinois from a point where it crosses the Mississippi River in Rock Island County to the Collins Substation in Grundy County. (Staff IB at 64, citing Petition at 2-3)

After examining RICL witnesses' testimony and the exhibits attached to them, including the Routing Study, Staff "has no reservations concerning RICL's process or

procedure concerning the route selection.” (*Id.* at 66, citing Staff Ex. 1.0 at 14) In addition, “if the Commission were to approve RICL petition, Staff would have no objection to the preferred or the proposed alternative routes that RICL identifies in its filing.” (Staff IB at 66)

IAA and ILA Positions

In its initial brief, IAA “takes no position on the proposed route.” (IAA IB at 16)

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.” (ILA IB at 36)

ILA argues that Hans Detweiler, who “supervised the routing team,” lacked qualifications for such an undertaking. (ILA IB at 37, citing Tr. 413-415) ILA asserts that the extent of his formal education is a Bachelor of Arts degree in political science, and that all of his experience prior to being hired by Clean Line was in public policy, policy advisement, outreach, and communications. (*Id.*, citing Tr. 413) ILA argues, “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.” (*Id.*, citing Tr. 413)

ILA states that Rock Island’s routing study began several years ago, in March of 2010; that the most recent visual inspection relied upon by the routing study took place nearly two years ago; and that the routing study has not been amended to include any information learned of or discovered since September 2012. ILA argues, “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.” (ILA IB at 37-38, citing Tr. 393- 395, RICL Ex. 8.3 at lines 409-411)

ILA asserts that within just over a year, Rock Island has missed a home, other distribution lines, a commercial development near Morris, and a private airport. (ILA IB at 38, citing RI Ex. 8.3 at lines 411-419, Tr. 395-396) ILA also states that the study does not consider the location of possible wind turbines for the Walnut Ridge wind farm in Bureau County (*Id.*, citing RI Exs. 8.10 at lines 65-67 and 7.35 at lines 533-538).

ILA also states that 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; that when considering the Rock Island Railroad, a benefit of that corridor was that it was “made up of land already impacted to some degree”; and that homes already impacted – at least visually – are to be given less weight. (ILA IB at 38-39, citing RI Exs. 8.2 at 23 and Ex. 8.3 at lines 665- 666; Tr. 400-401)

According to ILA, railroads are defined as a routing opportunity by Rock Island, and the so-called Rock Island Railroad right of way was initially identified as a beneficial corridor for the development of this Project but was dismissed early on due to RICL's claim of development of population centers along the railroad. (ILA IB at 39) ILA argues that the "limited study" of the Rock Island Railroad opportunity did not include a detailed quantitative analysis of bypassing any population centers along that route, and that Rock Island's witness was unable to provide any information as to distance of homes to the railroad. (*Id.*, citing Tr. 399-400) Accordingly, ILA contends, this potentially attractive corridor and routing option was dismissed early, and not adequately studied, and instead, Rock Island chose to proceed across miles and miles of prime farmland. (*Id.*)

ILA asserts that 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; that that identification of the Mississippi River crossing was part of the first step in the development process; and that the river crossing analysis was completed in January 2011, but consultation with the Illinois Department of Natural Resources did not begin until 2011 after the crossing was chosen, and was not concluded until November 8, 2013. ILA states that IDNR suggested that the crossing Rock Island had determined be moved further south due to mussel concentrations and forest fragmentation, with the latter concern never being resolved, and that the suggestion to move the line further south would have placed the line at a location already identified as an opportunity. (ILA IB at 39-40)

According to ILA, Rock Island's routing study does not consider impacts to Conservation Reserve Program ("CRP") property; that Rock Island has no idea as to the extent to which the proposed route will impact CRP property; that Rock Island claims the location of such land is confidential and it "cannot determine" the extent of these lands; that it never attempted to contact any landowners to determine the location of CPR land, despite being able to do so by mail; and that when it became aware of CRP land, Rock Island did not contact any Farm Service Administration personnel about the same. (ILA IB at 40-41)

ILA asserts that Staff's lack of opposition to the proposed Project's is based solely upon Staff's review of the routing study provided by Rock Island; and that Staff did not undertake any independent investigation, look into possible routing along existing infrastructure near Interstate 80 or the Rock Island Railroad right of way, or consult with IDNR. (ILA IB at 41, citing Tr. 701-702)

ILA concludes, in part, "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." (*Id.*)

ComEd Position

ComEd takes no position on RI's proposed route. ComEd states, however, that "RI has not provided the detailed level of evidence and route descriptions historically required by the Commission in CPCN cases, particularly for the 765 kV line that they belatedly and alternatively proposed for the first time in Dr. Galli's surrebuttal." (ComEd IB at 35)

3. Commission Conclusion

As proposed, the 500-mile transmission line Project would originate at a converter station in O'Brien County, Iowa, "traverse Iowa" for 379 miles, cross the Mississippi River near Princeton, Iowa, and then enter Illinois south of Cordova, Illinois. (Petition at 2-3)

From there, the proposed line would extend for approximately 121 miles in Illinois to the Collins Substation in Grundy County.

RI's route development process for Illinois is described in some detail above. A Routing Study was used to select preferred and proposed alternative routes for the DC and the AC portions of the proposed transmission line. The routing team that performed the study included environmental professionals and engineers from two engineering firms and Kiewit Power Constructors.

The main elements of the routing criteria that were used to develop the routes were sensitivities, opportunities, and technical guidelines.

The Staff witness "has no reservations concerning RICL's process or procedure concerning the route selection." (Staff Ex. 1.0 at 14) If the Commission were to approve the Rock Island petition, Staff would have no objection to the preferred or the proposed alternative routes that RICL identifies in its filing. (Staff IB at 66)

In its initial brief, IAA states that it "takes no position on the proposed route." (IAA IB at 16)

ILA "is not an advocate for any particular routing for the proposed project," and ILA does not appear to actually propose any alternate routes. ILA does express criticisms of the proposed routing, most of which appeared for the first time in its initial brief. There, ILA argues that Rock Island has engaged in a flawed, incomplete, and out of date routing study. (ILA IB at 40)

In its brief, ILA argues that the "potentially attractive" Rock Island Railroad right-of-way corridor was dismissed prematurely. In response, Rock Island explained that its analysis of the Railroad ROW indicated that the ROW was within close proximity of a significantly greater number of homes than other alternative routes, and that considerable other infrastructure, such as grain elevators and electric distribution lines,

were located along the railroad ROW and would be impacted if the Project utilized the railroad ROW. Upon reviewing the record, the Commission finds that Rock Island's decision not to use the railroad ROW was reasonable.

In its brief, ILA states a concern that possible routing along existing infrastructure near Interstate 80 was not properly explored. In response, Rock Island explained that its review determined that, compared to the DC Section Preferred Route, the potential I-80 routes increased the route length by approximately 12 miles, encountered significantly more homes, required the removal of a home, encountered 36 times as many non-residential structures within 100 feet of the centerline, and required more angle structures, all of which increase land use impacts and costs. Rock Island concluded that routing the project along I-80 was not feasible. Upon reviewing the record, the Commission finds that conclusion to be reasonable.

In response to the comment in ILA's brief that IDNR suggested the river crossing be moved further south, Rock Island indicates that a reroute farther to the south would impact a significantly larger number of homes on the Iowa side. Rock Island also points out that the IDNR's final consultation letter to Rock Island did not object to the Mississippi River crossing point, although it did note that the Project will cause forest fragmentation "in the vicinity of the Mississippi River." Upon reviewing the record, the Commission finds that the selection of the site for the river crossing was the result of a detailed analysis and was reasonable.

Rock Island also responded to claims appearing in ILA's initial brief that the routing study is out of date. The first two examples cited by ILA are that Rock Island missed a home and a distribution line. Rock Island explains that the one new home that has been constructed is located approximately 300 feet from the Preferred Route, outside the ROW which will be 100 feet on either side of the centerline, and that Rock Island determined that the Preferred Route will not cross the new distribution line. Upon reviewing the evidence, the Commission finds that ILA's argument that the routing study is too out of date to be relied upon is not supported by the record.

In its brief, ComEd took no position on Rock Island's proposed route. However, ComEd did note that a 765 kV line for the AV segment was belatedly and alternatively proposed for the first time in Dr. Galli's surrebuttal. In its reply brief, Rock Island clarifies that it will not pursue the 765 kV AC line alternative to which "ComEd objects."

Having reviewed the record, the Commission finds that the route development and selection process and analysis were detailed and comprehensive, and gave proper consideration to the routing criteria that were used to develop the routes. A reasonable effort was made to minimize impacts to sensitivities, such as proximity to homes and disruptions to the environment, while utilizing identified "opportunities" where feasible. The record also indicates that proper consideration was given to the cost of the preferred route relative to alternative routes.

In conclusion, the Commission finds that the preferred route developed by Rock Island is reasonable and should be approved.

The Commission also finds that the 765 kV line alternative referenced above is not before the Commission for consideration in this proceeding, and it is not approved in this order. Rather, the four-mile AC segment to the Collins substation will consist of two parallel 345 kV lines.

B. Easement Width

1. Rock Island Position

For the DC Section, RICL states that the ROW for the Project will vary between 145 feet and 200 feet wide, depending on requirements at particular locations. To accommodate the possible need for the maximum width at specific locations, Rock Island is requesting authority for a 200 foot ROW for the entire DC Section of the Project. Because there are two parallel 345 kV lines proposed for the AC Section -- one a single-circuit line and the other a double-circuit line -- Rock Island states that a larger ROW will be necessary, and is requesting authority for a 270 foot ROW for the AC Section. Rock Island states that the Commission has previously authorized ROWs of up to 150 feet for individual 345 kV transmission lines, and although this would seem to indicate that 300 feet would be needed for two parallel 345 kV transmission lines, Rock Island believes it can construct the AC Section with a 270 foot right-of-way. (RI IB at 136, citing RI Ex. 2.0 at 29-30)

According to RICL, the ROW width is based on the need to maintain electrical safety clearances and provide access for construction and maintenance of the line. Wind blowing on transmission line wires will cause them to sway away from the center of the ROW towards the side. The ROW must be wide enough to allow for this predicted wire movement on both sides of the ROW, while still maintaining the required electrical clearances from vegetation, structures and other infrastructure. As the span length of the transmission wire between the supporting structures increases, the amount of predicted transmission wire sway increases. Rock Island states that based on the structures that it will be using, the requested 200-foot ROW for the DC Section and 270-foot ROW for the AC Section are sufficient for typical span lengths. (*Id.* at 136-137, citing RI Exs. 2.0 at 31 and 2.11 Rev. at 7)

In two locations along the Preferred Route, where a longer than average span will be needed, a larger ROW width will be necessary and is being requested. First, the Preferred Route crosses Indian Creek, and in order to span this waterway, the length between structures will be approximately 1,973 feet. In this location, a larger ROW is necessary to allow for increased sway of the transmission conductors in high winds. Rock Island is requesting a ROW width of 235 feet for a segment beginning approximately one-half mile from the western bank of Indian Creek and ending approximately one-half mile beyond the eastern bank of Indian Creek. Second, where the Project enters Illinois after crossing the Mississippi River, there will be a need for

increased span lengths for the first several spans, covering the first mile of the transmission line in Illinois. For this segment, Rock Island is requesting authority for a ROW greater than 200 feet for approximately the first mile of the Preferred Route from the eastern bank of the Mississippi River. (*Id.* at 137, citing RI Ex. 2.0 at 31-32)

Rock Island is also requesting that the Commission "grant it a temporary construction easement" beyond the 200 foot ROW in the DC Section or the 270 foot ROW in the AC Section for locations at which the permanent ROW is insufficient for construction activities or to access the construction area. Any temporary construction easement reverts to the landowner when construction is finished. (RI IB at 137-138, citing RI Ex. 2.0 at 32-33)

In response to IAA's allegation that Rock Island has no knowledge of whether the requested easement widths are "market competitive" (IAA IB at 17), RICL asserts that easement width is not a "market" issue but rather a technical issue, determined by the need to maintain required electrical safety clearances and to provide for access for construction and maintenance of the line. The ROW needs to be wide enough to allow for the predicted "blowout" of the wires under extreme wind conditions while still maintaining required electrical clearances from vegetation, structures, and other infrastructure. As the length between the structures increases, a wider ROW is necessary, and vice versa. According to Rock Island, having a ROW easement width of 200 feet in the DC section of the Project will allow for a span length between structures of up to approximately 1,750 feet, with a typical span length of 1,200 feet. (RICL RB at 138-139, citing RI Ex. 2.0 at 30-32)

Rock Island responded to ILA's allegation that the Project will render aerial application of chemicals on agricultural property unavailable for some landowners and therefore will decrease production (ILA IB at 42). RICL states that it researched aerial application practices, and learned that aerial applicators can employ a variety of different techniques to adapt to varying field conditions, such as flying alternative patterns across the field. Rock Island asserts that it found no evidence that aerial applicators have been unable to spray an entire field due to concerns regarding transmission lines. (RI RB at 133-134, citing RI Ex. 7.35 at 22)

In developing the route of the Project, RICL considered Routing Criteria designed to minimize impacts to aerial application in several ways. First, the Routing Criteria included as Sensitivities private airports and airstrips and aerial fertilizer and herbicide application ability; Rock Island sought to avoid impacting private airports and airstrips. Rock Island also considered the amount of diagonal orientations to attempt to minimize the impacts on aerial application of fertilizer and herbicides. Second, Rock Island sought to place the transmission line along field lines, property lines, and Public Land Survey System ("PLSS") lines -- generally on east/west or north/south orientations -- as Opportunities to minimize impacts on utilizing aerial applications. According to Rock Island, this positioning allows for a smaller number of straight-line application runs than diagonal alignments, an easier flight pattern for aerial applicators. Rock Island states that where diagonal alignments across fields were selected, this was generally done to

avoid other Sensitivities, such as homes. (RI RB at 134, citing RI Exs. 7.30 at 11 and 8.2 at 13-14, 16)

Rock Island also states that its research indicates that aerial applicators need to maintain a 25-foot separation from the cross-arms; therefore, aerial applications will not be able to fly over approximately 70 feet of the 100 foot easement on either side of the transmission line but will still be able to access part of the easement area. (*Id.* at 135, citing RI Exs. 2.0 at 30 and 7.30 at 12)

Rock Island asserts that the concerns regarding aerial application of fertilizer and chemicals are not unique to the Rock Island Project, but are inherent with respect to any transmission line. Rock Island states that it will work with landowners to negotiate specific placement of the line and structures on properties to minimize impacts on aerial spraying operations. (*Id.* at 136, citing RI Ex. 7.30 at 26)

Rock Island responded to ILA's assertion that RICL ignored the fact that land taken out of production is not limited to the structure footprint, but also includes areas around the structure. (ILA IB at 42) Rock Island states that landowners will still be able to farm almost the entire easement. RICL witness Mr. Koch calculated the acreage that will be covered by structure footprints by assuming all structure footprints will be seven feet in diameter, then by assuming all structure footprints will be 11 feet in diameter, totaling 1.27 acres on the entire line. Moreover, not all structures will be 11 feet in diameter or placed on agricultural land and some structures will be placed along property lines and field lines, all of which will reduce the actual amount of agricultural land impacted by the structures. (RI RB at 134-135, citing RICL Exs. 7.0 at 39; 8.3 Rev. at 5; and 8.4 Rev.)

Rock Island responded to IAA's assertion that Mr. Detweiler lacks the necessary experience to lead Rock Island's easement acquisition and infrastructure siting efforts (IAA IB at 17), by stating that Mr. Detweiler has both supervisory experience and experience with infrastructure siting issues. Rock Island states that it continues to hire individual employees and retain contractors with expertise in transmission line easement acquisition and infrastructure siting. Rock Island states that Deann Lanz, Clean Line's Director of Land Services, will be primarily in charge of the easement acquisition efforts. As Director of Land Services, Ms. Lanz coordinates, manages and provides strategic direction for all ROW acquisition efforts. She is currently engaged in landowner contact and initial easement acquisition activities, as well as in other permitting activities. (RI RB at 136-137, citing RI Exs. 1.4 at 8; 1.5; 1.7 at 6)

According to Rock Island, Ms. Lanz oversees the ROW acquisition contractor, Contract Land Staff ("CLS") and its employees and will work closely with the construction managers to ensure that ROW acquisition efforts are consistent with construction management policies and practices. Rock Island states that Ms. Lanz has extensive experience in managing ROW and land issues pertaining to the development of large-scale energy generation and transmission projects. Prior to working at Rock Island, she served as Vice President, Land for BP Wind Energy North America, Inc. and

was responsible for the land issues for more than \$1 billion of energy generation assets. She also has supervisory experience managing a cross-functional team of personnel in geographic information systems, land acquisition, due diligence and property administration. (RI RB at 137, citing RI Exs. 1.4 at 8-9 and 1.8 at 6)

According to Rock Island, CLS, which RI has engaged to assist with activities related to ROW acquisition, has significant experience in ROW acquisition, and has been involved in planning, managing and executing hundreds of ROW acquisition and land management projects covering over 25,000 miles across the country. (*Id.* at 137-138, citing RI Ex. 1.4 at 17)

2. Positions of Staff and Intervenors

Staff states that RICL requests a 200 feet ROW for the HVDC portion of the transmission line and 270 feet for the HVAC portion of the transmission line. (Staff IB at 66, citing RICL Ex. 2.0 at 29-30)

Staff does not express an opinion regarding the proposed easement widths.

