

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Rock Island Clean Line LLC :  
: :  
Petition for an Order granting Rock Island :  
Clean Line LLC a Certificate of Public :  
Convenience and Necessity pursuant to : 12-0560  
Section 8-406 of the Public Utilities Act : (on Remand)  
as a Transmission Public Utility and to :  
Construct, Operate and Maintain an :  
Electric Transmission Line and Authorizing :  
and Directing Rock Island Clean Line LLC :  
pursuant to Section 8-503 of the Public :  
Utilities Act to Construct an Electric :  
Transmission Line. :

ORDER ON REMAND

By the Commission:

**I. PROCEDURAL HISTORY**

On October 10, 2012, Rock Island Clean Line LLC (“Rock Island,” “RI,” or “Petitioner”) 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” or “PUA”), 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”); the Illinois Landowners Alliance, NFP (“ILA”); Wind on the Wires (“WOW”); the Environmental Law & Policy Center (“ELPC”) and the Natural Resources Defense Council (“NRDC”), also collectively referred to as “Environmental Intervenors”); 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



issued per Section 10-201(e)(vi) of the Act. ComEd/ILA/IAA maintain that because Rock Island was ineligible for the Certificate, at the time it was issued, it is void. They suggest that, if the Commission does not dismiss the matter with prejudice, it should conclude that the Certificate granted in the Final Order is void.

## V. COMMISSION ANALYSIS AND CONCLUSION

The Commission is an administrative agency created by statute to exercise general supervision over all Illinois public utilities in accordance with the provisions of the PUA. As such, the Commission derives its authority solely from the PUA. Sheffler v. Commonwealth Edison Co., 399 Ill.App.3d 51, 60, 338 Ill.Dec. 110, 923 N.E.2d 1259 (2010); Peoples Energy Corp. v. Ill. Commerce Comm'n, 142 Ill.App.3d 917, 924, 97 Ill.Dec. 115, 492 N.E.2d 551 (1986). Section 8-406 of the PUA provides that a public utility must obtain a CPCN from the Commission before transacting business or constructing a high-voltage transmission line.

In the instant proceeding, Rock Island has requested a Certificate for the Project, i.e., to construct, operate, and maintain a high voltage transmission line along a proposed route across several counties in Illinois. The parties disagree as to whether Rock Island qualifies as a public utility such that it may be issued a Certificate.

The appellate court found that public utility status is determined by operation of Section 3-105 of the Act and conferred by order of the Commission authorizing the utility to transact business and construct and manage utility services. 60 N.E.3d 150, 158.

"Public utility" is defined in Section 3-105 of the PUA as any company that:

"owns, controls, operates or manages, within the 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, permit or right to engage in:

(1) the production, storage, [or] transmission \*\*\* of heat, cold, power, electricity, water, or light[.]"

220 ILCS 5/3-105(a).

The appellate court noted the finding in Mississippi River that an applicant does not satisfy the statutory qualifications of a public utility simply because it sells something ordinarily sold by a public utility, such as heat, power, water, or electricity. Mississippi River, 1 Ill. 2d at 516. It stated that a public utility must also provide its product or service for public use, with the duty of serving the public and treating all persons alike, without discrimination. Id. The appellate court concluded that to attain public utility status a company must: (1) own, control, operate, or manage utility assets, directly or indirectly, within the State; and (2) offer those assets for public use without discrimination. See Id. at 516-19. //

The appellate court found that Rock Island does not own, control, operate, or manage assets within the State. Similarly, the appellate court found that the Project does not satisfy the public use requirement. It notes that the majority, 75%, of the Project's transmission capacity will be used by anchor tenants i.e., wind generators in the resource area of northwest Iowa, South Dakota, Nebraska, and Minnesota. Id. at 159. The

appellate court states that the remaining 25% will be sold through an “open season” bidding process, but that Illinois generators are not required to participate in the bidding process. Id. at 160. Moreover, it states, the Project does not designate any part of the renewable energy transmitted along the proposed line for public use in Illinois. Id.

The supreme court affirms the judgement of the appellate court. It states that when the General Assembly repealed the prior PUA and replaced it with the present statute, the “now or hereafter \*\*\* may” language and all reference to ownership in the future was removed. 90 N.E.3d 448, 460. It states that the current law speaks only of ownership in the present tense. The supreme court states that it is axiomatic that when the legislature amends an unambiguous statute by deleting certain language, it is presumed that the legislature intended to change the law in that respect. Chicago Teachers Union, Local No. 1 v. Board of Education of the City of Chicago, 2012 IL 112566, ¶ 21, 357 Ill.Dec. 520, 963 N.E.2d 918. It therefore reads the current law as evincing an intention by the legislature to limit the definition of “public utility” to situations where the subject entity meets the ownership test at the present time.

The supreme court dismisses the arguments that the legislature has acquiesced to the Commission’s construction because the Commission has granted Certificates to applicants who were not yet public utilities and did not yet own or control assets in Illinois. Id. It states that the “acquiescence rule” applies in the context of administrative action involving consistently followed, long-standing administrative rules, regulations, or interpretations of ambiguous statutes. The supreme court finds those factors are not present here. Id. (citations omitted).

The supreme court also rejects the “Catch-22” concerns. It states that nothing in the PUA prohibits new entrants from commencing development of transmission lines immediately as a purely private project. The supreme court states that so long as the entities do not transact business as a public utility, they will not be subject to the PUA and will not require Commission authority to proceed. It asserts that barriers and costs to new companies wishing to enter the state to establish a new public utility is in no way incompatible with the theory and operation of the PUA. The supreme court explains that the PUA is based on a model of limited monopoly and reflects a policy of preventing rather than promoting competition with existing utilities. Id. at 462-463 (citations omitted).

The supreme court finds that Rock Island cannot meet the ownership requirement for qualification as a public utility and states there is no need to reach the additional question of whether it also fails the public use requirement.

Having considered the entire record and the parties' arguments, the Commission finds that Rock Island does not own, control, operate, or manage assets within the State; and that Rock Island’s plan does not devote assets for public use in Illinois without discrimination. The Commission therefore concludes that Rock Island is not a public utility and is therefore not eligible for a Certificate, consistent with the opinion of the appellate court as affirmed by the supreme court. ))

The Commission finds that the Petition should be dismissed with prejudice consistent with the opinion of the appellate court as affirmed by the supreme court.

**VI. FINDINGS AND ORDERING PARAGRAPHS**

Having given due consideration to the entire record, the Commission is of the opinion and finds pursuant to 220 ILCS 5/10-201(e)(vi) that:

- (1) the Commission has jurisdiction over the subject matter of this proceeding;
- (2) the findings of fact and conclusions of law reached by the Commission in this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (3) consistent with the opinion of the appellate court as affirmed by the supreme court, Rock Island is not a public utility as defined by Section 3-105 of the Public Utilities Act;
- (4) consistent with the opinion of the appellate court as affirmed by the supreme court, Rock Island does not qualify to be granted a Certificate under Section 8-406 of the Public Utilities Act;
- (5) this matter should be dismissed with prejudice; and
- (6) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that this matter is dismissed with prejudice.

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 pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

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.

By Order of the Commission this 14th day of June, 2018.

(SIGNED) BRIEN SHEAHAN

Chairman