IAA and ILA Positions

The Farm Bureau "takes no particular issue with the proposed easement widths of Rock Island," but does take issue with Rock Island's ability to obtain and negotiate such easements moving forward in anticipation of construction. (IAA IB at 16-17)

Rock Island's easement and infrastructure siting efforts in Illinois are led by Hans Detweiler. (IAA IB at 17, citing Tr. 493, Detweiler) IAA states that Mr. Detweiler has never worked for a transmission company, sited transmission infrastructure, negotiated easements, or otherwise been involved with the construction of a transmission line. (*Id.*, citing Tr. 493-496) With regard to easement width, easement compensation, and crop damage reimbursement, Rock Island has relied upon the recommendations of its contractor, Contract Land Management, and studied market standards. (*Id.*, citing Tr. 498, 502) IAA asserts that "despite this," Rock Island has no knowledge of whether the easement widths or associated compensation formulas are market competitive or appropriate, and has no idea why the easement widths and compensation that it is offering is less attractive than that offered by Illinois utilities. (*Id.*, citing Tr. 507)

IAA states that "Rock Island's reliance on its inexperienced employees to site a \$1.8B project in Illinois and negotiate easements therefor should not instill any sense of confidence in the Commission." IAA concludes, "The Farm Bureau's members' continued experience with Rock Island, a company that has never built a transmission line anywhere, is with its 'boots on the ground' representatives who have also never been involved with transmission lines before. As such, smooth and voluntary easement negotiations should not be assumed." (*Id.*)

In its initial brief, ILA states that 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." (ILA IB at 42) ILA asserts, "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." (*Id.*, citing Tr. 608)

Additionally, ILA submits, "production will be decreased insofar as the important tool of aerial application is rendered no longer usable for some landowners," and Rock Island failed to provide any witness that is qualified to speak to the application of herbicides, pesticides, or fungicides by air. (*Id.*, citing ILA Exs. 1.0 REV at lines 291-298 and 4.0 at lines 90-107; Tr. 401-402, 414)

3. Commission Conclusion

For the DC Section, Rock Island states that the ROW for the Project will vary between 145 feet and 200 feet wide, depending on requirements at particular locations. To accommodate the possible need for the maximum width at specific locations, Rock Island is requesting authority for a 200-foot ROW for the entire DC Section of the Project. Because there are two parallel 345 kV lines proposed for the AC Section -- one a single-circuit line and the other a double-circuit line -- Rock Island asserts that a larger ROW will be necessary, and is requesting authority for a 270-foot ROW for the AC Section.

According to Rock Island, the ROW width is based on the need to maintain electrical safety clearances and provide access for construction and maintenance of the line. Wind blowing on transmission line wires will cause them to sway away from the center of the ROW towards the side, and the ROW must be wide enough to allow for this predicted wire movement on both sides of the ROW, while still maintaining the required electrical clearances from vegetation, structures and other infrastructure. As the span length of the transmission wire between the supporting structures increases, the amount of predicted transmission wire sway increases. Based on the structures that it will be using, Rock Island states that the requested 200-foot ROW for the DC Section and 270-foot ROW for the AC Section are sufficient for typical span lengths.

In two locations along the Preferred Route, where a longer than average span will be needed, a larger ROW width will be necessary and is being requested, as explained above.

Rock Island is also requesting that the Commission "grant it a temporary construction easement" beyond the 200-foot ROW in the DC Section or the 270-foot ROW in the AC Section for locations at which the permanent ROW is insufficient for construction activities or to access the construction area. Any temporary construction easement reverts to the landowner when construction is finished.

It appears that other parties do not specifically object to the proposed easement widths, and no alternative widths were proposed.

ILA does note concerns such as compaction and aerial application. While IAA "takes no particular issue with the proposed easement widths of Rock Island," it does take issue with Rock Island's ability to obtain and negotiate such easements. These issues are addressed elsewhere in this order.

The Commission finds that the easement widths proposed by Rock Island, as identified above, are reasonable and should be approved.

C. Easement Acquisition and Landowner Compensation

1. Positions of Parties

Rock Island Position

Rock Island's Petition in this case does not include a request for eminent domain authority pursuant to §8-509 of the PUA (220 ILCS 5/8-509). Rock Island states that its "objective" is to obtain all necessary land rights for the Project in Illinois through voluntary negotiations and agreements with landowners. (RI IB at 138) Rock Island states that it understands that to obtain eminent domain authority for specific parcels pursuant to §8-509, it will need to demonstrate that it has engaged in reasonable, good faith negotiations with the landowners or has been precluded from doing so by the landowner. (*Id.*)

Rock Island states that it intends to engage in respectful and equitable negotiations with landowners in order to support voluntary transmission line easement acquisitions; that it will comply with the requirements of 83 Ill. Admin. Code Part 300; and that it has provided a copy of its informational packet that was sent to landowners. (*Id.* at 138-139)

Rock Island states that it adopted a Code of Conduct for its land acquisition agents' interactions with landowners, which requires that all communications with landowners and other persons made by right-of-way agents and subcontractor employees representing Rock Island must be factually correct, made in good faith, respectful and reflective of fair dealing, and respectful of the privacy rights of property owners. (*Id.* at 139, citing RI Exs. 7.0 Rev. at 38-39 and 7.17)

Rock Island states that while it understands the Commission does not determine what compensation should be paid to landowners, it provided information on the compensation package it intends to offer landowners for transmission line easements on their properties. Rock Island plans to offer a compensation package to landowners that will consist of (i) a payment for the easement itself, (ii) a separate payment for each structure placed on the landowner's property, and (iii) payments for specific damages and losses caused by the construction and operation of the transmission line, such as

crop losses during construction or maintenance activities, field repair for soil compaction and drainage tile damage, the value of commercially-marketable timber that is felled, and temporary or permanent impacts to the operation of center-pivot irrigation systems.

Rock Island states that it will offer an easement payment of 90% of the fair market value, as determined by an independent appraisal firm, of the fee interest in the property for the entire easement space; the landowners will be allowed to continue to farm within the portions of the easement area that are not used during construction of the transmission line and are not occupied by transmission structures when the line is placed into operation. (RI IB at 139, citing RI Exs. 7.0 Rev. at 39; 7.35 at 17; 10.14 Rev. at 62-64)

The separate, per-structure payment that Rock Island will offer will be, at the landowner's option, a one-time payment of \$6,000 or an annual payment of \$500 for monopole structures for as long as the structure is on the property and Rock Island retains the easement. The intent is that the combined easement payment and structure payments will result in compensation to any landowner with at least one structure on his or her land that is at least 100% of the fair market value of the land used for the easement. (*Id.* at 140, citing RI Exs. 7.0 Rev. at 39-40, 7.30 at 17; 7.31 Rev. at 1)

With respect to crop damages or losses during construction, Rock Island states that it will make an advance payment to the landowner for crop damages based on use of a 50-foot strip of the entire easement during construction in order to Rock Island IB at 140 provide compensation to the landowner prior to the growing season in which the impacted crops would otherwise be cultivated and harvested, rather than requiring the landowner to wait until after the construction is completed to receive compensation for crop damages caused by construction. However, if the landowner believes that actual crop loss damages resulting from construction prove to be greater than the advance payment, Rock Island will negotiate with the landowner to pay any additional amounts above the advance payments. (RI IB at 140-141, citing RI Exs. 7.35 at 11-12, 17-18 and 7.31 Rev. at 1; Tr. 520-521)

In response to IAA's and ILA's assertion that Rock Island's easement compensation package is inadequate (IAA IB at 17; ILA IB at 43), Rock Island states that neither party offered any evidence that Rock Island's planned compensation for easements – as summarized above -- is an inappropriate compensation level. (Rock Island RB at 139)

Rock Island responded to ILA's claim that Rock Island will not adequately compensate landowners for commercial timber operations on landowner property, specifically because, the ILA claims, Rock Island is only offering compensation for fully grown trees and not trees not yet commercially marketable (ILA IB at 43). Rock Island states that ILA did not raise this issue in its prepared testimony, so Rock Island did not address this topic in its rebuttal or surrebuttal testimony. (Rock Island RB at 140) RI states that if timber is being grown as part of commercial timber operations, then the timber would be considered commercially marketable timber for purposes of damage

payments by Rock Island. Rock Island asserts that it intends to use an independent timber appraiser to determine the market value of timber, and will separately compensate the landowner for the value of any such timber that is cut down in the construction process. (*Id.*) Referring to ILA's example of the felled trees on a landowner's property that were sold for over \$1,000 per tree (ILA IB at 43), Rock Island submits that if that were the appraised market value of the timber that is felled for construction of the Project, that is the compensation that Rock Island will pay the owner. (RI RB at 140)

Rock Island states that only approximately five miles of the 120-mile Preferred Route in Illinois is forested land, and ILA witness Mr. Simpson is the only landowner along the Preferred Route who has been identified with a marketable timber operation. Rock Island asserts that while Mr. Simpson and his property manager Mr. Cole expressed concern about the Project's impact on his timber business, Mr. Simpson has also expressed the desire to build a housing development on his property, which demonstrates that his own objectives are inconsistent with concerns about the impact on his timber business. Rock Island reiterated that it will compensate Mr. Simpson for 90% of the fair market value of the easement, for any structures placed on his land, and for the appraised value of any timber within his commercial operations that is felled during the construction process. (RI RB at 140-141, citing RI Exs. 7.30 at 25; 8.2 at 75, 103; and 8.3 Rev. at 19)

Rock Island also responded to ILA's assertion that erosion is a concern when felling timber on landowner property. (ILA IB at 43) Rock Island states that it will work with its EPC contractor to ensure that any landowner concerns about erosion are properly addressed, and that the Illinois Environmental Protection Agency ("IEPA") will require Rock Island to develop a Storm Water Pollution Prevention Plan ("SWPPP"), which will include best practices to prevent soil erosion during Project construction. According to Rock Island, the SWPPP will not only include the best management practices that will be utilized to generally address soil erosion, it will also address site specific measures such as work near roads and work near waters and streams. The SWPPP will also prescribe pollution prevention management measures, including setbacks for streams and wetlands, notification and clean-up requirements in the event of a spill, and hazardous material storage requirements. Rock Island also states that KPC intends to utilize erosion control measures that IEPA has established as the best management practices for erosion control. (RI RB at 141, citing RI Exs. 8.3 Rev. at 21-22, 36-37; and 9.2 at 8)

Rock Island states that it will also compensate landowners for a reasonable time period for damage to property and reduced crop yields due to soil compaction caused by the construction of the Project. (RI RB at 141-142) In response to ILA's concern that Rock Island has not provided a specific length of time for which it intends to compensate landowners for reduced crop yields (ILA IB at 44), Rock Island submits that because each property is different and may be impacted in different ways, the damage determinations beyond the standard advance payment for crop damages need to be

made on a parcel by parcel basis. (RI RB at 142, citing RI Ex. 7.35 at 17-18 and Tr. 444-446)

Rock Island states that the best practices that will be employed by its EPC contractor for avoidance, minimization and remediation of soil compaction are described on pages 144-147 of RICL's initial brief and in §IV.C.2.b.vii of its reply brief.

Rock Island responded to ILA's assertion that Rock Island witness Mr. Detweiler lacked agricultural education or experience to provide testimony on compensation for damage due to soil compaction or to review studies cited by ILA witness Dr. Marshall concerning soil compaction (ILA IB at 44). Rock Island states that Mr. Detweiler read the studies cited by Dr. Marshall and pointed out certain statements in the studies that were inconsistent with Dr. Marshall's position. According to Rock Island, the studies stated that any long-term impacts from compaction would be rather small in crop yield percentage terms and would only occur on a small percentage of the easement area. (RI RB at 142-143, citing RI Ex. 7.30 at 7; Tr. 439) Rock Island submits that Mr. Detweiler simply pointed out that while Dr. Marshall asserted that the studies establish that additional passes of equipment over soil exacerbate compaction and reduce crop yields, the studies indicated that the large yield reductions he referred to were the result of compaction that was deliberately created for purposes of the studies, with no attempts to use methods to prevent, avoid, minimize or remediate the compaction. Additionally, the studies attempted to measure compaction and its effects caused by normal farming practices on entire agricultural fields, not to study construction impacts in limited, defined portions of a field using carefully designed and implemented avoidance, mitigation and remediation methods that Rock Island and KPC will use. Therefore, Rock Island states, the studies are not applicable to the current situation in which its contractor will access only limited areas of the property and will take specific precautions to avoid or minimize soil compaction. (*Id.*, citing RI Ex. 7.35 at 15; Tr. 440-441)

ILA and IAA Positions

ILA states that Rock Island has attempted to obtain easements from only a "very small number" of affected landowners. (ILA IB at 42, citing Tr. 421-422)

ILA asserts that 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 contends that the record shows Rock Island has provided no competent testimony from any witness that can speak as to the aerial application business. Yet, Rock Island does not plan on compensating any aerial applicators for loss of business. (*Id.* at 43, citing ILA Ex. 4.0, lines 113-123; Tr. 401-402, 414, 441)

According to ILA, those with timber operations on their property will also 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. In ILA member Simpson's

timber operation, trees sell for as much as \$1,000 each. 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. 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 90 percent the fair market value of the easement. In ILA' view, Rock Island's compensation package simply does not add up for those with timber operations. (*Id.* at 43-44, citing ILA Exs. 5.0 at lines 52-54; 6.0 at lines 28-30; Tr. 443, 519)

Finally, ILA asserts that 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, instead suggesting it will compensate for such damages for a "reasonable time period." (ILA IB at 44, citing RI Ex. 7.3 at line 542, and Tr., 446) ILA argues, "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." (*Id.* citing Tr. 439) According to ILA, 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..." (*Id.*, citing Tr. 440-441)

In its initial brief, the IAA "restates and realleges its allegations" in Section IV.B.2 of its initial brief. (IAA IB at 17) Those arguments are summarized above under "Proposed Easement Width."

2. Commission Conclusion

Rock Island's Petition in this case does not include a request for authority pursuant to Section 8-509 of the PUA (220 ILCS 5/8-509), which would allow RI to seek eminent domain before the courts.

According to Rock Island, it understands that to obtain relief pursuant to Section 8-509, it will need to demonstrate that it has engaged in reasonable, good faith negotiations with the landowners or has been precluded from doing so by the landowner.

ILA states concerns as to whether Rock Island's compensation package properly considers impacts on aerial applications, soil compaction, and erosion from the cutting of timber.

The Commission observes that in other dockets, when determining whether a utility has made a reasonable effort to negotiate for easements needed to construct an authorized transmission line, the Commission has relied upon several factors, some of

which relate to offers of compensation. These include, among others, the number, nature and extent of contacts with the landowners; whether the utility has adequately explained its offer of compensation; whether the offers of compensation are comparable to offers made to similarly situated landowners; whether the utility has made an effort to address landowner concerns; and whether further negotiations will likely prove fruitful. Order, Docket 13-0456 at 3; see also Order, Docket No. 06-0706 at 88, and Order, Docket 13-0446 at 33-34.

The Commission expects that, at a minimum, Rock Island will in engage in negotiation efforts that are respectful to the landowners, and will proceed in a manner that reasonably considers the factors identified above.

Except as otherwise noted in this Order, the Commission will not make any further determinations in this proceeding regarding monetary compensation issues.

Concerns regarding aerial applications and soil compaction -- other than those relating to compensation -- are addressed elsewhere in this order.

X. PROJECT DESIGN AND CONSTRUCTION

A. Structures

1. Positions of Parties

Rock Island's Position

Rock Island proposes "that the transmission line will be a bi-pole HVDC line," with a voltage rating and operating voltage of ± 600 kV. The voltage between the poles will be 1,200 kV. Each pole will carry one-half of the power, 1,750 MW per pole, with a peak operating current of approximately 2,917 amperes. In certain circumstances, such as a maintenance condition or a contingency, only one pole may be available for transmitting power, in which event the single pole may be able to transmit somewhat more than 1,750 MW. (RI IB at 141, citing RI Ex. 2.0 at 24-27)

Rock Island asserts that in North America, there are over 30 HVDC installations, dating as far back as 1968, including 11 HVDC lines with a combined capacity of approximately 14,000 MW; and that worldwide, HVDC applications are commonplace and are continuing to increase in applications similar to the Rock Island Project, with significant HVDC transmission applications in Australia, New Zealand, Brazil, China, India, Japan and Europe. (RI IB at 141, citing RI Ex. 2.0 at 22-24) The purported advantages of using HVDC technology in a long distance application such as the Project, and for transporting large amounts of variable generation, as described by Rock Island, are discussed elsewhere in this Order.

Rock Island entered into an Agricultural Impact Mitigation Agreement ("AIMA") with the Illinois Department of Agriculture ("IDOA"). With respect to structure types,

Paragraph 3 of the "Construction Standards and Policies" section of the Agreement states:

Tangent structures (straight-line, non-turning structures) will utilize only single, drilled-pier type concrete foundations or direct embed type foundations that are typical of single pole type structures. Clean Line will not use multi-foundation lattice type structures for tangent structures, though such structures may be used for turns, long spans such as river crossings, and similar situations where specific engineering and environmental challenges are present. The use of guy wires will be avoided to the extent feasible. If guy wires are required, they will be marked with highly visible guards.
(*Id.* at 141-142, citing RI Ex. 7.28 at 3-4)

The single-pole structures that Rock Island proposes to use will be steel monopoles or lattice mast structures. Rock Island Exhibit 2.9 Rev. provides drawings of these structures. These single-pole structures would have a typical span between structures of 1200 feet, and heights in the range of 100 to 175 feet depending on terrain topology. River crossings and certain other situations may require taller towers. Rock Island plans to use 2156 circular mil ("kcmil") ACSR conductors in a triple bundle configuration for the pole conductors. For the dedicated metallic return of the HVDC line, Rock Island plans to use two 1780 kcmil ACSR conductors, subject to final design refinement based on the final Commission-approved route. (RICL IB at 142, citing RI Exs. 2.0 at 27, 29; and 2.11 Rev. at 7)

Rock Island states that ILA acknowledges Rock Island will be using lattice mast structures with a single base and that this structure type is preferable to other structure types with larger footprints. (RICL IB at 144, citing ILA IB at 45) RICL's response to ILA's assertion that landowners will be required to "farm around" these obstacles and that some may lose the ability to aerially apply chemicals (RICL IB at 144-145, citing ILA IB at 45) is addressed elsewhere in RICL's brief and is summarized elsewhere in this order.

In response to ILA's assertion that "any obstacle lowers the value of entire parcels" (ILA IB at 45), RICL responds that the only support offered for this assertion is a single incident in which ILA witness Dr. Marshall subjectively concluded that a piece of farm property in a foreclosure sale sold for a lower price than was anticipated because of the presence of an easement on the property for a municipal sewer line and lift station. Rock Island submits that Dr. Marshall acknowledged there were "other contributing factors" in this situation. (RI RB at 145, citing Tr. 612-617) Rock Island reiterates that its separate payment to the landowner for each structure placed on the property provides specific compensation for any difficulty in "farming around" the structure bases. (*Id.*)

Rock Island states that ComEd objects to the possibility that Rock Island would seek to build a 765 kV line in the AC Section of the Project to connect the eastern

converter station to the Collins Substation. (RI RB at 145, citing ComEd IB at 36) Rock Island clarifies that it is not asking for approval for a 765 kV line for the AC Section that was described in Dr. Galli's surrebuttal testimony (RI Ex. 2.15), but rather is requesting approval to construct a single-circuit 345 kV line and a double-circuit 345 kV line, with a combined ROW of 270 feet, from the eastern converter station to the Collins Substation, as described in Rock Island's Petition and direct testimony. (RI RB at 145)

Staff Position

Under "Design and Construction of the Project," Staff first states that this proposed HVDC transmission line originates in O'Brien County, Iowa and terminates in Grundy County, Illinois. The total length of the transmission line is approximately 500 miles, 121 miles of which are in Illinois. The transmission line's nominal voltage will be ± 600 kilovolt ("kV") direct current ("DC"). This is the first DC transmission line proposed for Illinois. All other transmission lines in Illinois operate using alternating current ("AC").

High voltage direct current ("HVDC") technology has advantages over high voltage alternating current ("HVAC") technology when power flows are large and transmission distances are long. Some of these advantages are lower power losses, lower construction cost, and narrower horizontal clearance for the transmission line, which means the DC transmission line can operate safely and reliably inside a narrower Right of Way ("ROW"). (Staff IB at 66-67, citing RI Ex. 2.0 at 20-21)

RICL indicated that the proposed project would be rated at ± 600 kV DC, which could be as high as ± 640 kV to ± 660 kV DC, based on the final design of the proposed project. (RICL Petition at ¶ 6) Mr. Galli testified that RICL will utilize a bipolar design for the project. (Staff IB at 67, citing RICL Ex. 2.0 at 24) A bipolar design utilizes two poles for the transmission line. In this case, a pole means a conductor through which energy transmits. In AC transmission, conductors through which energy transmits are called "phases." In DC transmission, the conductors are called "poles". Used in this context, "pole" is best defined as either of the two terminals of an electric cell, battery, generator, or motor. Because of the polarity nature of DC voltage, the potential difference (the DC voltage) between the two poles will be 1,200 kV. Mr. Galli testified that the proposed project could operate in a monopolar mode in case one of the two poles is not available. (*Id.*, citing RI Ex. 2.0 at 25)

Section IV.C.1 of Staff's initial brief is titled, "Proposed Structures and other Components." (Staff IB at 68-69) According to the Petitioner, the HVDC portion of the proposed transmission line will originate from an AC-to-DC converter station at O'Brien County in Iowa and will terminate at a DC-to-AC converter station ("eastern converter station") located approximately four miles north of the Collins Substation in Grundy County. (Petition at 2-3) The converter stations are essential for HVDC transmission technology. (Staff IB at 68) The energy generated in wind farms is in AC form; to transmit this energy over a HVDC transmission line, the energy must be converted to DC form. In addition, since the energy used domestically is in AC form, the DC energy

transmitted through the HVDC transmission line must be converted back to AC form before delivery to customers.

RICL will also install a 345/765 kV step-up transformer facility to interconnect to the Collins Substation. (*Id.*, citing RI Petition at ¶6) RICL witness Wayne Galli stated that the proposed project would originate within O'Brien County, Iowa, where it would connect to a 345 kV AC transmission system, and would terminate in Grundy County, Illinois where it would connect to the existing 765 kV AC transmission system at the Collins Substation. (Staff IB at 68, citing RI Ex. 2.0 at 5) RICL will construct three parallel 345 kV AC transmission lines between the eastern converter station and a new substation adjacent to ComEd's existing Collins Substation -- a distance of approximately 3 to 4 miles -- where the voltage will be stepped-up to 765 kV using two or three 345/765 kV transformers for interconnection to the Collins 765 kV bus. The 345 kV AC transmission lines will consist of one single circuit and one double circuit running contiguously. (*Id.*)

Staff states that RICL provided information regarding the structures that RICL intended to use for the transmission line and the ROW that RICL would need for the transmission line. (Staff IB at 69, citing RI Ex. 2.0 at 27-32) Mr. Galli stated that "two primary structure types have been identified: lattice structures and tubular steel "monopole" structures." (*Id.*, citing RI Ex. 2.0 at 27) Mr. Galli added, "Rock Island has not made a determination as to the final structure type but would like to have flexibility in such a determination so that landowner concerns, project costs, terrain, land use, and other relevant factors can be considered when making a final selection. It is likely that a mix of structures could be utilized to help maximize flexibility and optimize costs." (*Id.*, citing RI Ex. 2.0 at 27-28)

On May 31, 2013, RICL filed an Agricultural Impact Mitigation Agreement ("Agreement" or "AIMA") that it negotiated with Illinois Department of Agriculture. One of the issues that the Agreement addressed in Paragraph 3 of the "Construction Standards and Policies" section was RICL's potential use of the lattice towers, which require a larger base than the monopole structure design. (RI Ex. 7.28) The provisions of that paragraph are set for above in the summary of RI's position.

ILA and IAA Positions

The ILA recognizes that many of the supporting superstructures proposed for this project are lattice box structures with a single base. According to ILA, 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, and some may lose the ability to hire aerial applicators for portions of the land. ILA further argues that any obstacle lowers the value of entire parcels. (ILA IB at 44-45, citing ILA Ex. 1.0REV at lines 190-197 and 291-298; ILA Ex. 4.0 at lines 90-107; Tr. 608)

IAA states, "Since Rock Island has apparently committed to use monopole structures in the Project, the Farm Bureau takes no position the proposed structures and other components." (IAA IB at 44)

ComEd Position

ComEd notes that the Petition does not request authority to construct, operate and maintain a 765 kV AC line, whether on single-circuit poles or any other structures. In his surrebuttal testimony, RI witness Dr. Galli mentions such a concept for the first time. (ComEd IB at 36, citing RI Ex. 2.15 at 42) According to ComEd, presentation in surrebuttal of a new type of line – operating at a different voltage, with a different capacity – is far too late. (*Id.*, citing *Northern Moraine Wastewater Dist.*, 392 Ill. App. 3d at 575-576)

Moreover, even this belated testimony includes no detail about the line or the structures on which it will be built, detail that the Commission has historically required. There is no cross-section diagram, analysis of right-of-way requirements or specification of right-of-way utilization, and no project-specific cost estimate of the 765 kV line, or the required transformation and substation equipment. ComEd asserts that the Commission has never authorized a 765 kV line – or any major project – based on such little information. (*Id.*)

2. Commission Conclusion

As proposed, the 500-mile transmission line Project would originate at a converter station in O'Brien County, Iowa, "traverse Iowa" for 379 miles, cross the Mississippi River near Princeton, Iowa, and then enter Illinois south of Cordova, Illinois.

From there, the proposed line would extend for approximately 121 miles in Illinois to the Collins Substation in Grundy County.

The energy generated in wind farms is in AC form. To transmit this energy over a HVDC or "DC" transmission line, the energy must be converted to DC form. The DC portion of the proposed transmission line will originate from an AC-to-DC converter station at O'Brien County in Iowa and will terminate at a DC-to-AC converter station to be located approximately four miles north of the Collins Substation in Grundy County. From the converter station, a four-mile AC segment, consisting of two parallel 345 kV AC lines, will connect to ComEd's existing 765 kV AC transmission system at or near the Collins substation.

The DC transmission line's nominal voltage will be ± 600 kilovolt direct current. The line is characterized as the first DC transmission line proposed for Illinois.

RI asserts that HVDC technology has advantages over high voltage alternating current technology when power flows are large and transmission distances are long, including lower power losses, lower construction cost, and narrower horizontal

clearance for the transmission line, which means the DC transmission line can operate safely and reliably inside a narrower Right of Way ("ROW").

Rock Island signed an Agricultural Impact Mitigation Agreement ("Agreement" or "AIMA") with the Illinois Department of Agriculture. One of the issues that the Agreement addressed was Rock Island's potential use of the lattice towers, which require a larger base than the monopole structure design. The Agreement provides:

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

The single-pole structures that Rock Island proposes to use will be steel monopoles or lattice mast structures which would have a typical span between structures of 1200 feet, and heights in the range of 100 to 175 feet depending on terrain topology.

As a condition of this Order, the Commission finds that Rock Island shall comply with above-referenced "tangent structure" provision, as well as the other terms and provisions, of the Agricultural Impact Mitigation Agreement.

In its initial brief, ComEd notes that the Petition does not request authority to construct a 765 kV AC line in the AC Section of the Project to connect the eastern converter station to the Collins Substation, but that Rock Island witness Dr. Galli belatedly raises such a concept for the first time in surrebuttal testimony. In its reply brief, Rock Island clarifies that it is not asking for approval for a 765 kV line for the AC Section that was described in Dr. Galli's surrebuttal, but rather is requesting approval to construct a single-circuit 345 kV line and a double-circuit 345 kV line, with a combined ROW of 270 feet, from the eastern converter station to the Collins Substation, as described in its Petition and direct testimony.

The Commission finds that the 765 kV AC line alternative referenced above is not before the Commission for consideration in this proceeding, and it is not approved in this order.

Subject to determinations made and conditions imposed above and elsewhere in this Order, the Commission finds that the use of the types of transmission lines and structures as proposed for the Project is appropriate.

B. Landowner Concerns about Impacts of Construction

1. RI Position

a. AIMA

According to Rock Island, it entered into an AIMA with the IDOA which the IDOA has determined meets the IDOA's requirements to minimize and mitigate impacts to landowners. (RI IB at 143, citing RI Exs. 7.28 and 7.30 at 4) The AIMA sets forth a series of requirements that the IDOA has determined appropriately protect landowners from potential impacts of the Project, including the following: (1) Rock Island will discuss pole placement with landowners so as to minimize interference with cropland (AIMA Section 3); (2) for tangent structures (straight-line, non-turning structures), Rock Island will use only single, drilled pier type concrete foundations or direct embed type foundations that are typical of single pole type structures (AIMA Section 3); (3) Rock Island will not use multi-foundation lattice type structures for tangent structures though such structures may be used for turns, long spans such as river crossings, and similar situations where specific engineering and environmental challenges are present (AIMA Section 3); (4) Rock Island will avoid the use of guy wires (AIMA Section 3); (5) temporary and permanent access roads on landowner property will be located by agreement with the landowner (AIMA Section 4); (6) transmission structures will be relocated, to the extent reasonably possible, to avoid interference with drain tile (AIMA Section 5); (7) Rock Island will repair, or will compensate landowners for, damaged drain tile; a landowner can also retain his own contractor to repair damaged drain tile and be reimbursed by Rock Island (AIMA Section 5); (8) Rock Island will decompact cropland to a depth of 18 inches and pasture land to a depth of 12 inches (AIMA Section 7); and (9) Rock Island will repair any damage to soil conservation practices and will work with landowners to prevent excessive erosion (AIMA Sections 9 and 10). (*Id.* at 143-144, citing RI Ex. 7.28)

Rock Island explains that the AIMA also provides that its terms will be incorporated into Rock Island's easement agreements with landowners (AIMA Section 18). Rock Island represents, however, that if a landowner requests that the methods specified in the AIMA not be used or that different measures be employed, Rock Island will attempt to negotiate a satisfactory alternate approach with the landowner. (*Id.* at 144, citing RI Exs. 7.28 at 1, 7; 7.35 at 3, 5; 9.4 Rev. at 12, 14)

Rock Island also states that, as set forth in the AIMA, it has agreed to employ an independent agricultural inspector ("IAI") to verify compliance with the provisions of the AIMA by Rock Island and to vest the IAI with authority to stop contractors' construction activities that the IAI determines are out of compliance with the AIMA (AIMA Section 13). The IAI will also have authority to stop contractors' activities that are not in compliance with the landowner's easement agreement. (*Id.*, citing RI Exs. 7.28 at 6; 7.30 at 6; 7.35 at 10)

b. Impacts of Construction

Soil Compaction

Rock Island recognizes that a certain level of soil compaction can be expected to occur in the construction of the Project on agricultural property, but states that it and its contractors will take steps to avoid or minimize soil compaction; Rock Island will use chiseling and other approved means to remediate any soil compaction that occurs; further, Rock Island will compensate landowners for damages they incur associated with any soil compaction caused by the construction or maintenance of the Project, including compensation for reduced crop yields. (RI IB at 144-145, citing RI Ex. 7.30 at 5-8)

Rock Island states that Rock Island and its EPC contractor will employ several construction methods that are designed to avoid or limit soil compaction. First, the EPC contractor will minimize soil compaction by limiting the area actually traversed by construction vehicles and equipment. Specifically, to the extent practicable, access to the specific construction areas will be obtained either (i) from an existing public road or other existing access road directly to the structure location, or (ii) by traveling from a public road or other existing access road within the easement right-of-way. Rock Island states that the primary construction activities on landowner property will occur at or near the locations of the transmission structures, which are expected to be placed at least 1,200 feet apart. Further, although the proposed easement widths will be 200 feet, Rock Island and its contractors expect to use only about 50 feet of the easement width during construction. Rock Island asserts that the avoidance measures will minimize the overall soil compaction that will occur during construction. (*Id.*, citing RI Exs. 7.35 at 5, 11; 9.2 at 2-3)

Second, Rock Island submits that, to the extent possible, the EPC contractor will use tracked equipment on agricultural property in the construction of the Project, which will cause less soil compaction than tire mounted equipment because the weight of the equipment is distributed over a much larger area and thus there is significantly less pressure transmitted to the ground. Third, the EPC contractor will construct access roads and construction pads using crushed stone and geotextile, which will also serve to spread the weight of equipment over a larger area as well as allowing for appropriate drainage. Rock Island states that KPC will also shape access roads and construction areas by constructing access roads and construction pads with a crown to allow water to drain. Further, KPC will typically not perform construction activities during inclement weather, particularly in heavy rains, or under extremely wet soil conditions. (RI IB at 145-146, citing RI Ex. 9.2 at 2-3; 9.4 Rev. at 12)

Rock Island represents that if a landowner objects to any of the compaction avoidance measures Rock Island and KPC plan to use, Rock Island and KPC will not use them and will negotiate alternative methods or measures with the landowner to prevent soil compaction. Rock Island further states that the AIMA requires Rock Island

to discuss the mitigation measures it intends to employ with the landowner before implementing them. (*Id.* at 146, citing RI Exs. 7.28 at 1 and 7.35 at 5-6)

With respect to remediating soil compaction, Rock Island asserts that it has committed to decompact cropland where necessary to a depth of 18 inches, and pasture to a depth of 12 inches, as specified in the AIMA, and if landowners wish, Rock Island will apply fertilizer to disturbed soils, which, RICL states, is consistent with remediation recommendations in a University of Wisconsin study that ILA witness Dr. Marshall cited. Rock Island also submits that landowners can choose to self-perform decompaction activities on their land or retain a contractor of their choice to do this work, the reasonable cost of which will be paid by Rock Island; or can elect to not have any chiseling performed on their property. Rock Island further represents that if the landowner believes some depth other than 18 inches is appropriate, Rock Island will work with the landowner to effectuate the landowner's recommendation. Rock Island also acknowledges that there may be circumstances where chiseling beyond 18 inches may be needed. (RI IB at 146, citing RI Exs. 7.28 at 5; 7.30 at 5; 7.35 at 3, 6)

Rock Island states that in the event that if soil compaction still occurs, despite the measures described above, any impacts in terms of reduced crop yields will be limited to the relatively small portion of the easement property where construction activities occurred, and not the entire easement area. Rock Island expects the areas in which construction activities -- structure assembly and installation and cable pulling -- will occur or that will be traversed by construction vehicles, including access roads, will comprise only about 20% of the easement area, thereby leaving the majority of the easement area untouched and undamaged. Further, Rock Island contends that its compensation package will pay the landowner an amount in excess of the full fee value of the easement area (assuming at least one structure on the landowner's property), yet the landowner is allowed to continue to farm within the easement. (Rock Island IB at 146-147, citing RI Exs. 7.0 Rev. at 39; 7.35 at 13, 17; 10.14 Rev. at 62-64)

Rock Island also represents that it will compensate landowners for soil compaction damages to the extent such losses are caused by construction or maintenance activities for the Project; that there is no maximum period of time for which Rock Island will compensate landowners for soil compaction damages; and that it will compensate landowners for long-term impact, should it occur. (RI IB at 147, citing RI Ex. 7.30 at 5, 21)

In response to ILA's assertion that KPC, the EPC contractor, may not "sufficiently appreciate or mitigate soil compaction" because, among other things, the "low-impact tracked equipment" that Mr. Adam described KPC will use will "exert at least 17 pounds per square inch of ground pressure" (ILA IB at 49), Rock Island states that while even relatively "light" equipment may cause soil compaction, KPC will employ specific construction methods and procedures, as are described above, to avoid and limit soil compaction. (RI RB at 153, citing RI Ex. 9.2 at 3 and RI IB at 145) Rock Island also asserts that commonly used farm equipment is of similar or greater weight than many of the items of equipment that KPC will use to construct the Project, and in fact can cause

greater damage because the farm equipment is driven over bare land, as opposed to over prepared access roads. (*Id.*, citing RI Ex. 9.4 Rev. at 10-11) Rock Island states that Dr. Marshall testified that the increasing size of farm equipment, as it relates to soil compaction, is "becoming a significant issue." (*Id.*, citing Tr. 611, 623-24; 628)

In response to the ILA's assertion that Rock Island witness Mr. Detweiler did not have sufficient qualifications to review and "provide conclusions" from certain studies and articles concerning soil compaction that were cited by ILA witness Dr. Marshall (ILA IB at 46), Rock Island argues that Mr. Detweiler did no more than review the studies and other articles that were cited by Dr. Marshall and, based on the "plain language" of the studies, pointed out portions that undercut Dr. Marshall's testimony. (Rock Island RB at 154) RI asserts that Mr. Detweiler identified numerous inconsistencies between Dr. Marshall's testimony and the studies and articles Dr. Marshall cited. RICL described four such "inconsistencies" in its reply brief. (RICL RB at 154-155, citing RICL Ex. 7.35 at 4, 14-16)

Drainage Tiles

Rock Island states that prior to construction, KPC will complete a due diligence process to identify the locations of drainage tiles so as to avoid damaging them during construction and maintenance activities. The due diligence process will include locating mapped and unmapped existing drainage tiles by (i) visiting local soil and water conservation districts and consulting other available documents that describe the location of drainage tiles, (ii) consulting with any contractors that installed drainage tiles, and (iii) meeting with landowners and walking their fields. Rock Island further explains that once drainage tiles are located, KPC may use a "street plate" (a carbon steel plate that typically is 1 inch thick) or other matting to spread the loads of the construction equipment, thereby reducing the pressure being exerted on the tiles, and consequently reducing the possible damage to the tiles. (RI IB at 147-148, citing RI Exs. 7.30 at 8 and 9.2 at 4-5)

In the event drainage tiles are damaged by construction or maintenance of the Project, Rock Island represents that it will repair or replace -- with equal or better quality -- damaged drainage tiles, or will compensate landowners to make such repairs. (RI IB at 148, citing RI Ex. 7.30 at 9; see also RI RB at 155) Rock Island also represents that it will repair, replace or compensate landowners for damaged drainage tiles associated with the construction and maintenance of the Project for a reasonable period of time after construction is completed. Rock Island states that these commitments are specified in the AIMA. (*Id.*, citing RI Exs. 9.2 at 10 and 7.28 at 4-5; see also RI RB at 155) Rock Island witness Mr. Adam testified that evidence of damaged drain tile is typically observed the following crop season, or if a crop season experiences drought or near-drought conditions, the damaged drain tile should become evident in the subsequent crop season. (*Id.*, citing RI Ex. 9.2 at 5) Rock Island also states that, after construction is complete, it will have personnel available to landowners to address any remaining drainage tile issues. (*Id.*, citing RI Ex. 7.30 at 9)

In response to the ILA's assertion that Rock Island has "refused to agree unconditionally to move transmission line structures when they are known prior to construction to interfere with drainage tile" (ILA IB at 49-50), Rock Island states that the AIMA specifies that Rock Island must avoid such interferences "to the extent reasonably possible," rather than being unconditionally required to move structures in all instances where the structure intercepts a drain tile. Rock Island also states that relocating a transmission structure in each instance where there is an interference, rather than simply relocating the drain tile, may result in additional or other impacts to the landowner. (RI RB at 155, citing RI Exs. 7.28 at 4 and 7.35 at 7) Therefore, Rock Island suggests, these situations should be evaluated on a case-by-case basis. Finally, Rock Island cited testimony by Mr. Adam that "structures are moved all the time for a lot of different reasons and if a structure has to be moved 10 feet to avoid a drain tile it is typically not a big issue." (*Id.*, citing Tr. 881)

Aerial Application Activities

ILA witnesses expressed concern that the Project would inhibit aerial applications of fertilizer, insecticides and pesticides to agricultural property. Rock Island responds that it has considered impacts to aerial applicators and that the Project will not materially restrict aerial application activities. (RI IB at 148-149) First, Rock Island explains that its Routing Criteria included Sensitivities of Private Airports/Airstrips and Aerial Fertilizer and Herbicide Application Ability so as to minimize impacts to aerial application. Further, in developing the Preferred Routes and Proposed Alternate Routes, Rock Island "considered" following field lines, property lines, and Public Lands Survey System ("PLSS") lines as Opportunities to avoid impacting aerial application (and other agricultural activities). Rock Island states that placing transmission lines along field lines, property lines, and PLSS lines reduces impacts to aerial applicators because it allows for a smaller number of straight-line application runs than would transmission lines placed in diagonal alignments. (RI IB at 148-149, citing Rock Island Exs. 7.30 at 11 and Ex. 8.2 at Table 1)

Rock Island also contends that ILA witnesses' assertions ignore that aerial applicators regularly work in the vicinity of existing transmission lines in Illinois, and that, with the potential exception of the internal corner of 90 degree turns, there should not be any reduction in the ability of aerial applicators to treat crops outside the easement area of the Project. Rock Island states that while an aerial applicator needs to maintain a reasonable distance from transmission structures and appurtenances, the width of the easement should provide more than enough clearance to maintain the required distance. (*Id.* at 149, citing RI Ex. 7.30 at 11-12) Rock Island states that the easement width in the DC Section of the route will be 200 feet, or 100 feet on each side of the structure, so maintaining a 25 foot separation from cross-arms will enable an aerial applicator to cover part of the easement area. (*Id.*, citing RI Exs. 7.30 at 12 and 2.0 at 29) Rock Island asserts that ILA witness Mr. Nelson's contention that aerial applicators will require 50-100 feet of clearance, and not 25 feet as suggested by Rock Island, because guy wires and "different transmission structures" may be used, ignores that Rock Island has no intention to use guy wires in Illinois, and that Section 3 of the AIMA

states that the "use of guy wires will be avoided to the extent feasible." Rock Island submits that Mr. Nelson has not identified any other specific features that would require greater clearance than 25 feet or why "different transmission structures" would require greater clearance. (RI IB at 149-150, citing RI Exs. 7.28 at 4 and 7.35 at 20-21)

In response to Mr. Nelson's statement that RICL failed to recognize the cumulative impact of existing transmission lines and new transmission lines on aerial applicators (ILA Ex. 4.1 at 4), Rock Island states that the instances in which the Project will cross or parallel existing transmission lines will be very limited, as the Preferred Route crosses other existing transmission lines only 8 times in Illinois and parallels existing transmission lines only three times for a total of 8.4 miles, of which only 7.5 miles is through agricultural land. (RI IB at 150, citing RI Exs. 7.35 at 23 and 8.10 at 2-3)

Rock Island contends that Mr. Nelson's assertion that Rock Island failed to account for the cumulative effect of existing wind farms on the Project (ILA Ex. 4.1 at 4) ignored that across its 120-mile length in Illinois, the Preferred Route passes within one-half mile of only a single existing wind farm and through one area in which a new wind farm is proposed; that the distance between the Preferred Route and the existing wind farm is well over a half mile, which is too great a distance to result in any cumulative impacts to aerial application; and that Rock Island is working with the developer of the wind farm to coordinate development and placement of structures. (RI IB at 150-151, citing RI Exs. 7.35 at 23-24 and 8.10 at 3)

In response to Mr. Nelson's assertion that Rock Island did not account for the cumulative impact to population centers (ILA Ex. 4.1 at 4), RICL contends that aerial application of chemicals in the vicinity of population centers should already be very limited, if done at all, and also that there are only three instances where the Preferred Route runs through or within one-half mile of a population center. (*Id.* at 151, citing Rock Island Exs. 7.35 at 24 and Ex. 8.10 at 3)

In response to Mr. Nelson's assertion that the Morris Municipal Airport will be impacted because the transmission line will have a negative impact on precision approaches, so fewer aircraft will use the airport in adverse weather (ILA Ex. 4.0 at 7-8), Rock Island submits its review of Federal Aviation Administration requirements indicates that the Project can be constructed along the Preferred Route in the area of Morris Municipal Airport in accordance with those requirements. (*Id.* at 150, citing Rock Island Ex. 8.3 Rev. at 31)

Limitations on Land Use

Rock Island responded to the concerns of ILA witnesses that the Project will limit land use because structures will obstruct large farm equipment, the Project will take valuable land out of agricultural production, and the Project will prevent certain future land uses. Rock Island contends that it sought to minimize impacts on the use of large farm equipment near Project structures by including a preference for routing along field

lines, property lines, and PLSS lines in its Routing Criteria, as routing in this manner can reduce the amount of navigation around support structures; and that the typical transmission line spans will be 1,200 feet with single-foundation structures, which means that typically there will be four to six single foundation structures placed per mile. (RI IB at 151, citing RI Exs. 7.30 at 15, 17; and 8.3 Rev. at 7)

Rock Island also states that it will provide landowners the GPS coordinates of transmission structures so that landowners with self-navigating farm equipment will be able to utilize such equipment to navigate around structures. (*Id.* at 151-152, citing Rock Island Ex. 7.30 at 16) Rock Island witness Dr. Galli testified that based on the nature of the HVDC line, results of prior studies, and the fact that the GPS system is based on numerous satellites, it is extremely unlikely that the HVDC line would interfere with GPS signals or systems. (*Id.* at 152, citing RI Ex. 2.11 Rev. at 46-48)

With respect to the concern that valuable farmland will be taken out of production, Rock Island maintains that the Project's transmission structures will occupy less than two acres of land in total in Illinois, not all of which will be farmland that is currently in agricultural production. (*Id.*, citing RI Exs. 7.30 at 17 and 8.3 Rev. at 5) With respect to potential limitations on the future use of land, Rock Island asserts that it considered known future developments in the Project Area in its development of the Preferred Route, and beyond that, concerns about possible but unknown future land uses are inherently speculative and should not be a routing criterion for siting the line. (*Id.*, citing RI Exs. 8.3 Rev. at 7 and 7.30 at 18)

Impacts on Wetlands, Forests, Historical Sites and Conservation Areas

Rock Island responded to the concerns of Landowner witnesses that the Project could damage existing wetlands, forests, historical sites and other conservation areas. Rock Island states that the record establishes that these concerns are overstated or unfounded. (RI IB at 152, citing ILA exhibits) Rock Island asserts that these features were identified as Sensitivities in the route development process in order to determine a route that minimizes adverse impacts to these features. (*Id.*, citing RI Ex. 8.3 Rev. at 2) With respect to any of these types of features that the Preferred Route may cross, such as wetlands, Rock Island states it will avoid adverse impacts to such land to the extent possible and will employ measures to minimize impacts where those impacts are unavoidable.

Rock Island also represents that it will comply with all applicable state and federal regulations governing construction, maintenance and other Project activities on such lands. (*Id.*, citing RI Ex. 8.3 Rev. at 3) Rock Island further maintains that the Preferred Routes do not cross any historical sites and that Rock Island plans to span the seven archaeological sites the Preferred Route crosses. (*Id.*, citing RI Exs. 8.2 at 63, 84, 85, 98, 109, 110; and 8.3 Rev. at 3) Regarding forested lands, Rock Island states that of the 120 miles of the Preferred Route in Illinois, only about five miles is forested. (RI IB at 153, citing RI Ex. 8.2 at 75, 103)

Rock Island states that Staff summarized the parties' positions regarding the concern that the Project may impact wildlife, wetlands, forests, historical sites, and other conservation areas, including Mr. Koch's rebuttal testimony (RI Ex. 8.3 Rev. at 2-4, 16) on these issues, and that Staff points out that no witnesses responded to the portions of Mr. Koch's rebuttal testimony regarding how Rock Island had taken into account potential impacts to wildlife, wetlands, forests, historical sites, and other conservation areas. (RI RB at 158-159, citing Staff IB at 38-40). Rock Island also states that Staff concludes that Rock Island's route development process identified potential wetland areas and that Rock Island sought to avoid impacting them. (*Id.*, citing Staff IB at 47)

Visual Impacts

Rock Island responded to concerns of landowner witnesses that the Project would impair their views of scenic landscapes. Rock Island states that the Preferred Route for the DC Section in Illinois, which is approximately 117 miles, has no homes within 0-200 feet, 11 homes within 201-500 feet, and 66 homes within 501-1,000 feet. (RI IB at 153, citing RI Ex. 8.2 at 66) Further, the Preferred Route does not come within two miles of any designated scenic overlooks or historic landscapes. (*Id.*, citing RI Ex. 8.3 Rev. at 6) Rock Island also explains that it sought to maximize the use of visually-related Opportunities, including paralleling existing linear infrastructure such as roads, railroads and other transmission lines. Further, Rock Island states that in accordance with the AIMA, it will use single foundation, single mast structures for straight-line segments of the Project with the structures typically placed approximately 1,200 feet apart, and therefore, only four to six structures will be placed per mile of the route. (*Id.*, citing RI Exs. 8.3 Rev. at 6-7; 8.10 at 2; 7.30 at 15, 17)

c. Individual Landowners' Property-Specific Concerns

A total of eight intervenor witnesses who are landowners or managers for landowners expressed concerns about the specific impacts of having the transmission line on their parcels, and a ninth intervenor witness expressed concerns due to purported impacts on his aerial chemical spraying business. (*Id.* at 153-154, citing Rock Island Ex. 7.30 at 18-19) Rock Island states that many of these property-specific concerns mirror the general concerns raised by the ILA, which are addressed in §IV.C.2.a through f of Rock Island's Initial Brief and are summarized above. Rock Island represents that it is fully committed to working with all landowners to understand their parcel-specific concerns and to develop plans to address them. The property-specific concerns expressed by landowner witnesses are discussed below.

Larry and Steve Gerdes' Property-Specific Concerns

In response to Mr. Larry Gerdes' concern that the Project will have a downward impact on his property values and will interfere with aerial spraying activities on his properties, Rock Island stated that the Preferred Route does not cross any of the three properties identified as owned by Mr. Larry Gerdes and in fact will be 1.5 miles to four miles from these properties. (RI IB at 154, citing RI Exs. 7.30 at 31 and 8.3 Rev. at 28)

In response to Mr. Steve Gerdes' assertion that the Project will hinder aerial spraying, irrigation, and farming activities on his properties, Rock Island stated that Mr. Steve Gerdes does not appear to own any property that is crossed by or adjacent to the Preferred Route. (*Id.*, citing RI Exs. 7.30 at 33; and 8.3 Rev. at 29)

Mr. James Bedeker's Property-Specific Concerns

In response to Mr. Bedeker concern that the Project will adversely affect his use of his mechanical irrigation system, Rock Island states that while the Preferred Route does cross the area irrigated by one of Mr. Bedeker's center pivots, Rock Island can avoid placing a structure in that area, and by spanning the center pivot irrigator can thereby avoid any permanent impacts to the irrigator. (RI IB at 154-155)

As a condition of this Order, the Commission finds that RI shall avoid placing a structure in that area, and shall span the center pivot irrigator in a manner that avoids any permanent impacts to the irrigator.

Rock Island further states that if the Project were to create some limitation on Mr. Bedeker's use of the existing irrigation system, it would compensate him for any additional equipment that may be required. (RI IB at 154-155, citing RI Exs. 8.3 Rev. at 29 and 7.30 at 36)

RICL states that Mr. Bedeker also expressed concern that his property regularly floods and he is concerned that construction activities would create additional adverse impacts on his property. Rock Island responds that it should not be expected to solve Mr. Bedeker's pre-existing flooding problems; however, it will employ appropriate construction methods to limit and mitigate soil compaction under wet ground conditions and will compensate for crop damages that result from construction or maintenance of the Project. (RI IB at 155, citing RI Ex. 7.30 at 36)

As a condition of this Order, the Commission finds that RI shall employ appropriate construction methods to limit and mitigate soil compaction under wet-ground conditions.

In response to Mr. Bedeker's assertion that his enjoyment of his home will be impacted by the visual impacts of the Project being installed close to his home, Rock Island states that Mr. Bedeker's home is already located in close proximity to an overhead 765 kV transmission line owned by ComEd, which is in clear view from his home and which was in place before he built the home. (*Id.*, citing RI Exs. 8.3 Rev. at 30 and 8.6-8.7)

Mr. Bedeker also raised concerns regarding protected wetlands on his property. Rock Island responded that it is likely the wetlands on Mr. Bedeker's property can be spanned; further, if the Project were to impact the wetlands, Rock Island will obtain the

necessary permits from the U.S. Army Corps of Engineers ("USACE") prior to construction. (*Id.*, citing RI Ex. 8.3 Rev. at 31)

As a condition of this Order, the Commission finds that RI shall span any wetlands on Mr. Bedeker's property to the extent feasible, and if the Project were to impact the wetlands, Rock Island shall obtain the necessary permits from USACE prior to construction.

Lastly, Mr. Bedeker expressed a concern that the Project will render his property "valueless." Rock Island responded that Mr. Bedeker has not obtained any appraisals, valuation reports or other similar documents, or communicated with any appraisers or other similar professionals regarding the purported financial impact of the Project on his Property, and therefore his assertion is entirely unsupported and without basis. (*Id.*, citing Rock Island Cross Ex. Bedeker 1) RI also states that Mr. Bedeker's property is already located in close proximity to a 765 kV line and is presumably not "valueless" today. (*Id.* at 155-156, citing RI Exs. 7.30 at 36-37; 8.3 Rev. at 30)

Dr. Paul Marshall's Concerns

Dr. Paul Marshall stated a concern that the Project will cause extensive soil compaction and damage to his clay tile system during construction and maintenance of the Project. (ILA Ex. 1.0 at 12-13) Rock Island states that, as explained in §IV.C.2.a and b of its Initial Brief, Rock Island and KPC have plans to avoid, mitigate and remediate any soil compaction and damage to drain tiles that occurs during construction or maintenance of the Project. Also, Rock Island will compensate Dr. Marshall for crop damages and damages to drainage tile caused by construction or maintenance of the Project. (RI IB at 156, citing RI Ex. 7.30 at 20-21)

Dr. Marshall also identified a concern that the easement will lower his property values and restrict his ability, in the future, to allow his land to be used for mining purposes. (ILA Ex. 1.0 at 15) Regarding these concerns, Rock Island states that the easement and structure payment that Rock Island will pay Dr. Marshall compensates for future land-use restrictions on his property, as Rock Island is paying in excess of 90% of the fee value of the easement area. Rock Island further states that, based upon review of the location of Dr. Marshall's property relative to existing mining operations in the area, mining seems to be an unlikely future use of Dr. Marshall's property unless there were considerable geographic expansion of the mining activities currently in the area. (RI IB at 156, citing RI Ex. 7.30 at 22)

Lastly, Dr. Marshall stated a concern that the transmission line will affect his ability to alternate soybean and corn plantings because, due to the Project's purported impacts to aerial spraying, he would not be able to choose which specific crops to plant near the power line. (ILA Ex. 1.0 at 14-15) Rock Island responds that, as discussed in §IV.C.2.c of its Initial Brief, any impacts to aerial spraying will be limited to a portion of the easement area and therefore would not justify a decision to never plant corn on the entirety of Dr. Marshall's parcel. (RI IB at 156-157, citing RI Ex. 7.30 at 22-23)

Mr. Bill Cole's and Mr. Ed Simpson's Concerns

Mr. Bill Cole is a manager for Mr. Ed Simpson's timber land, and both of their testimonies addressed Mr. Simpson's property, which is located near the Mississippi River in the area where the Project will cross the river. They both stated that the Project will necessitate the removal of trees and therefore (i) Mr. Cole will lose out on some measure of paying work, and (ii) erosion will result beyond the easement area. (ILA Ex. 6.0 at 3; ILA Ex. 5.0 at 4) Rock Island states that it cannot determine what acreage of trees may be removed from Mr. Simpson's property at this time because, among other reasons, Mr. Simpson has denied Rock Island survey access to his property. (RI IB at 157, citing RI Exs. 7.30 at 25; 8.3 Rev. at 20-21) Rock Island stated that, at the appropriate time and when access to the property is allowed, Rock Island will evaluate the extent to which tree clearing can be avoided or minimized, and will compensate Mr. Simpson for commercially marketable timber that is felled in the construction process. (*Id.* and RI RB at 149-150, citing RI Exs. 7.30 at 25 and 8.3 Rev. at 20)

As a condition of this Order, the Commission finds that RI shall avoid or minimize the above-referenced tree clearing to the extent practicable.

Mr. Cole expressed a concern that the vegetation clearing needed for the Project will require spraying "harsh chemicals" to control regrowth of weeds and brush, and these chemicals could leach through the sandy soils and end up in the area's water supply. (ILA Ex. 6.0 at 3) Rock Island responds that if it must spray to control vegetation regrowth, it will only use products that are specified for use in this application. (RI IB at 157, citing RI Ex. 8.3 Rev. at 21)

Mr. Simpson stated a concern that extreme erosion will occur at the Mississippi River crossing and that there are areas to the north and south of the proposed crossing that have less vulnerable and less steep property. (ILA Ex. 5.0 at 3) Rock Island responded that it will be required to develop a Storm Water Pollution Prevention Plan which will include specifying the best practices to prevent soil erosion during construction of the Project. (*Id.* at 157-158, citing RI Ex. 8.3 Rev. at 21-22) Rock Island asserts that KPC will use erosion control measures such as silt fences, erosion control blankets and construction matting, and will follow the Illinois Environmental Protection Agency's best management practices for erosion control as applicable to each location. Rock Island states that KPC may also be required to obtain National Pollutant Discharge Elimination System Permits for work in certain locations, which will prescribe specific conditions and mitigation to be followed. (*Id.* at 158, citing RI Ex. 9.2 at 7-8)

As a condition of this Order, the Commission finds that RI shall use erosion control measures such as silt fences, erosion control blankets and construction matting, and shall follow the best management practices for erosion control as applicable to each location as promulgated by the IEPA.

With respect to the location of the Mississippi River crossing, Rock Island maintains that it selected the crossing point after performing a detailed analysis, including consideration of the alternate locations suggested by Mr. Simpson. Rock Island determined that the planned crossing was the best choice because, among other reasons, it is located at an existing overhead transmission line crossing, which minimizes overall land use impacts, visual impacts and environmental impacts. Rock Island states that the USFWS expressed a preference for the proposed Mississippi River crossing because it would be located adjacent to an existing overhead transmission line crossing, which would make the two transmission lines more visible to eagles, thereby making it less likely that eagles would collide with transmission line conductors or shield wires. (*Id.*, citing RI Ex. 8.3 Rev. at 23, 25-26)

Mr. Cole also asserted that Mr. Simpson's property is highly sought after for housing, farming and recreation, and that Mr. Simpson's land is the most pristine woods privately held in the area. (ILA Ex. 6.0 at 2, 4) Rock Island states that, other than submitting preliminary or conceptual drawings Mr. Simpson prepared in 2005 and 2010 that depict two different potential subdivision concepts, Mr. Cole and Mr. Simpson did not provide any documentation to establish that the property is highly sought after for housing development or any other purpose. Rock Island further asserts that the suggestion that this land is "pristine" conflicts with the logging activities that are conducted on the property. (RI IB at 158, citing RI Ex. 8.3 Rev. at 19-20)

Mr. Cole and Mr. Simpson also stated that there are shallow wetlands on Mr. Simpson's property, that it is historically significant land, and that there are bald eagles in the area of his land. Rock Island responds that while USFWS National Wetland Inventory data do not show shallow wetlands on the property near the Preferred Route, it is possible that some wetlands nevertheless exist. Rock Island states that Mr. Simpson has denied Rock Island survey access to his property, and that prior to commencing construction, when it has survey access authority -- which the issuance of a CPCN will provide, pursuant to PUA §8-510 -- Rock Island will conduct an assessment of potential wetlands located along the approved route and obtain any required permits, and will also survey for evidence of eagle nests in the area. Rock Island also states that it will conduct any required archeological, historical, and environmental surveys and obtain any required permits or approvals. (*Id.* at 159, citing RI Ex. 8.3 Rev. at 23-25)

As a condition of this Order, the Commission finds that RI shall conduct the assessment and take the other actions described immediately above.

Mr. Curtis Jacobs' Property-Specific Concerns

Mr. Jacobs stated a concern that because the Preferred Route runs north/south and bisects one of his farms, he would no longer be able to use aerial applications to treat that farm, and that the inability to aeriaily spray will impact his ability to grow non-genetically modified ("non-GMO") crops, which are not as resilient as other crops. (ILA Ex. 2.0 at 2-4) Rock Island responds that it is prepared to work with Mr. Jacobs to

negotiate specific placement of the line and structures on his property so as to minimize impacts to aerial spraying activities for his operations, and that any crop damage compensation paid to Mr. Jacobs for his non-GMO crops will take into account the higher net return that his non-GMO crops yield. (RI IB at 159 RI Ex. 7.30 at 26)

As a condition of this order, the Commission finds that RI shall work with Mr. Jacobs to negotiate specific placement of the line and structures on his property so as to minimize impacts to aerial spraying activities for his operations

Mr. Jacobs also stated that the Project may cause him to forfeit payments he receives through conservation programs in which he participates. (ILA Ex. 2.0 at 5-6) Rock Island does not expect that the Project will cause Mr. Jacobs to forfeit conservation payments because, among other things, it may be possible for Rock Island to make minor adjustments to the Preferred Route so as to avoid impacts to any Conservation Reserve Program ("CRP") filter strips on Mr. Jacobs' property. Rock Island also states that Mr. Jacobs has asked Rock Island not to communicate with him and has denied Rock Island physical access to his land; accordingly, Rock Island is limited in determining the impacts the Project may potentially have on his CRP land. However, Rock Island will compensate Mr. Jacobs for any such forfeited payments as allowed by law. (*Id.* at 159-160 and RB at 149, citing RI Exs. 7.30 at 19, 27 and 8.3 Rev. at 8-9)

Mr. Jacobs also stated a concern that the Project will impede access to his property because there is only one access point and alternate access points may cause damage to drainage structures. (ILA Ex. 2.0 at 6) Rock Island responds that since Mr. Jacobs has asked Rock Island to not communicate with him, Rock Island is precluded from discussing potential solutions to this concern. Rock Island states that if it is determined that placement of Project structures will impede access to the property, it will discuss alternatives with Mr. Jacobs to mitigate any potential impacts. (RI IB at 160, citing RI Ex. 8.3 Rev. at 9)

As a condition of this order, the Commission finds that if it is determined the placement of Project structures will impede access to Mr. Jacob's property, RI shall offer and discuss alternatives with Mr. Jacobs to remove or mitigate such impacts.

Mr. Jacobs also stated that the Project may cause damage to the Penny Slough Drainage District levee by removing trees that protect the levee against flood waters and ice flows, and because the Project structures near the base of the levee would be susceptible to severe erosion and toppling. (ILA Ex. 2.0 at 7-8) Rock Island disagrees that the transmission structures at the base of the levee are susceptible to severe erosion or toppling because, among other things, the foundations will be designed to account for the specific soil characteristics at this location to ensure stability. Further, if the Penny Slough Levee District and the USACE determine that removal of trees is a threat to the protection of the levied area, Rock Island will determine ways to mitigate such impacts, which may include use of other types of barriers to prevent erosion. (RI IB at 160, citing RI Ex. 8.3 Rev. at 12-13)

As a condition of this order, the Commission finds that if the Levee District and the USACE determine that removal of trees is a threat to the protection of the levied area, Rock Island shall determine ways to eliminate or mitigate such impacts, which may include use of other types of barriers to prevent erosion.

Mr. Jacobs also stated a concern that the Project may impact wildlife in the area, including bald eagles, otters and Indiana bats, and that the area near his property is historically significant because camp sites from the Black Hawk Indian wars are in the area. (ILA Ex. 2.0 at 9-10) Rock Island states that the USFWS National Bald Eagle Management Guidelines recommend that any disturbances maintain a buffer of at least 660 feet, and the eagle nest sighting area on Mr. Jacobs' property is more than 2,640 feet from the Preferred Route. (RI IB at 160-161, citing RI Ex. 8.3 Rev. at 14)

Rock Island states that the only known occurrences of the Indiana bat in the Project area are in LaSalle County and there are no records of the Indiana bat within one mile of the Preferred Route. (*Id.* at 161, citing RI Ex. 8.3 Rev. at 14-15) Rock Island states that the river otter is not a protected species in Illinois, and that Rock Island's routing team did not observe any river otters during field reconnaissance. (*Id.*, citing RI Ex. 8.3 Rev. at 15) Rock Island also asserts that minimizing impacts to threatened, endangered and special status species, designated critical habitats and eagle nesting locations were Routing Criteria for the Project, and that that it will work with all relevant wildlife, historical and archeological agencies, prepare necessary field surveys and comply with all applicable such statutes and regulations to avoid any such impacts. (*Id.*, citing RI Ex. 8.3 Rev. at 13-18)

Mr. Randy Rosengren's Concerns

RICL states, "Mr. Rosengren expressed a concern that construction and placement of the Project will cause his property lot to not be isolated enough for the seed company with which he contracts to allow him to grow parent seed, which nets a higher return than non-parent seed crops." (*Id.*, citing ILA Ex. 3.0 at 4-5) Rock Island asserts that the presence of the Project should not inhibit Mr. Rosengren's ability to grow the parent seed crop on his land because the centerline of the route is more than 600 feet from the edge of Mr. Rosengren's parent seed plot; the easement area of the Project does not intersect the parent seed plot but rather traverses adjacent plots; and the easement has no impact on the isolation distance required between the parent seed plot and other crops noted by Mr. Rosengren. (*Id.*, citing RI Exs. 8.3 Rev. at 26-27 and 8.5) Rock Island also states that in the "unlikely event" there were any damages to the parent seed crop, any compensation made to Mr. Rosengren for crop loss or damages will take into account the higher return he obtains for parent seed. (*Id.*, citing RI Ex. 7.30 at 29)

d. Other Responses in Reply Brief

In its reply brief, RI responds to what it calls "specific issues that the ILA raised in its initial brief." (RI RB at 147)

In response to the ILA's assertion that Rock Island failed to coordinate with any United States Department of Agriculture Farm Service Agency ("USDA FSA") offices regarding impacts to CRP land (ILA IB at 50), Rock Island states that contacting such offices before Rock Island determines the specific potential impacts of the Project to CRP land would be premature. Rock Island intends to coordinate with the USDA FSA once Rock Island has identified whether any conservation areas are actually impacted by the Project. (RI RB at 149, citing RI Ex. 8.3 Rev. at 8) Rock Island states that although the ILA claimed its membership includes a significant portion of landowners whose property will be crossed or impacted by the Project (ILA IB at 1), ILA has only identified a single landowner -- Mr. Jacobs -- with CRP land that may be impacted by the Project. (*Id.*)

In response to the ILA criticism that Rock Island's agreement to compensate landowners for reduced crop yields for a "reasonable time period" is inadequate because Rock Island has provided "no standard or method for determining what the time period is" and because yield reductions may "not be known for some time" (ILA IB at 47), Rock Island points out that the ILA does not suggest an appropriate or "fair" alternative to Rock Island's commitment to compensate landowners for reduced crop yields for a "reasonable time period." (RI RB at 150)

In response to the ILA's assertion that KPC may not be the EPC contractor constructing the Project, and therefore that the steps and procedures KPC plans to use to prevent or mitigate soil compaction, damage to drainage tiles and other potential impacts might not be used by the eventual contractor (ILA IB at 47), Rock Island states that it does intend to use KPC as the EPC contractor for the Project, and that Rock Island and KPC have a signed development agreement which sets forth key, material terms to be included in the EPC contract. (RI IB at 95-96, 98 and RB at 150, citing RI Ex. 1.4 at 12-15) RICL represents that even if Rock Island were to use a different EPC contractor to construct the Project, the contractor would be expected to use the same construction methods and procedures that Mr. Adam described will be employed by KPC, because such methods and procedures are standard, industry practices. (RI RB at 150-151, citing RI Ex. 9.4 Rev. at 14)

In response to the ILA's assertion that Mr. Adam of KPC lacks sufficient experience managing construction projects in agricultural areas (ILA IB at 47), Rock Island states that Mr. Adam testified at length regarding the large transmission and other infrastructure projects he has managed and which crossed agricultural lands. He also presented information on KPC's other experience with these types of projects. (RI RB at 151, citing RI Exs. 9.0 at 4-5; 9.2 at 1; 9.3; 9.4 Rev. at 2-6, 7-8; 9.5) With respect to ILA's reliance on the fact that the overall length of previous projects that Mr. Adam managed were shorter than the Rock Island Project (ILA IB at 47-48), Mr. Adam

testified that the same activities needed to prepare access roads, prevent and remediate soil compaction, prevent damage to drain tiles, and prevent erosion are performed on both shorter and longer projects, and the only difference between a shorter project and a longer projects is that these same activities are repeated a greater number of times on a longer project. (RI RB at 151, citing RI Ex. 9.4 Rev. at 6 and Tr. 862-863)

Rock Island also maintains that the relevant prior experience is not just Mr. Adam's personal experience, but rather the prior experience and capabilities of the entire KPC organization. (*Id.* at 151-151, citing RI Ex. 9.4 Rev. at 7-8) Rock Island states that KPC is one of North America's largest construction, mining, and engineering organizations, with a workforce of about 10,400 salaried and hourly staff and more than 15,600 craft workers. (*Id.* at 152, citing RI Ex. 9.0 at 3) Rock Island also cites Staff testimony that "it appears that KPC is capable of handling EPC for the proposed project." (*Id.*, citing Staff Ex. 1.0 at 15)

RICL states, "In response to ILA's assertion that the 'Utah-Idaho' project (or 'Populus Project') that Mr. Adam managed, which was a 135-mile 345 kV transmission line project (120 miles of which crossed agricultural lands), crossed land used to grow hay, cereal grain, grazing ground, and fruit orchards, but not corn-soybean rotated land (ILA IB at 48), Rock Island notes that Mr. Adam testified that the Populus Project does cross land used principally for growing corn." (RI RB at 152, citing RI Ex. 9.4 Rev. at 4) Rock Island also suggests that the ILA fails to explain why this purported distinction is meaningful. (*Id.*)

In response to ILA's assertion that the project in Lake Zurich, Illinois that Mr. Adam managed is not relevant because "Lake Zurich is not rural" (ILA IB at 48), Rock Island suggests ILA ignores evidence that in the Lake Zurich project, KPC performed work on agricultural land that was located approximately two and a half miles north of State Route 22 (which runs through Lake Zurich itself); that KPC was required to construct an access road and to transport heavy construction equipment across agricultural land; and that KPC was required to follow methods and procedures to prevent soil compaction to the property. (RI RB at 152; citing RI Ex. 9.4 Rev. at 5 and Tr. 867-869)

2. Positions of ILA, other Intervenors and Staff

ILA Position

ILA witness Dr. Paul Marshall concluded, based upon his studies and personal experiences, that the proposed Project would result in compaction that may not be able to be remediated. According to ILA, the witness is "uncontrovertibly qualified and credible on the subjects on which he testified," and his conclusion was supported by his review of many studies relating to compaction. Additionally, in ILA's view, the Agricultural Impact Mitigation Agreement provides no assurance to ILA that Rock Island

will engage in adequate compaction remediation. (ILA IB at 45-46, citing ILA Exs. 1.0 REV at lines 198-211 and 1.2 REV at lines 70-76, 93-95, 118-121, 261-274)

In response to concerns about compaction, ILA states that Rock Island offered the opinions and conclusions of an "unqualified" Mr. Detweiler, who has no experience or education in agricultural compaction issues, having an undergraduate degree in political science (*Id.* at 46, citing Tr. 413) Mr. Detweiler reviewed studies regarding compaction, summarized them, and drew the conclusion that long-term impacts from compaction would be rather small. (*Id.*, citing Tr. 439) Mr. Detweiler summarily dismissed studies cited by Dr. Paul Marshall, who has advanced degrees encompassing compaction issues and decades of agricultural experience, because Mr. Detweiler "found those studies ... to be not applicable to the situation. ..." (Tr. 440-441) ILA argues, "The Commission should dismiss Mr. Detweiler's unqualified opinions regarding compaction and instead adopt the well-researched and studied conclusions of Dr. Marshall." (ILA IB at 46)

ILA next states that Rock Island has suggested it will compensate landowners for reduced crop yields, "yet refuses to provide any standards for the length of time it will do so." (*Id.*) According to ILA, "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." (ILA IB at 47)

Rock Island also suggests that it will 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. (ILA IB at 47)

ILA states that as a threshold matter, Kiewit may not even be constructing this Project. No construction contract is expected to be signed for at least another year and a half. (*Id.* at 47-48, citing Tr. 857)

ILA asserts that the majority of Mr. Adam's construction experience concerns urban, not rural, areas, and transportation, not transmission, infrastructure. 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. Additionally, none of Mr. Adam's projects involved direct current transmission. (*Id.*, citing Tr. 860-861, 863, 865-866)

According to ILA, 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 farmland that Rock Island proposes crossing and disturbing. (*Id.*, citing ILA Ex. 1.2 Rev. at lines 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. Similarly, the Canada Detour project he cited did not involve crossing agricultural lands. (*Id.*, citing Tr. 863-866) The New Jersey project which Mr. Adam described involved land already impacted; and did not include land in a corn-

soybean rotation. (*Id.*, citing Tr. 866) 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. (*Id.*, citing Tr. 568) 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. (*Id.*, citing Tr. 860, 868)

ILA argues that "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." ILA states that even the low-impact tracked equipment will exert at least 17 pounds per square inch of ground pressure; that its non-tracked equipment will exert as much as 100 pounds per square inch of ground pressure; and that equipment used by landowners in harvests is generally designed for the purposes of spreading such pressures. (ILA IB at 49-50, citing Tr. 871-872, 874)

ILA also argues that much of the land impacted by the proposed Project makes use of drainage tile, some of which was installed in the 1930's; that the same kind of construction traffic that causes compaction can lead to tile being crushed and broken; that those same pressures that lead to irreversible compaction can create drainage tile issues, which may not be revealed for several years; and that compounding the issue is the fact that lands which are compacted actually require more functional drainage tile. (ILA IB at 49-50, citing ILA Ex. 1.0 Rev. at lines 212-216, 226-228, 237-240, and Tr. 876). ILA also submits 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. (*Id.*, citing Tr. 877, 881, 883)

According to ILA, Rock Island's proposed Project will also impact Conservation Reserve Program ("CRP") property. Differing Farm Service Administration ("FSA") offices have different policies regarding these impacts. (ILA IB at 50, citing Tr. 401) 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. (*Id.*, citing ILA Ex. 2.0 at lines 83-86) ILA asserts that Rock Island failed to contact any FSA offices to determine their policies on impacts to CRP land that may be impacted, and that 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. (*Id.*, citing Tr. 401 and ILA Ex. 2.0 at lines 76-81 and 87-91)

In its reply brief, ILA states that in RICL's initial brief relies extensively on the assumption that KPC is its EPC contractor, and what KPC will or will not do. ILA responds, "As demonstrated above, there is nothing on the record that makes it clear that KPC will be the EPC contractor." (ILA RB at 14-15, citing RI IB at 145)

IAA Position

The Farm Bureau "takes no direct position" regarding landowner concerns about impacts of construction of the Project, but IAA states that if Rock Island's Petition is approved in any respect, the proposed line will cause soil compaction, impact drainage tiles, aerial application, irrigation systems, gps and precision data systems in farm equipment and hinder the ability to farm efficiently. IAA argues, "Rock Island should be directed to conduct its business in a fashion that produces minimal impact on farm operations, does not negatively impact the land, and does not interfere with planting or harvest. In short, Rock Island should be held to the terms of its Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture." (IAA IB at 18)

Staff Position

In its initial brief, under "Land Owner Interests Position," Staff summarizes the concerns expressed by ILA witnesses – and responses thereto by RICL witnesses -- regarding "Potential damage to farmland, disruption to farming operations, and devaluation of property," "Potential interference with aerial application of farm chemicals" and "Potential damage to existing wetlands, forests, historical sites, and other conservation areas." (Staff IB at 33-40)

3. Public Comments

Over 400 public comments were filed on e-Docket in this proceeding. In addition, over 200 comments were filed in Docket No. 10-0579. Some of the comments were filed by affected landowners. Most of the comments that were filed expressed strong opposition to the Project, as did those made at the two public forums by landowners, representatives of the Farm Bureau and others.

The Commission wishes to emphasize that it appreciates the comments presented at the public forums and filed on the e-Docket system, as well as the time and effort expended by those who prepared and provided them. These comments have been considered by the Commission in reaching its decisions in this Order to the extent permitted by law.

4. Commission Conclusion

ILA cites concerns about soil compaction. ILA states that its witness, Dr. Paul Marshall, concluded that based upon his studies and personal experiences, the proposed Project would result in compaction that may not be able to be remediated.

The steps that will be taken by Rock Island and its contractor to avoid or minimize soil compaction are described in some detail above.

Rock Island states that the AIMA requires Rock Island to discuss the mitigation measures it intends to employ with the landowner before implementing them. Rock

Island represents that if a landowner objects to any of the compaction avoidance measures Rock Island plans to use, Rock Island will not use them and will negotiate alternative methods or measures with the landowner to prevent soil compaction.

With respect to remediating soil compaction, Rock Island has committed to decompact cropland where necessary to a depth of 18 inches, and pasture to a depth of 12 inches, as specified in the AIMA, and if landowners wish, Rock Island will apply fertilizer to disturbed soils. Rock Island also submits that landowners will be permitted to self-perform decompaction activities on their land or retain a contractor of their choice to do this work, the reasonable cost of which will be paid by Rock Island; or can elect to not have any chiseling performed on their property. Rock Island further represents that if the landowner believes some depth other than 18 inches is appropriate, Rock Island will work with the landowner to effectuate the landowner's recommendation.

The Commission finds that the measures described by Rock Island to avoid or minimize soil compaction, and to remediate soils compaction, are reasonable, subject to the conditions below. As a condition of any approvals granted in this Order, Rock Island and its contractors, be it KPC or someone else, shall adhere to these measures.

As a condition of this Order, Rock Island shall discuss the mitigation measures it intends to employ with the landowner before implementing them; and if the landowner objects to any of those measures, Rock Island shall not use them and shall instead negotiate alternative methods or measures with the landowner to prevent soil compaction.

As a condition of this Order Rock Island shall comply with the terms of the AIMA with respect to decompaction, and shall also permit landowners to self-perform decompaction activities on their land or retain a contractor, the reasonable cost of which shall be paid by Rock Island.

Further, with respect to compaction issues, if the landowner wants to communicate directly with Rock Island instead of just with contractors, Rock Island shall do so.

ILA also cites concerns with respect to damage to drainage tiles. ILA argues that much of the land impacted by the proposed Project makes use of drainage tile; and that the same kind of construction traffic that causes compaction can lead to tile being crushed and broken.

The process to be used by Rock Island to identify the locations of drainage tiles, and avoid damaging them during construction, are summarized above. As a condition of this Order, the Commission finds that Rock Island shall adhere to these measures, and shall take such other measures as are reasonably necessary to locate the tiles and avoid damaging them.

If drainage tiles are damaged by construction or maintenance of the Project, Rock Island represents that it will repair them, or replace them with equal or better quality, or will compensate landowners to make such repairs; and that it will do so for a reasonable period of time after construction is completed. Rock Island states that these commitments are specified in the AIMA. As a condition of this Order, the Commission finds that Rock Island shall comply with these commitments, and shall do so for a reasonable period of time, and shall comply with the terms of the AIMA.

ILA also complains that Rock Island has refused to agree unconditionally to move transmission line structures when they are known prior to construction to interfere with drainage tile.

Rock Island responds that the AIMA specifies that Rock Island must avoid such interferences "to the extent reasonably possible." Rock Island also states that relocating a transmission structure in each instance where there is an interference, rather than simply relocating the drain tile, may result in other impacts to the landowner. As a condition of this Order, RI shall avoid such interferences to the extent reasonably possible, including, where practicable, moving structures to a location elsewhere in the ROW, to avoid such interferences, if requested by the landowner.

Subject to these conditions, the Commission finds that the processes to be used by Rock Island to identify the locations of drainage tiles, to avoid damaging them during construction, and to repair them or replace them if they are damaged, are reasonable.

Another concern stated by ILA is that the Project will impact Conservation Reserve Program ("CRP") property. In response, Rock Island states that ILA has only identified one landowner with CRP property, Mr. Curtis Jacobs, who may be impacted by the Project. (RI RB at 149) Rock Island also states it may be able to make minor adjustments so as to avoid impacts to Mr. Jacob's CRP land, but that it has been limited in determining what impacts the Project may potentially have on his CRP land because Mr. Jacobs has asked Rock Island not to communicate with him and has denied Rock Island physical access to his land. Rock Island also states that it will compensate Mr. Jacobs for any such forfeited payments as allowed by law.

As a condition of this Order, the Commission finds that Rock Island shall make such adjustments as are practicable in order to avoid impacts on Mr. Jacobs' CRP land.

As noted elsewhere in this order, another concern expressed by ILA, mainly in other sections of its initial brief, is that the line would have adverse impacts on aerial applications of fertilizer, insecticides and pesticides. For example, under "easement width," ILA submits that "production will be decreased insofar as the important tool of aerial application is rendered no longer usable for some landowners," and that Rock Island failed to provide any witness that is qualified to speak to the such applications. (ILA IB at 42)

In response, Rock Island described the measures that it took, when evaluating routing and placement of structures, to avoid or reduce impacts to aerial applications. With regard to concerns of ILA witness Mr. Nelson that guy wires will require more clearance than Rock Island has suggested, Rock Island notes that the AIMA provides that the "use of guy wires will be avoided to the extent feasible." As a condition of this Order, the Commission finds that Rock Island shall comply with this provision of the AIMA.

As a condition of this Order, the Commission also finds that RI shall work with landowners to negotiate specific placement of the line and structures on their property so as to minimize impacts to aerial spraying activities for their operations.

The Commission finds, subject to the conditions above, that Rock Island has taken reasonable measures to avoid or reduce impacts to aerial applications.

In its initial brief, as summarized above, Rock Island also responded to "individual landowners' property-specific concerns" that were identified in written testimony, from those landowners, that was filed by ILA. Some of these concerns were discussed in ILA's initial brief, and those concerns are addressed in the conclusions above.

The Commission observes that in this Order, in response to the landowner impact concerns expressed by ILA and landowners, the Commission has imposed a number of conditions on Rock Island as described above. Some of these conditions are contained above in the summary of Rock Island's discussion of property-specific concerns.

Subject to these conditions, the Commission finds that to date, Rock Island has undertaken or developed reasonable measures and procedures to avoid or reduce impacts on affected properties.

XI. SECTION 8-503

A. Rock Island Position

In addition to requesting a CPCN for the Rock Island Project, Rock Island requests an order from the Commission, pursuant to §8-503 of the PUA, authorizing Rock Island to construct the Project. According to Rock Island, "the evidence in this case that supports granting Rock Island a CPCN to construct the Project also supports a finding that the requirements for an order under §8-503 are met." (RI IB at 162, citing RI Ex. 10.14 Rev. at 66-67)

Rock Island states that the specific criterion in §8-503, "to promote the development of an effectively competitive electricity market," is the same as the §8-406(b)(1) criterion "that the proposed construction will promote the development of an effectively competitive electricity market." Rock Island contends that it has

demonstrated that construction of the Project will promote the development of an effectively competitive electricity market. Dr. McDermott's analysis addressed both the statutory criterion of §8-406 that the Project will "promote the development of an effectively competitive electricity market" and the statutory criterion of §8-503 that the Project will "promote the development of an effectively competitive electricity market," and he concluded that the Project satisfies the provision of §8-503 that the Project will "promote the development of an effectively competitive electricity market" as well as the criterion set forth in §8-406 that the Project will "promote the development of an effectively competitive electricity market." (*Id.*, citing Rock Island Ex. 4.0 Rev. at 2, 4)

RI argues that the record also shows construction and operation of the Project will "promote the security or convenience of ... the public" and "secure adequate service or facilities" and therefore the Project can also be authorized pursuant to those criteria of §8-503. According to Rock Island, the evidence which shows the Project will "promote the public convenience and necessity" for purposes of §8-406(b), as summarized above, also shows that that the Project will "promote the security and convenience of the public" and serve to "secure adequate service and facilities" within the meaning of Section 8-503. In support of its conclusion, RICL lists several purported benefits from the Project. (*Id.* at 163)

Rock Island notes that questions arose during the course of this proceeding as to why Rock Island has requested authority to construct the Project under §8-503 in the same proceeding in which it has requested a CPCN for the Project under §8-406(b). In response, RICL states that in negotiating with potential transmission customers of the Project for capacity and service contracts, it is important that Rock Island be able to show the customers that it has obtained the major regulatory approvals for the Project. Rock Island explains that this is true as well with respect to negotiating with potential lenders and investors in the Project. Rock Island states that potential lenders and investors will not provide binding financial commitments for the capital needed to construct a project until the project sponsor has obtained the major regulatory approvals for the project. (RI IB at 164, citing RI Ex. 10.14 Rev. at 22-23; Tr. 1051)

Rock Island states that in this context, an order under §8-503, in addition to a CPCN order, is a major regulatory approval from the perspective of potential transmissions customers, lenders and investors. By the express terms of §8-509 of the PUA, an order under §8-503 is a prerequisite to being able to obtain an order under §8-509 authorizing the use of eminent domain to acquire easements. Given that the Preferred Route traverses approximately 121 miles in Illinois, potential transmission customers, lenders and investors are likely to anticipate that Rock Island will need to acquire some easements through the use of eminent domain, and they will understand that the use of eminent domain will require authority from the Commission. Rock Island states that potential transmission customers, lenders and investors will want to know that Rock Island has obtained at least the predicate regulatory approval -- a §8-503 order -- to being able to exercise eminent domain to acquire the easements needed to complete the route of the transmission line. (RI IB at 164-166, citing RI Exs. 10.14 Rev. at 21-23; 10.26 at 2-4; Tr. 991-993)

RI also argues that consideration of both requests in the same proceeding, rather than in separate proceedings, is more convenient and efficient for Rock Island, the Commission and its Staff, and intervenors. Rock Island asserts that if it were required instead to request a §8-503 order in a separate proceeding, it would be presenting essentially the same evidence and seeking the same determination as in the §8-406 proceeding, resulting in duplicative expenditures of resources by Rock Island, the Commission, and other interested parties. (RI IB at 165)

Rock Island submits that if it were required to file a separate petition, at a later date, for authority under §8-503, this could delay the completion of activities that need to be concluded in order to construct the Project, including completion of easement acquisition, negotiating and signing contracts with transmission customers, and raising the capital to finance construction of the Project, thereby delaying the Project. (RI IB at 166)

According to Rock Island, the fact that an applicant requests, and the Commission grants in the same order, both a CPCN for a project pursuant to §8-406 and authority to construct the project pursuant to §8-503, is by no means unusual. Rock Island cites *Illinois Power Co. d/b/a AmerenIP*, Docket 10-0079 (Order dated April 12, 2011); *Central Illinois Public Service Co. d/b/a AmerenCIPS*, Docket 07-0532 (Order dated May 6, 2009); *Illinois Power Co. d/b/a AmerenIP and Ameren Illinois Transmission Co.*, Docket 06-0706 (Order dated Mar. 11, 2009); *Illinois Power Co. d/b/a AmerenIP and Ameren Illinois Transmission Co.*, Docket 06-0179 (Order dated May 16, 2007), as recent cases in which both authorizations were granted in the same docket. (RI IB at 166)

Rock Island states that it has been suggested by other parties that an order under §8-503 "directing" Rock Island to construct the Project is inappropriate because such an order would be an unconditional mandate to construct the Project. Rock Island states that it is sufficient if the Commission's order in this proceeding simply "authorizes" Rock Island to construct the Project pursuant to §8-503. Rock Island asserts that in many previous orders, the Commission has "authorized" the applicant to construct a proposed project but has not "directed" the applicant to do so, and cites as examples the four orders cited in the immediately preceding paragraph. (RI IB at 166-167)

In its reply brief, in response to IAA's argument that Rock Island is not capable of complying with a "legal compulsion" to construct the Project (IAA IB at 19-20), Rock Island asserts that while it is capable of constructing the Project subject to the conditions to be imposed in the order, Rock Island is only seeking an order under §8-503 "authorizing" it to construct the Project. (RI RB at 159-160)

Rock Island states that IAA's assertion that "it is virtually impossible for Rock Island to utilize any Commission certificates within 2 years as required" (IAA IB at 19-20) relates to §8-406(f), not §8-503, "and in any event has no basis in the record." (RICL RB at 160) Rock Island states that the schedule provides for Rock Island to

accomplish milestones leading up to closing on the construction financing in the fourth quarter of 2014, and that construction would start in 2015. Rock Island further states that "the fact that it must complete other tasks before commencing construction of the Project and placing it into operation is unremarkable; this is true for any transmission line project." (RI RB at 160)

In response to IAA's argument that Rock Island's request for a §8-503 order is "simply a prerequisite for obtaining eminent domain authority" (IAA IB at 20) Rock Island states that even if it were requesting a §8-503 order solely as a prerequisite for requesting eminent domain authority for certain parcels on which it had been unable to acquire easements through voluntary negotiations, such a request and approval are permissible and commonplace. (RI RB at 160-161)

In response to arguments in ILA's initial brief, Rock Island reiterates that it is only requesting an order under §8-503 "authorizing" construction of the Project, and that such relief has been granted in prior Orders. (RI RB at 162-163, citing ILA IB at 50-51 and Docket 06-0179, Order at 40)

In response to arguments in ComEd's initial brief, Rock Island states that ComEd's arguments on pages 38-40 and 41 are premised on the assumption that Rock Island is requesting an order under §8-503 "directing" the construction of the Rock Island Project. Rock Island asserts that it is seeking an order "authorizing" construction of the Project. Rock Island argues that the "contingencies" that ComEd cites in this portion of its Initial Brief do not warrant declining to issue an order under §8-503 authorizing construction of the Project. Rock Island states that the fact that "the Project has not been fully vetted under the PJM RTEP process as one that is justified by a public need, be it reliability or market efficiency" (ComEd IB at 38), is irrelevant, as the Project is not going to be vetted under the PJM RTEP process for this purpose, because PJM does not review merchant transmission projects for this purpose. (RI RB at 164, citing RI Ex. 10.14 Rev. at 57-58; ComEd Ex. 1.0 2d Rev. at 15; Tr. 649, 655, 953) Rock Island asserts that it is asking the Commission to grant a CPCN and an order authorizing construction of the Project based on meeting the criteria specified in §8-406 and §8-503 of the PUA, which do not include any requirement for review and approval under the PJM RTEP. Rock Island states that the PJM interconnection process will determine what is required to allow the Project to reliably interconnect to the PJM grid, but the PJM interconnection process operates independently from this Commission proceeding. (RI RB at 164)

Rock Island responds to ComEd's statement that "also incomplete, and lagging several months behind the instant proceeding, is the regulatory review proceeding in Iowa, where the proposed Project originates and traverses some 379 miles across that state." (ComEd IB at 38-39) RICL contends that ComEd's argument "does not warrant declining to issue an order under §8-503 authorizing construction of the Project." Rock Island states that all parties understand that construction of the Project from northwest Iowa to northern Illinois requires the approval of two state commissions. Rock Island also asserts that the Staff financing condition effectively requires Rock Island to obtain

the necessary authorizations from both commissions before it can begin to construct the transmission line. (RI RB at 164-165)

Rock Island next asserts that "§8-406(b)(1) and §8-503 require that the Commission determine that a proposed project will "promote the development of an effectively competitive electricity market" or, alternatively, that the proposed project is 'necessary to provide adequate, reliable, and efficient service" (§8-406(b)(1)) or will "promote the security or convenience of its employees or the public . . . or in any other way to secure adequate service or facilities' (§8-503)." (*Id.* at 165) Rock Island submits that ComEd's arguments on pages 38-39 and 41 of its Initial Brief regarding §8-503 are the same arguments it has advanced as to why the Project has not been shown to meet the criteria of §8-406(b)(1). Rock Island states that ComEd's arguments provide "no basis unique to §8-503" as to why an order under that section authorizing construction of the Project should not be granted. (RI RB at 165)

In response to ComEd's argument that Rock Island's "primary motivation" in requesting an order under §8-503 is to facilitate its ability to acquire eminent domain authority and to "initiate condemnation lawsuits" (ComEd IB at 40), Rock Island asserts that even if its "primary motivation" were to facilitate its ability to obtain eminent domain authority, a request for authority under §8-503 would be entirely permissible; that granting the request in the same order as the CPCN would be consistent with the Commission's practice; and that this "motivation" would not be grounds to deny an order under §8-503 authorizing construction of the Project. (RI RB at 166) Rock Island contends that the Commission commonly issues a CPCN under §8-406 and an order authorizing construction of a project under §8-503, but not an order authorizing eminent domain under §8-509) in the same proceeding, and that such an order in this case would not be "precedent-setting" as argued by ComEd. (RI RB at 165-166)

B. Positions of ComEd

Section V.A of ComEd's initial brief is titled, "Because the evidentiary record shows that the Project does not satisfy the requirements of Section 8-406(a)-(b), there certainly is no basis for the Commission to take the extraordinary step of ordering the project's construction under Section 8-503." (ComEd IB at 38)

ComEd's arguments that the Project does not satisfy the requirements of Section 8-406(a)-(b) are summarized above. ComEd argues that RI's request for an order under Section 8-503 is both premature and inconsistent with RI's own testimony and the contingent nature of RI's commitment to build the Project. (*Id.*)

ComEd maintains that the FERC-jurisdictional interconnection planning process has not been completed (Tr. 154-155, McDermott); that the Project has not been fully vetted under the PJM RTEP process as one that is justified by a public need, be it reliability or market efficiency; and that the studies that will determine how RI will interconnect with PJM, how it will interact with MISO, and how it will have to limit its

operations to make that interconnection functionally possible are uncertain and incomplete. (ComEd IB at 38)

ComEd states, "Also incomplete, and lagging several months behind the instant proceeding, is the regulatory review proceeding in Iowa, where the proposed Project originates and traverses some 379 miles across that state. Indeed, RI President, Michael Skelly, acknowledged that the Iowa proceeding likely will not be concluded until early-2015." (*Id.* at 38-39, citing Tr. 235, Skelly) ComEd states that the most recent information of record indicates that the related formal franchise petition had not even been filed. (*Id.* at 24) ComEd further asserts, "Depending on the outcome of the Illinois and Iowa regulatory proceedings, Clean Line may decide to abandon or postpone the Project and focus its limited financial resources on one of the four other transmission projects currently under development. Skelly, Tr. 269:12-23." (*Id.*)

In ComEd's view, the evidence "contradicts RI's claims that the Project is a transmission addition essential to meet a public need that the Commission should unconditionally order RI to construct," and "the Commission should not set a new and dangerous precedent by approving this incomplete, speculative, private venture and directing its construction." (*Id.* at 39-40)

Section V.B of ComEd's initial brief is titled, "RI's primary objective in seeking an order under Section 8-503 is to facilitate its ability to acquire eminent domain authority and initiate condemnation lawsuits to obtain the property interests it requires." (ComEd IB at 40)

According to ComEd, the fact that RI admits it will not construct the line in Illinois until it obtains regulatory approval in Iowa, raises hundreds of millions of dollars, and subscribes at least 60% of the capacity, suggests that its primary motivation in obtaining a Commission order under Section 8-503 is to use it as leverage in negotiations with private landowners whose land RI will need to build upon. Failing those voluntary negotiations, RI will have in hand a Section 8-503 order to use as the legal basis for pursuing condemnation actions against unwilling landowners, which will strengthen its negotiating position with landowners and add credibility to RI's claim that it can acquire the necessary property one way or the other. (*Id.*, citing Tr. 152-143, Skelly) In light of the record in this case, filled with various contingencies that will delay or even prevent construction of the Project, the Commission should not, in ComEd's view, take the "extraordinary, precedent-setting step" of arming RI with an order that will permanently impact private property rights, whether used as leverage in easement negotiations or as the legal predicate to allowing RI to take private property in condemnation proceedings. (*Id.*; see also ComEd RB at 32)

In Section V.C of its initial brief, ComEd argues, "The Commission should deny RI's premature request for an order under Section 8-503, particularly when such an order would have such a permanent and potentially damaging impact on ComEd, Illinois transmission customers, and private landowners." (*Id.* at 41) In ComEd's view, RI has

no reasonable basis to expect the Commission to set new precedent and issue an order "unconditionally directing that the Project be built." (*Id.*)

In its reply brief, ComEd states that RI contends a Section 8-503 order can authorize or provide permission to construct a project, but not to direct construction. (RI IB at 166-167). ComEd argues, "This interpretation is wrong." (ComEd RB at 28)

ComEd argues that if Section 8-503 is not intended to direct construction, it would duplicate Section 8-406. (*Id.*, citing *A.P. Properties, Inc. v. Goshinsky*, 186 Ill. 2d 524, 532-33 (1999) (rejecting construction of a statute that rendered the statutory phrase meaningless or superfluous). ComEd argues, "Such a construction should be rejected. RI's position also fails to consider the language in Section 8-503 requiring the Commission to find that approved 'additions...ought reasonably to be made' and 'structure ... should be erected,' indicative of the legislature's intent that this Section apply to projects that are more than just optional. 220 ILCS 5/8-503." (ComEd RB at 28) In ComEd's view, the interpretation that Section 8-503 requires RI to construct the Project is further supported by the exception in Section 8-503 for electric generating plants that states that the Commission shall have no authority to "order the construction ... of any electric generating plant." If RI's assertion was correct, and a Section 8-503 order was not compulsory and did not require an attempt to construct, this exception would not be necessary. (ComEd RB at 28, citing *A.P. Properties*, 186 Ill. 2d 524, 532-533)

ComEd further argues, "Also, unlike Section 8-406, Section 8-503 should not be permissive, because this Section serves as the prerequisite before an applicant such as RI can obtain eminent domain authority under Section 8-509 of the PUA.... A Commission finding that a project must be built to support the public interest goes hand-in-hand with the added powers of condemnation made available under Section 8-509." (ComEd RB at 28, 32)

ComEd cites "unrebutted facts" showing RI's "unwillingness to commit to constructing the project now and the array of uncertainties surrounding the Project" including that "RI may abandon or delay the Project if it does not obtain approval from the Iowa Commission for the 379 mile segment of the line proposed to traverse Iowa." (*Id.* at 28-29, citing Tr. 235, Skelly)

In response to RI's argument that it needs to show "potential" customers, lenders and investors that RI has obtained a "major" regulatory approval, ComEd contends that obtaining authority to construct a project under Section 8-503 was never contemplated to, nor should it be, used as a marketing tool to attract potential customers, lenders or investors. (*Id.* at 29-30, citing RI IB at 164-165)

In response to RI's argument that requesting Section 8-503 authority in a separate proceeding would be duplicative, ComEd asserts that by RI's own agreement, it must come before the Commission again in a separate proceeding to obtain final eminent domain authority. (*Id.*, citing RI IB at 164-165)

In response to RI's argument that failure to obtain Section 8-503 authority now would create "regulatory uncertainty" for "potential" customers, lenders and investors," ComEd contends that this argument ignores "the complete lack of certainty surrounding all aspects of the Project, including whether RI will even construct the Project." (*Id.* at 30-31, citing RI IB at 166) ComEd also argues, RI also cannot explain how a Section 8-503 order is more certain from a regulatory standpoint than a CPCN alone. (*Id.* at 30) ComEd also asserts that with respect to the four Ameren orders cited by RI where both CPCNs and Section 8-503 relief were granted, "there was no question that Ameren would build the Projects." (*Id.*, citing RI IB at 166)

C. ILA and IAA Positions

In ILA's view, "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." (ILA IB at 50-51)

In its Petition initiating this proceeding, Rock Island applied for an Order "authorizing and directing" Rock Island, pursuant to PUA Section 8-503, to construct the transmission line. ILA argues, "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." (*Id.* at 51)

According to IAA, the requirements of § 8-503 are similar to those of § 8-406(b) in that its relief is conditioned upon a finding that the Project will "promote the security or convenience of its employees or the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities...." 220 ILCS 5/8-503. IAA argues, "As the same criteria apply in § 8-503 as in § 8-406(b), if the Commission finds that Rock Island failed to meet its burden related to § 8-406(b), which it should, then its relief requested under § 8-503 must also be denied." (IAA IB at 19)

IAA states that if the Commission grants § 8-503 relief to Rock Island, it is "authorizing" and "directing" it to commence construction of the Project. IAA asserts that Rock Island is "seeking direction, or better put, a legal compulsion," to build the Project, but is not capable of complying with the legal compulsion. (*Id.*) IAA states that RICL does not own, control, operate, or manage any plants, equipment, or property used for or in connection with the transmission, delivery, or furnishing of electricity in Illinois (Tr. 231-233, 1116-1120), and it does not have the basic infrastructure to start doing anything. (IAA IB at 19) Also, since Rock Island has identified that construction

of the Project may never occur, stating that “permanent installation of facilities cannot and will not commence unless and until the need for the Project is actually established through the market test of transmission customers contracting for sufficient service on the transmission line to support and justify financings that raise sufficient capital to cover the total Project cost” (RI Ex. 10.13 at 4), it can give no assurance to the Commission that it will ever comply with the legal compulsion it is requesting. (IAA IB at 19)

IAA argues that even assuming construction does commence at some point, Rock Island must wait on other initial milestones to be completed first, including obtaining relief from the Iowa Public Utilities Board, and that it is virtually impossible for Rock Island to utilize any Commission certificates within 2 years as required. (*Id.* at 19-20, citing Tr. at 287, 1123)

According to IAA, Rock Island’s request for an order under § 8-503, by its own admission (Tr. 143), is simply a prerequisite to obtaining eminent domain authority, and if granted §8-503 relief, what Rock Island characterizes as “voluntary” easement negotiations with farmers will actually sound something like “Rock Island has been directed by the Commission to construct a transmission line on an approved route, which crosses your land.” (IAA IB at 20; RB at 5)

D. Staff Position

In its initial brief, Staff did not address RICL’s request for Section 8-503 relief. In its reply brief, Staff states that “RICL claims the evidence that supports granting a CPCN to construct the project also supports a finding that the requirements for an order under Section 8-503 are met because the criterion of Section 8-503 ‘to promote the development of an effectively competitive electricity market’ is the same as the Section 8-406(b)(1) criterion.” Staff “disagrees.” (Staff RB at 17, citing RI IB at 164)

Staff argues, in part, “Given all the contingencies, conditions, and government and regulatory approval still needed, RICL is petitioning the Commission for authority that cannot be utilized. The request for an order pursuant to Section 8-503 is premature and should therefore denied.” (Staff RB at 18)

Staff also cites the Commission Order in Docket No. 06-0706 where the Commission stated in part, “A utility may obtain a certificate under Section 8-406 in one docket. If it later desires eminent domain authority under Section 8-509, it may initiate a new docket in which it seeks relief under Sections 8-503 and 8-509.” (Docket 06-0706. Order, March 11, 2009 at 88-89) Staff asserts that a utility must also demonstrate that it has negotiated in good faith with landowners and has nonetheless failed to obtain all of the necessary parcels before eminent domain relief under Section 8-509 is granted. (*Id.* at 19)

E. Commission Conclusion

In addition to requesting a Certificate of Public Convenience and Necessity for the Project pursuant to Section 8-406 of the Act, Rock Island requests an order from the Commission authorizing the Project pursuant to Section 8-503 of the Act. Rock Island's request is opposed by Staff, ComEd, ILA and IAA.

Section 8-503 provides, in part:

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order;

Authorization under Section 8-503 is a condition to obtaining relief under Section 8-509 of the Act. Section 8-509 provides, in part, "When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1, 8-503, or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain."

Rock Island is not seeking relief under Section 8-509 in this proceeding, but it could do so in the future if the easements are not obtained through the negotiation process.

According to Rock Island, "the evidence in this case that supports granting Rock Island a CPCN to construct the Project also supports a finding that the requirements for an order under §8-503 are met."

Rock Island argues that the criteria in Section 8-503 are the same as criteria contained in Section 8-406(b)(1), and that the evidence showing Rock Island has met the criteria in Section 8-406(b)(1) also shows it has met the criteria in Section 8-503.

ComEd and Staff disagree with RI's argument. They argue that Rock Island's request for Section 8-503 relief is premature.

The Commission has reviewed the evidence and arguments. First of all, to the extent Rock Island is asserting that the criteria in Sections 8-406(b) and 8-503 are

identical, and that a finding the Section 8-406(b) criteria have been met would automatically mean the Commission is required to grant the relief sought under Section 8-503, the Commission disagrees. Such an interpretation would render Section 8-503 superfluous.

ComEd and Staff argue that Rock Island's request for Section 8-503 relief is premature, in that Rock Island is seeking authority that cannot be utilized given the contingencies, conditions and regulatory approvals still needed.

While the Commission is by no means suggesting that RI would have to satisfy every condition, contingency or uncertainty before Section 8-503 authorization may be granted, the Commission does agree with Staff and ComEd that under the circumstances, it would be premature to grant Section 8-503 relief to Rock Island in this proceeding.

Rock Island claims Section 8-503 approval is needed now because it is one of the major regulatory approvals needed to satisfy potential lenders and investors; however, Rock Island does not explain how a Section 8-503 authorization is somehow more urgent or important in that regard than is the proceeding in Iowa, where the Project originates and the first 379 miles of the 500-mile line would be built. Even Rock Island does not estimate a decision being reached in Iowa until 2015, assuming the formal proceeding has even begun there.

The Commission wishes to emphasize that the Certificate of Public Convenience being granted in this Order, which expressly authorizes construction of the transmission line project pursuant to Section 8-406(a) and (b), is not conditioned on the issuance of an order authorizing the Project under Section 8-503. That is, Rock Island does not need authority under Section 8-503 to build the line, unless it decides to seek relief under Section 8-509 because it wants to pursue eminent domain.

The Commission also observes that the approval of a line route as part of this Certificate Order should facilitate negotiations with landowners, and that the issuance of the Certificate will enable Rock Island to gain access to the property to conduct surveys and related activities, which are steps characterized by Rock Island as important ones in which to engage in the near future.

Rock Island also argues that granting Section 8-503 authority now rather than in a later proceeding would be more efficient for Rock Island, Staff and Intervenor. As noted by ComEd, however, granting Section 8-503 authority now will not avoid a later proceeding. If Rock Island needs eminent domain, it will need to file a petition under Section 8-509. If Rock Island does not need eminent domain, there will not need to be a later proceeding under either section. Also, while Rock Island asserts that granting Section 8-503 authority now rather than in a later proceeding would be more convenient and efficient for Staff and Intervenor, Staff and Intervenor ComEd, ILA and IAA do not agree that it would.

As also noted by Staff, the Commission has previously indicated that a utility may obtain a certificate under Section 8-406 in one docket, and later initiate a new docket in which it seeks relief under Sections 8-503 and 8-509.

In conclusion, the Commission finds that it would be premature to grant authority under Section 8-509 at this time. If Rock Island needs authorization under Section 8-503 in order to seek relief under Section 8-509, it can request such authorization at a later time.

XII. OTHER ISSUES

A. System of Accounts; Maintaining Records; Confidential Information

RI seeks permission to maintain its books and records at its principal office and that of its ultimate parent company, Clean Line Energy Partners, in Houston, Texas. Staff has no objection, subject to the condition that that RI shall reimburse any Staff travel costs and expenses incurred in order to review these books and records.

The Commission finds that RI's request should be granted, subject to the condition proposed by Staff.

RI also seeks permission to submit annual financial information required by ICC Form 21, 83 Ill. Adm. Code 210, and Section 5-109 of the Act, by using the FERC Uniform System of Accounts to complete ICC Form 21. Staff does not object; nor did any other Party.

The Commission finds that RI's request should be is granted.

RI also requests that all confidential information placed into the record of this proceeding be treated as proprietary and confidential for a period of two years from the date of this Order is granted. There were no objections to this request

The Commission finds that all information treated as confidential in this proceeding pursuant to rulings shall continue to be treated as proprietary and confidential for a period of two years from the date of this Order.

B. Motion to Compel Consultation

ILA filed a "Renewed Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources ['IDNR']" ("Motion").

ILA argued, in part, that the Illinois Endangered Species Act ("IESA") and Illinois Natural Areas Preservation Act ("INAPA") mandate that agency consultation regarding anything affecting Natural Areas "shall be conducted early in the planning of the proposed action." 525 ILCS 30/17. According to ILA, "Such action is not discretionary with the agency. Based on the applicable statutes, regulations and case law, it is

evident that the Commission should carry out its duty to officially consult with the Illinois Department of Natural Resources regarding the issues identified herein” (Motion at 6)

The Staff of the Commission, functioning as a party to the proceeding, and Rock Island, filed responses to the Motion in which they recommend that the Motion be denied. ILA filed a reply to the responses.

Staff raised a threshold issue, arguing that ILA’s renewed “Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources” is not an appropriate procedural mechanism and is prohibited by law. Under the IESA, the structured consultation process policy is “enforceable only by writ of mandamus”. 520 ILCS 10/11(b). The Illinois Supreme Court spoke to this when it stated that section 11(b) “does not contain any language that expressly grants a private cause of action for a violation of the [IESA], with the exception of allowing the enforcement of the consultation process by a writ of mandamus.” *Glisson v. City of Marion*, 188 Ill.2d 211, 242 (1991). Staff further asserts that the enforcement mechanism in the INAPA is also a writ of mandamus, rather than a motion to compel the Commission as ILA filed. Section 30/17 of the INAPA provides, in part, “The Department, Commission, or any affected person may seek a writ of mandamus to compel an agency of State or local government to engage in the evaluation and study required by this Section.” 525 ILCS 30/17. (Staff 10/15/13 response at 5)

According to Staff, a writ of mandamus is both extraordinary in nature and procedurally premature. Staff argues that the Commission is a creature of statute and only possesses those rights which have been granted to it from the General Assembly, and that the Commission does not possess equitable powers.

Staff also notes that it is functioning a party to the proceeding, not as advisors to the Commission.

In its reply, ILA argued in part that it is illogical and a waste of resources to force the ILA down the route of mandamus. ILA contends that its motion should be granted. (ILA 11/5/13 reply at 3-4)

A ruling was issued on December 4, 2014. It stated, in part, “Upon consideration of the Parties’ filings, it is hereby determined that Staff’s position is correct. For those reasons argued by Staff as are summarized above, a motion by ILA to ‘compel the Commission to consult with the Illinois Department of Natural Resources,’ whereby the Commission would be compelled to engage in an official and structured consultation with IDNR, is not an appropriate procedural vehicle under the statutes in question.”

The ruling concluded, “Accordingly, ILA’s Renewed Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources is denied.”

In its post-hearing briefs, ILA again argues that its Motion should be granted.

In the instant Order, the Commission concurs in the rationale and determination contained in the ruling of December 4, 2013 which denied the Motion. ILA's Motion is not an appropriate procedural vehicle under the statutes in question.

Other Arguments

Staff and Rock Island also observe that even if the motion to consult were an appropriate procedural mechanism -- which, as indicated above, it is not -- the statutes cited by ILA require an agency to consult with IDNR only when it "authorizes, funds or carries out" the project. Staff and Rock Island argue that under Illinois caselaw, the Commission is not "authorizing" Rock Island's proposed project within the meaning of those statutes. (Staff response at 6)

Staff and RICL rely on the decision of the Illinois Appellate Court in *Pierce Downer's Heritage Alliance v. Village of Downers Grove*, 302 Ill.App.3d 286, 297 (2nd Dist. 1998) (*Pierce Downer's*). There the Court held that a consultation with IDNR was not required under the statute. The Court held that the actions of the Village Board and the Illinois Health Facilities Planning Board ("HFPB") were not "authorizations" under Section 17 of the Natural Areas Preservation Act. *Id.* at 300.

The Court determined that because of the legislature's use of the word "planning" in the preface of Section 17, the broad dictionary definition of "authorize" was insufficient. *Pierce Downer's* at 286, 297. The term "planning" requires that the public agency or municipality had a role in forming the scheme or the program.

The Court stated that "such a role clearly requires more active participation than that which would satisfy the traditional dictionary definition of 'authorize.'" *Id.* at 297. The Court further explained, "[W]e believe that the Act was meant to apply only to an action in which the state agency or local government is a more active participant in the process. We believe that such active participation requires that the state agency or local government have a direct role in either the planning, design, funding, construction, or carrying out of the action." *Id.* at 297.

The Court found that neither the Village Board's approval of Advocate's amended site development plan, nor the HFPB's issuance of a certificate of need for the new facility, was an "authorization" under Section 17. *Id.* at 296, 297. The Court noted that issuance of a certificate of need by the HFPB for a new health facility represents a determination that there is an identifiable need for the health facility based on the community's population, the number of existing medical facilities, the extent to which the existing facilities are used, the availability of medical personnel, and other factors. *Id.* at 296, citing Section 12 of the Illinois Health Facilities Planning Act, 20 ILCS 3960/12.

In its reply, ILA relies on *McHenry County Defenders, Inc. v. The City of Harvard*, 384 Ill. App. 3d 265, 891 N.E.2d 1017 (2d Dist. 2008) ("*McHenry*") in support of its position that "the [Illinois Commerce] Commission is involved to a degree that includes

planning and involvement to the level of an 'authorization.'" (ILA reply at 10) In that case, the Second District held that the level of involvement amounted to authorization.

In *McHenry*, the Court noted that the authorization in that case contained the recitation that the "Corporate Authorities ...have concluded that the annexation of the property to the City, under the terms and conditions hereinafter set forth, would enable the City to control the development of the area and serve the best interest of the City." *Id.* at 1027-1028. ILA asserts that the issues in *McHenry* were complex, like those before the Commission in this proceeding. According to ILA, "just as the Commission has its own engineering staff to review plans for building this particular line, the Village in that case had engineers on staff as well." (IPL reply at 10, citing *McHenry* at 1027)

ILA argues, "Again, just as happens in some Commission proceedings, those plans, after review by the village (rather than Staff) engineer, were revised. (*Id.*) This result is something that even Rock Island has recognized in the past, noting that if the Commission may 'conclude[] that' another route is 'superior' they will proceed with the Proposed Alternative Routes." (IPL reply at 10) ILA asserts that conditions may be imposed upon the project by the Commission as well which ILA regards as part of planning. (*Id.*)

ILA argues that by contrast, the case relied upon by Staff and RICL, *Pierce Downer's*, involved an "insignificant amendment to a single development unit plan, to a small piece of land, with no real review of the plans in the single meeting that took place." *Pierce Downer's* involved what amounted to a "rubber-stamping." (IPL reply at 11)

ILA claims the *McHenry* case involves facts that more closely resemble those in the present case than do the facts of *Pierce Downer's*. According to ILA, "This Commission has been actively and intensively reviewing the plans - economic, engineering, and otherwise - of Rock Island." (*Id.* at 11)

Having reviewed the arguments of the Parties, the Commission first observes that in ILA's arguments that "the Commission is involved to a degree that includes planning and involvement to the level of an 'authorization'" similar to *McHenry*, ILA relies extensively on the actions of Commission Staff members who are witnesses in the proceeding.

For example, ILA states that "[t]his Commission has been actively and intensively reviewing the plans - economic, engineering, and otherwise - of Rock Island." ILA also states that "the Commission has its own engineering staff to review plans for building the particular line."

ILA's comments misunderstand, and blur, an important line between the role of the Commission Staff witnesses and that of the Commission in contested proceedings such as the instant one. The current case, initiated pursuant to Sections 8-406 and 8-503 of the PUA, is a contested docketed proceeding. There are numerous parties who

are participating pursuant to a schedule. Among other things, the schedule includes dates for the filing by parties of several rounds of proposed witness testimony and exhibits. In this context, the Staff is clearly functioning as a party to the proceeding. The Staff witnesses do not serve as advisors to the Commission; in fact, they are not allowed to do so by virtue of ex parte restrictions.

As a participant, like other parties, Staff conducts discovery and files testimony, through witnesses, including testimony in response to other parties. At the hearings, parties have the opportunity to cross-examine the witnesses of other parties, including Staff witnesses. The Commission will ultimately render a decision based on the entire evidentiary record presented by the parties, including Staff. For that matter, the Commission's decisions must be made based on the evidence of record. The input from "its own engineering staff" relied upon by the Commission is that which is put into the evidentiary record.

Under these circumstances, any review of the proposed project by Staff witnesses and other parties during or prior to the course of the proceeding does not constitute an active and direct role on the part of the Commission in the "planning, design, funding, construction or carrying out" of the of the project. Given these considerations, and upon reviewing the other arguments and information presented by the parties as summarized above, the Commission agrees with Staff and Rock Island that the Commission's level of involvement does not reach that of "authorizing" the project as that term has been interpreted by the Appellate Court in the *Pierce Downers* case.

Evidence in this Proceeding Regarding Input from IDNR

The Commission also observes, as pointed out by Staff and Rock Island, that Rock Island has consulted with and obtained considerable input from the IDNR concerning the Preferred Route and the Proposed Alternative Route of the Project with respect to both potential impacts on threatened and endangered species and potential impacts to Illinois Natural Areas Inventory sites, as well as on other topics relating to impacts on habitat and natural features. Through witnesses and documentation, Rock Island has placed information concerning its consultation into the record of this proceeding, thereby providing the Commission Staff and other parties with a full opportunity to review it, conduct discovery, respond to it and cross-examine Rock Island witnesses.

The information includes the IDNR's initial and final consultation letters to Rock Island concerning the Preferred Route and the Proposed Alternative Route. According to Rock Island, the IDNR stated in its final consultation letter that "it is unlikely that the project will result in any adverse impacts to state-listed species or their habitats." (RI RB at 31-33, citing Rock Island Ex. 8.12 at 1, and RI Exs. 8.8 and 8.12)

Other Considerations

As also noted by Rock Island, ILA does not identify any certificate orders in which the Commission engaged in a consultation process with the IDNR pursuant to either statute cited by ILA. As explained by Staff, the "consultation" advocated by ILA is a lengthy, multi-stage process which would not be very compatible with the process involved in a Commission Section 8-406 proceeding. (Staff RB at 5-6) Furthermore, it appears that the consultation process urged by ILA, if found to be required here, would then be required in every transmission line case before the Commission.

XIII. FINDINGS AND ORDERING PARAGRAPHS

Having given due consideration to the entire record, the Commission is of the opinion and finds that:

- (1) the Commission has jurisdiction over Rock Island and the subject matter of this proceeding;
- (2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the evidence and are hereby adopted as findings herein;
- (3) subject to the conditions imposed and determinations made in this order, the Commission finds, pursuant to Section 8-406 of the Act, that the proposed line 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; that Rock Island is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction; and that Rock Island is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers;
- (4) pursuant to Section 8-406 of the Act, a Certificate of Public Convenience and Necessity should be issued to Rock Island as ordered below.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a Certificate of Public Convenience and Necessity is hereby issued to Rock Island Clean Line LLC pursuant to Section 8-406 of the Public Utilities Act, and that said certificate shall read as follows:

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

IT IS HEREBY CERTIFIED that the public convenience and necessity require (1) construction, operation, and maintenance by Rock Island Clean Line LLC of the proposed DC and AC transmission lines over the Preferred routes found appropriate above and as described and

depicted on Appendices A and B of the filing made by Rock Island Clean Line LLC on March 6, 2014, and (2) the transaction of an electric public utility business by Rock Island Clean Line LLC, as a transmission public utility, in connection therewith, all as set forth above.

IT IS FURTHER ORDERED that Rock Island's request to maintain its books and records at its principal office and that of its ultimate parent company, Clean Line Energy Partners, in Houston, Texas, is approved, subject to the condition that that Rock Island shall promptly reimburse any Staff travel costs and expenses incurred in order to review these books and records.

IT IS FURTHER ORDERED that Rock Island's request to submit annual financial information required by ICC Form 21, 83 Ill. Adm. Code 210, and Section 5-109 of the Act, by using the FERC Uniform System of Accounts to complete ICC Form 21, is granted.

IT IS FURTHER ORDERED that all information treated as confidential pursuant to rulings made in this proceeding shall continue to be treated as proprietary and confidential for a period of two years from the date of this Order.

IT IS FURTHER ORDERED that the request for relief pursuant to Section 8-503 of the Act is not granted at this time; this determination is without prejudice to the filing of a request for such relief in the future.

IT IS FURTHER ORDERED that any and all motions, objections and requests not ruled upon in this proceeding are hereby deemed disposed of in a manner consistent with the determinations and ultimate conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: August 11, 2014

Larry Jones
Administrative Law Judge